EPA-APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	*	*	* *	*
1997 8-Hour Ozone Section 110 Maintenance Plan.	New Orleans Ozone Maintenance Area (including Jefferson, Orleans, St. Bernard and St. Charles Parishes), LA.	6/29/07	9/16/08. [Insert FR page number where document begins].	

3. Section § 52.975, entitled, ''Redesignations and maintenance plans; ozone'', is amended by adding a new paragraph (k) as follows:

§ 52.975 Redesignations and maintenance plans; ozone.

* * * * *

(k) *Approval.* The LDEQ submitted a maintenance plan addressing the 1997 8-hour ozone standard for the New Orleans Ozone Maintenance Area on June 29, 2007. This area is designated unclassifiable/attainment for the 1997 ozone standard. EPA determined this request for the New Orleans Ozone Maintenance Area was complete on August 8, 2007. This maintenance plan meets the requirements of section 110(a)(1) of the CAA, and is consistent with EPA's maintenance plan guidance document dated May 20, 2005. The EPA therefore approved the 1997 8-hour ozone NAAQS maintenance plan for the New Orleans Ozone Maintenance Area including the parishes of Jefferson, Orleans, St. Bernard and St. Charles on September 16, 2008.

* * * * *

[FR Doc. E8–21196 Filed 9–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0836–200739(a); FRL–8714–8]

Approval and Promulgation of Implementation Plans; Florida; Removal of Gasoline Vapor Recovery From Southeast Florida Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Florida (Florida) on May 31, 2007, for the purpose of removing Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in Dade, Broward, and Palm Beach Counties (hereafter refer to as the ''Southeast Florida Area''), and to phase out Stage II requirements for existing facilities in those counties. In addition, EPA is approving this SIP revision which requires new and upgraded gasoline dispensing facilities and new bulk gasoline plants statewide to employ Stage I vapor control systems, and phases in Stage I vapor control requirements statewide for existing gasoline dispensing facilities.

DATES: This direct final rule is effective November 17, 2008 without further notice, unless EPA receives adverse comment by October 16, 2008. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0836, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: lesane.heidi@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2007–0836,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2007–0836. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center home page at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning

Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074. Ms. LeSane can also be reached via electronic mail at *lesane.heidi@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Effective January 6, 1992, EPA under the Clean Air Act Amendments of 1990 (CAA or ''the Act''), designated and classified the three-county Southeast Florida Area consisting of Palm Beach, Broward, and Dade Counties as a ''moderate'' ozone nonattainment area. (56 FR 56694). The designation was based on the area's 1-hour ozone design value, 138 parts per billion (ppb), for the three-year period 1987–1989. Pursuant to the requirements of section 182(b)(3) of the CAA, the Florida Department of Environmental Protection (FDEP) developed Florida Administrative Code (F.A.C.) Rule 62–252.400, Gasoline Dispensing Facilities—Stage II Vapor Recovery, and submitted the rule to EPA for approval as part of Florida's ozone SIP. The rule was adopted by FDEP effective February 2, 1993, and approved by EPA effective April 25, 1994 (59 FR 13883). Under the State rule, new gasoline dispensing facilities built after November 15, 1992, were required to employ Stage II systems upon start-up; existing facilities were required to install Stage II systems by specific dates ranging from June 30, 1993, to November 15, 1994.

On November 8, 1993, having implemented all measures required of the State to that date for moderate ozone nonattainment areas under the CAA, and with three years of data (1990–1992) showing compliance with the 1-hour ozone standard, FDEP submitted to EPA an ozone maintenance plan and request for redesignation of the Southeast Florida Area to attainment status. The maintenance plan, as required under section 175A of the CAA, showed that nitrogen oxides (NO_X) and volatile organic compound (VOC) emissions in the area would remain below the 1990 ''attainment year'' levels throughout the ten-year period from 1995 to 2005. In making these projections, FDEP factored in the emissions benefit (primarily VOCs) of the area's Stage II program, thereby expressing the State's intent to maintain this program as part of its 1-hour ozone SIP. The redesignation request and maintenance plan were approved by EPA, effective April 25, 1995 (60 FR 10325). Subsequently, the maintenance plan was extended by FDEP to 2015 and approved by EPA, effective April 13, 2004 (69 FR 7127).

