

# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 80

[FRL-6984-7]

### Approval of Colorado's Petition To Relax the Federal Gasoline Reid Vapor Pressure Volatility Standard for 2001

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency ("EPA" or "the Agency") is taking direct final action approving the State of Colorado's June 23, 2000, petition to relax the federal Reid Vapor Pressure ("RVP") gasoline standard that applies to gasoline introduced into commerce in the Denver/Boulder area from June 1 to September 15 (the ozone control season). By this action, the RVP standard will be relaxed from 7.8 pounds per square inch ("psi") to 9.0 psi for the 2001 ozone control season. The Agency does not believe that this action will cause environmental harm to the Denver/Boulder area. The area has been in compliance with the ozone standard since 1987. The area's gasoline has been subject to a 9.0 psi RVP standard since 1992 because EPA has approved relaxations of Denver/Boulder's RVP standard from 7.8 psi to 9.0 psi for the past eight years.

**DATES:** This action will be effective July 23, 2001, unless the Agency receives adverse or critical comments or a request for a public hearing by June 25, 2001. If the Agency receives adverse or critical comments, EPA will publish in the **Federal Register** a timely withdrawal of this direct final rule informing the public that this rule will not take effect.

**ADDRESSES:** Any person wishing to submit comments should submit them (in duplicate, if possible) to the two dockets listed below, with a copy forwarded to Richard Babst, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, NW., (Mail Code: 6406J), Washington, DC 20460.

Public Docket: Materials relevant to this petition are available for inspection in public docket A-2000-53 at the Air Docket Office of the EPA, Room M-1500, 401 M Street, SW., Washington, DC 20460, (202) 260-7548, between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A duplicate docket CO-RVP-01 has been established at U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO, 80202-2466, and is

available for inspection during normal working hours. Interested persons wishing to examine the documents in this docket should contact Kerri Fiedler at (303) 312-6493 at least 24 hours before the visiting day. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

#### FOR FURTHER INFORMATION CONTACT:

Richard Babst at (202) 564-9473 facsimile: (202) 565-2085, e-mail address:

*babst.richard@epamail.epa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Regulated Entities

Entities potentially affected by this rule are those regulated entities involved with the production, distribution, importation, and sale of gasoline that is supplied and consumed in the Denver/Boulder, Colorado nonattainment area.<sup>1</sup> Regulated categories include:

Category	Examples of regulated entities
Industry .....	Gasoline refiners and importers, gasoline terminals, gasoline truckers, blenders, gasoline retailers and wholesalers, purchaser-consumers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this rule. To determine whether you are affected by this rule, you should carefully examine the requirements in § 80.27 of title 40 of the Code of Federal Regulations ("CFR"). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

#### I. Background

##### A. History of Gasoline Volatility Regulation

In 1987, EPA determined that gasoline had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered sources. The most common measure of fuel volatility under ambient conditions—which is useful in evaluating vehicle evaporative emissions—is the Reid Vapor Pressure ("RVP"). These emissions from gasoline, referred to as volatile organic compounds ("VOCs"), are precursors for ozone and contribute to the nation's

ground-level ozone problem. Ground-level ozone causes health problems, including damaged lung tissue, reduced lung function, and lung sensitization to other pollutants.

Under authority in section 211(c) of the Clean Air Act (as amended in 1977), EPA promulgated regulations on March 22, 1989 that set maximum volatility levels for gasoline sold during the summer ozone control season. These regulations were referred to as Phase I of a two-phase nationwide<sup>2</sup> program, which was designed to reduce the volatility of commercial gasoline during the summer high ozone season by setting maximum RVP standards.<sup>3</sup> On June 11, 1990, EPA promulgated more stringent volatility controls for Phase II.<sup>4</sup> The requirements established maximum volatility standards of 9.0 psi and 7.8 psi (depending on the state, the month, and the area's ozone attainment status) during the ozone control season—June 1 to September 15.