On April 6, 1994, EPA promulgated regulations requiring the phase-in of on-board refueling vapor recovery (ORVR) systems on new motor vehicles. Under Section 202(a)(6) of the CAA, moderate ozone nonattainment areas are not required to implement Stage II vapor recovery programs after promulgation of ORVR standards. Since the Southeast Florida Stage II program was already in place and had been included in the State's November 8, 1993, redesignation request and 1-hour ozone maintenance plan for the area, FDEP elected not to remove the program from the SIP at that time.[1]

II. Analysis of State's Submittal

A. Requested Removal of Stage II Requirements

EPA's primary consideration for determining the approvability of Florida's request to remove Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the Southeast Florida Area, and for the phase out of Stage II requirements for existing facilities in those counties is whether this requested action complies with section 110(l) of the CAA. Below is EPA's analysis of these considerations.

1. Federal Requirements for Stage II

As a result of the 1990 CAA amendments, states were required to adopt Stage II rules for all areas classified as ''moderate'' or worse under section 182(b)(3) of the CAA. In addition, Section 202(a)(6) of the CAA required EPA to promulgate Onboard Vapor Recovery standards. Section 202(a)(6) further provides that ''the requirements of section 182(b)(3) (relating to Stage II gasoline vapor recovery) for areas classified under section 181 as moderate for ozone shall not apply after promulgation of such standards.'' Onboard Refueling Vapor Recovery (ORVR) regulations were promulgated by EPA on April 6, 1994 (see, 59 FR 16262, 40 CFR 86.001 and 40 CFR 86.098). As a result, the CAA no longer requires moderate areas to impose Stage II controls under section 182(b)(3), and such areas may seek SIP revisions to remove such requirements from their SIPs, subject to section 110(l) of the Act. Section 110(l) of the CAA, states:

> Plan Revision—Each revision to an implementation plan submitted by a State under this Chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this Chapter.

As such, Florida must make demonstration of noninterference to remove Stage II from the SIP for the Southeast Florida area. EPA's policy memoranda related to ORVR, dated March 9, 1993, and June 23, 1993, provided further guidance on an allowance for removing stage II requirements from certain areas.

2. Southeast Florida's Air Quality Status

On April 30, 2004, EPA published the nonattainment and attainment designations for the 1997 8-hour ozone standard (69 FR 23857). The Southeast Florida Area was determined to be in attainment for the 8-hour ozone standard. With regard to the 1-hour and 8-hour ozone NAAQS, Southeast Florida is still in attainment and has provided monitoring data in the submittal for both standards through 2006 which demonstrates this attainment. Compliance with the 8-hour ozone standard is demonstrated at 84 ppb and for the 1-hour ozone standard, compliance was demonstrated at 124 ppb. For the period of 2004–2006, the 8-hour ozone design value was 70 ppb, and the 1-hour ozone design value was 92 ppb.

On January 5, 2005, EPA published nonattainment and attainment designations for the $PM_{2.5}$ standard (70 FR 944). The Southeast Florida Area was designated as attainment for the $PM_{2.5}$ standard and has remained in attainment through 2006. Compliance for the current $PM_{2.5}$ annual standard is

[1] The Phase I implementation rule for the 1997 8-hour ozone standard, at 40 CFR 51.905(4), requires that any ''applicable requirement'' under the 1-hour ozone SIP, if rescinded, be retained as a contingency measure in the 8-hour ozone SIP. However, since the Southeast Florida Stage II vapor recovery program ceased to be an ''applicable requirement'' upon EPA's promulgation of the ORVR standards in 1994, the State is not obligated, and is not proposing, to retain the program as a contingency measure.

15 micro-grams per cubic meter (μg/m^3). The annual $PM_{2.5}$ design value for Southeast Florida for the period of 2004–2006 was 9.5 μg/m^3.