The 1990 CAA Amendments established a new section 211(h) to address fuel volatility. Section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. It further requires EPA to establish more stringent RVP standards in non-attainment areas if EPA finds such standards "necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in non-attainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control and economic factors." Section 211(h) bans EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that EPA may impose a lower (more stringent) standard in any former ozone non-attainment area redesignated to attainment.

On December 12, 1991, EPA promulgated regulations to modify the Phase II volatility regulations pursuant to section 211(h).<sup>5</sup> The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. Areas designated as non-attainment retained the original Phase II standards published in 1990.<sup>6</sup>

<sup>2</sup> Hawaii, Alaska and U.S. territories were excepted.

<sup>3</sup> 54 FR 11868 (March 22, 1989).

<sup>4</sup> 55 FR 23658 (June 11, 1990).

<sup>5</sup> 56 FR 64704 (December 12, 1991).

<sup>6</sup> 55 FR 23658 (June 11, 1990).

<sup>1</sup> This area encompasses Denver's entire six-county Consolidated Metropolitan Statistical Area, with the exception of Rocky Mountain National park in Boulder County and the eastern portions of Adams and Arapahoe counties.

As stated in the preamble for the Phase II volatility controls,<sup>7</sup> and reiterated in the proposed change to the volatility standards published in 1991,<sup>8</sup> EPA will rely on states to initiate changes to the EPA volatility program that they believe will enhance local air quality and/or increase the economic efficiency of the program within the statutory limits.<sup>9</sup> The Governor of a state may petition EPA to set a volatility standard less stringent than 7.8 psi for some month or months in a non-attainment area. The petition must demonstrate the existence of a particular local economic impact that makes such changes appropriate and must demonstrate that sufficient alternative programs are available to achieve attainment and maintenance of the ozone NAAQS.

#### *B. History of Federal RVP Requirements for the Denver/Boulder Area*

On November 6, 1991, EPA issued ozone nonattainment designations pursuant to section 107(d)(4)(A) of the Act (56 FR 56694). In that notice, EPA designated the Denver-Boulder area as a nonattainment area<sup>10</sup> and classified it as a "transitional area" as determined under section 185A of the CAA.<sup>11</sup>

Because the Denver/Boulder area was designated as a transitional nonattainment area, the volatility standard applicable under the federal RVP rule promulgated on December 12, 1991, was 9.0 psi RVP in May and 7.8 psi from June 1 to September 15, beginning in 1992.<sup>12</sup> Since 1992, in response to petitions from the Governor of Colorado, EPA has waived the 7.8 psi RVP requirement for the Denver/Boulder area and required only 9.0 psi RVP in the area for the ozone control

season.<sup>13</sup> For in-depth discussions of these actions, please refer to the **Federal Register** notices. In general, EPA granted these petitions to relax the 7.8 psi standard based on evidence presented by Colorado that showed economic hardship to consumers and industry if the 7.8 psi standard were retained. EPA's decision to grant these petitions was also based on evidence that demonstrated that the 7.8 psi standard was not necessary given the area's record of continued attainment of the 1-hour ozone standard.

On August 8, 1996, the Governor of Colorado submitted a maintenance plan and requested EPA to redesignate the Denver/Boulder area to attainment for the 1-hour ozone NAAQS.<sup>14</sup> EPA did not proceed with any action on the Governor's request as the maintenance plan had both legal and technical problems which precluded EPA's full approval.

In July 1997,<sup>15</sup> EPA established a new 8-hour ozone NAAQS of 0.08 parts per million (ppm). At that time, EPA also promulgated regulations governing when the 1-hour ozone standard would no longer apply to areas. On June 5, 1998 (63 FR 31014), in accordance with these regulations, EPA issued final rules for several areas that were attaining the 1-hour standard, including the Denver/Boulder area, finding that the 1-hour ozone standard no longer applied to these areas.<sup>16</sup> As a result of the finding that the 1-hour ozone standard no longer applied to the Denver/Boulder area, the August 8, 1996, 1-hour ozone redesignation and maintenance plan became moot and no further action was contemplated by either the State or EPA.

In 1998, the governor of Colorado again requested that EPA waive the federal 7.8 psi RVP requirement for the Denver/Boulder area. Finding that while a 9.0 psi RVP standard was in place, the Denver/Boulder area had attained the 1-hour ozone standard and was

monitoring attainment of the 8-hour standard since 1994, EPA concluded that retaining the 9.0 psi RVP standard would not cause the area's air quality to significantly deteriorate. See 63 FR 31627, (June 10, 1998). Moreover, EPA concluded that imposing a 7.8 psi standard would result in significant costs for consumers and refiners. EPA therefore extended its waiver relaxing the federal RVP standard for the area to 9.0 psi for the ozone control seasons of 1998 through 2000. EPA explained that designations under the new 8-hour standard would be made by July 2000, and that consideration of a permanent revision to the federal RVP standard for the area would be appropriate at that time.

On May 14, 1999, the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded, but did not vacate, the revised 8-hour ozone standard.<sup>17</sup> On February 27, 2001, the Supreme Court affirmed in part and reversed in part the judgment of the Court of Appeals and remanded the decision to the Court of Appeals for further proceedings.<sup>18</sup> In the interim period, while the Supreme Court was considering the case, EPA reinstated the 1-hour ozone standard in all areas of the nation to ensure the availability of a fully enforceable Federal ozone standard to protect public health.<sup>19</sup> With reinstatement of the 1-hour ozone standard, the 1-hour standard designations and classifications that applied in such areas at the time the standard was revoked were also reinstated. Reinstatement of the 1-hour standard in the Denver/Boulder area became effective January 16, 2001. With reinstatement of the standard, the Denver/Boulder area returned to nonattainment for the 1-hour ozone standard with a "transitional" classification.

As a result of the reinstatement of the nonattainment designation, the Denver Regional Air Quality Council and the State have developed a revised maintenance plan that updates the August 8, 1996, Governor's submittal and addresses EPA's technical and legal concerns with the 1996 submittal. The Governor submitted a new redesignation request and revised maintenance plan to EPA on November 30, 2000. The revised maintenance plan submittal incorporates a gasoline RVP limit of 9.0 psi. Since maintenance of the 1-hour ozone NAAQS is shown for the entire

<sup>7</sup> The Phase II final rulemaking discussed procedures by which states could petition EPA for more or less stringent volatility standards. See 55 FR 23660 (June 11, 1990).

<sup>8</sup> See 56 FR 24242 (May 29, 1991).

<sup>9</sup> See CAA section 211(h)(1) (allowing EPA to set a standard more stringent than 9.0 psi as necessary to achieve comparative emissions in nonattainment areas considering enforceability, the need of an area for emissions control and economic factors).

<sup>10</sup> The nonattainment area encompasses Denver's entire six-county Consolidated Metropolitan Statistical Area, with the exception of Rocky Mountain National Park in Boulder County and the eastern portions of Adams and Arapahoe Counties.

<sup>11</sup> Section 185A defines a transitional area as "an area designated as an ozone nonattainment area as of the date of enactment of the Clean Air Act Amendments of 1990 [that] has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989." In fact, according to monitoring data, the Denver-Boulder area attained and has continued to maintain the 0.12 parts per million (ppm) 1-hour standard since 1987.

<sup>12</sup> The standard applicable in other areas of Colorado is 9.0 psi from May 1 to September 15.

<sup>13</sup> See 53 FR 26067 (April 30, 1993); 59 FR 15629 (April 4, 1994); 61 FR 16391 (April 15, 1996); and 63 FR 31627 (June 10, 1998).

<sup>14</sup> In order for EPA to redesignate an area to attainment under section 107(d)(3)(D) of the CAA, the Governor must submit a redesignation request and a maintenance plan that meets the requirements of section 107(d)(3)(E) and section 175A of the CAA, the redesignation requirement of the General Preamble for the Implementation of Title I of CAA Amendments of 1990 (57 FR 13498 (April 16, 1991), and 57 FR 18070 (April 28, 1992)), and addresses the provisions of EPA's redesignation policies and guidance documents. In general, the ozone maintenance plan must demonstrate long-term (i.e., 10 years) maintenance of the ozone NAAQS.

<sup>15</sup> 62 FR 38856 (July 18, 1997).

<sup>16</sup> Similar rulemakings for other areas were promulgated on July 22, 1998 (63 FR 39432) and June 9, 1999 (64 FR 30911).

<sup>17</sup> *American Trucking Assoc. v. EPA*, 175 F.3d 1027 (D.C. Cir. 1999).

<sup>18</sup> *Whitman v. Am. Trucking Ass'n*, 121 S.Ct. 903 (2001).

<sup>19</sup> 65 FR 45182 (July 20, 2000).

maintenance time period of 1993 through 2013 with this 9.0 psi limit, Colorado has requested that the 9.0 psi summertime RVP limit (10.0 psi for ethanol blends) be made permanent for the Denver/Boulder area once EPA approves the redesignation request and maintenance plan. EPA anticipates a final approval of the State's redesignation request in the late spring of 2001.

## II. Colorado's Petition

### A. What Did Colorado Request in Its Petition?

On June 23, 2000, The Honorable Bill Owens, Governor of Colorado, sent a letter to Ms. Rebecca Hammer, Acting Administrator of EPA's Region VIII, requesting that EPA provide a waiver of the 7.8 psi federal RVP standard and that "the 9.0 psi volatility standard be continued in the Denver/Boulder metropolitan area for the summertime ozone season in 2001."

### B. Justification for Granting Colorado's Petition To Waive the 7.8 RVP Standard for 2001

As described above, for changes to the federal volatility standard EPA must find the following: (1) The existence of a particular local economic impact that makes changes to the otherwise applicable standard appropriate; and (2) that sufficient alternative programs are available to achieve attainment and maintenance of the ozone NAAQS. The petition and available evidence indicate that imposing the 7.8 psi standard would result in costs to consumers and industry and that these costs are not reasonable given that the 7.8 psi RVP standard is not necessary to ensure continued attainment of the 1-hour ozone standard.

The Colorado Petroleum Association<sup>20</sup> has estimated that the cost of providing gasoline to the Denver market without the waiver would cost the refiners who supply the Denver area approximately \$15–25 million. Six refiners supply the Denver market and these refiners vary in size, refining capacity and complexity. The Colorado Petroleum Association estimates that all of the refiners would have to spend capital dollars to upgrade and reconfigure their facilities to provide gasoline blended at the 7.8 psi RVP level for the Denver market. Documentation submitted in support of Colorado's petition for relaxation of the 7.8 psi RVP standard indicate that implementation of that standard would

cost the consumer about 1.5 cents more per gallon of gasoline with an overall seasonal cost of \$4,500,000.<sup>21</sup>

The record also supports the conclusion that retention of the 9.0 psi standard will not cause deterioration of air quality in the Denver/Boulder area. As stated above, the area has continued to meet the 1-hour ozone standard since 1987 without the implementation of the 7.8 psi standard. With continued vehicle fleet turnover to lower-emitting vehicles and continued implementation of the State's existing VOC and NO<sub>x</sub> control programs,<sup>22</sup> we believe sufficient controls are in place to ensure maintenance of the ozone NAAQS in the short-term.

The Governor has requested a one-year extension of EPA's waiver of the federal 7.8 psi RVP standard for the Denver/Boulder area, pending final approval of the State's redesignation request. EPA believes that the appropriate time to assign a permanent RVP standard for the area will be following redesignation of the Denver/Boulder area.

## III. Final EPA Action

EPA has decided to grant Denver/Boulder's petition for approval of a waiver of the federal volatility standard of 7.8 psi RVP for the 2001 ozone control season. The applicable federal volatility standard for the Denver/Boulder area for the 2001 ozone control season, therefore, will be 9.0 psi RVP. This action represents a continuation of previously approved relaxations of the RVP standard.

Because this rulemaking merely extends for one additional year the waiver allowing the Denver/Boulder area to continue to receive gasoline containing up to 9.0 psi RVP as it has since 1992, EPA is publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. In the "Proposed Rules" section of today's

<sup>21</sup> Memorandum from K.B. Livo, Colorado Department of Public Health and Environment, to Kerri Fiedler, Region VIII, dated 12/07/2000.

<sup>22</sup> In particular, EPA notes that Colorado has had a motor vehicle inspections and maintenance program since 1981 (Automobile Inspection and Readjustment, State Regulation No. 11 ("Motor Vehicle Emissions Inspection Program")). A more stringent and effective "enhanced" inspection and maintenance program began in the Denver/Boulder area in 1995.

In addition, Regulation No. 3 ("Air Contaminant Emissions Notices") and Regulation No. 6 ("Standards of Performance for New Stationary Sources") control emissions from industrial facilities and cap VOC and NO<sub>x</sub> emission from new or modified major stationary sources, and Regulation No. 7 ("Emissions of Volatile Organic Compounds") contains RACT requirements for commercial and industrial sources of VOCs.

**Federal Register**, however, we are publishing a separate document that will serve as the proposal to grant Colorado's petition if adverse comments are filed. This direct final rule will be effective on July 23, 2001 without further notice unless we receive adverse comment by June 25, 2001. If EPA receives adverse comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on today's proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## IV. Administrative Requirements

### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### B. Paperwork Reduction Act

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

### C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for

<sup>20</sup> Memorandum from Stan Dempsey, Colorado Petroleum Association, Denver, CO, to Kerri Fiedler, EPA Region VIII, dated 2/27/2001.

Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule continues the current relaxation of the Federal 7.8 psi RVP standard and thus avoids imposing the costs that the existing Federal regulations would otherwise impose. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

#### *D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885 (April 23, 1997)) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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 rule is not subject to Executive Order 13045 because it is not an economically significant action as defined by Executive Order 12866, and because it does not address an environmental health or safety risk that would have a disproportionate effect on children.

#### *E. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255 (Aug. 10, 1999)), 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."

This rule does not have federalism implications. Today's rule affects the level of the Federal RVP standard with which businesses supplying gasoline to the Denver/Boulder area must comply. It 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. Therefore, Executive Order 13132 does not apply to this rule.

#### *F. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law

104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### *G. Congressional Review*

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**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(a).

#### *H. Regulatory Flexibility*

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

*I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

“On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084”. Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249 (November 6, 2000)), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

Today’s rulemaking does not have tribal implications. The rule affects the level of the Federal RVP standard applicable to gasoline supplied to the

Denver/Boulder area. It therefore affects only refiners, distributors and other businesses supplying gasoline to the Denver/Boulder area and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

*J. Electronic Copies of Rulemaking*

A copy of this action is available on the Internet at <http://www.epa.gov/otaq> under the title: “Direct Final Rule—Approval of Colorado’s Petition to Relax the Federal Gasoline Reid Vapor Pressure Volatility Standard for 2001.”

*K. Statutory Authority*

Authority for this action is in sections 211(h) and 301(a) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. 7545(h) and 7601(a)).

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

Environmental protection,  
Administrative practice and procedures,

Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 16, 2001.

**Christine Todd Whitman,**  
*Administrator.*

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

**PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES**

1. The authority citation for part 80 continues to read as follows:

**Authority:** Sections 114, 211, and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. In § 80.27(a)(2), the table is amended by revising the entry for Colorado and footnote 2 to read as follows:

**§ 80.27 Controls and prohibitions on gasoline volatility.**

*	*	*	*	*
(a)	*	*	*	
(2)	*	*	*	

**APPLICABLE STANDARDS <sup>1</sup> 1992 AND SUBSEQUENT YEARS**

State	May	June	July	August	September
Colorado <sup>2</sup> .....	9.0	7.8	7.8	7.8	7.8

<sup>1</sup> Standards are expressed in pounds per square inch (psi).

<sup>2</sup> The standard for 1992 through 2001 in the Denver-Boulder area designated nonattainment for the 1-hour ozone NAAQS in 1991 (see 40 CFR 81.306) will be 9.0 for June 1 through September 15.