On October 17, 2006, EPA promulgated a revised NAAQS for $PM_{2.5}$. The effective date for the new standard was December 18, 2006. EPA retained the annual $PM_{2.5}$ standard of 15 μg/m^3 and revised the 24-hour $PM_{2.5}$ standard, changing it from 65 μg/m^3 to 35 μg/m^3. FDEP submitted a letter dated December 12, 2007, which recommended that the entire State of Florida be designated as attainment for $PM_{2.5}$.

Although the Southeast Florida Area is in attainment for the 1-hour ozone, 8-hour ozone and $PM_{2.5}$ standards, section 110(l) still requires that this area demonstrate noninterference for any SIP revision related to these standards.

On March 12, 2008, EPA strengthened its NAAQS for ground-level ozone, the primary component of smog. These changes will improve protection of both public health and sensitive trees and plants. EPA is revising the 8-hour ''primary'' ozone standard, designed to protect public health, to a level of 0.075 parts per million (ppm). The previous standard, set in 1997, was 0.08 ppm. The Southeast Florida Area 8-hour ozone standard design values for the years 2004–2006 are as follows: 0.072 ppm for Dade, 0.066 ppm for Broward and 0.066 ppm for Palm Beach. These levels are below both the 1997 8-hour ozone standard and the 2008 8-hour ozone standard.

3. Noninterference Demonstration for Removal of Stage II

Removing the Stage II vapor recovery requirement from the Southeast Florida Area's portion of the Florida SIP may result in a small, temporary increase in VOC emissions within the three Southeast Florida counties. However, as explained below, implementation of the ORVR requirements ensures noninterference with the NAAQS. The following table shows the expected emission changes in comparison with the emissions that would occur if the Stage II vapor recovery requirement were to remain in force.

TABLE 1—VOC EMISSIONS FROM VEHICLE REFUELING (STAGE II)

[Tons per day (tpd)]

	2005	2010		2015	
	With Stage II	With Stage II	Without Stage II	With Stage II	Without Stage II
Miami-Dade	1.43	1.04	3.22	0.87	2.04
Broward	1.26	0.92	2.86	0.78	1.81
Palm Beach	0.95	0.71	2.19	0.61	1.42
SE Florida Total	3.64	2.67	8.27	2.26	5.27

EPA's analysis involved a comparison of the VOC emissions attributed to the Stage II program (see, Table 1 above) to the total VOC emissions projected for the Southeast Florida Area in the most recent 1-hour ozone maintenance plan [2] (see Table 2 below).

TABLE 2—TOTAL VOC [3] EMISSIONS FROM SOUTHEAST FLORIDA AREA WITH & WITHOUT VEHICLE REFUELING (STAGE II)

[tpd]

	1990	2005	2010		2015	
	Without Stage II	With Stage II	With Stage II	Without Stage II	With Stage II	Without Stage II
Miami-Dade	399.8	208.3	200.0	202.1	191.6	192.8
Broward	239.6	154.6	145.3	147.2	135.9	136.9
Palm Beach	228.4	149.7	143.2	144.7	136.7	137.5
SE Florida Total	867.8	512.6	488.4	494.0	464.2	467.2

Since 1990, the year that the Southeast Florida Area came into attainment with the 1-hour standard, VOC emissions from all sources have continued to decline. From a 1990 value of 867.8 tpd, VOC emissions decreased to 512.6 tpd in 2005. As a result of turnover of the vehicle fleet and other programs designed to reduce emissions, VOC emissions in the Southeast Florida Area are expected to further decline to 488.4 tpd and 464.2 tpd in 2010 and 2015, respectively, if the Stage II vapor recovery program is continued (and does not produce ORVR incompatibility-related excess emissions). Without credit for the Stage II program, the VOC emissions would potentially be 494.0 tpd in 2010 and 467.2 tpd in 2015, which is still below current levels and well below the 1990 attainment-year emissions ''ceiling.'' Thus, the additional emissions that may result from the phase-out of the Stage II program do not appear to compromise continued attainment of the former 1-hour ozone standard or the more restrictive 8-hour ozone standard.

Any VOC emissions increase that may result from the phase out of the Stage II program is not expected to cause a violation of the 8-hour ozone standard in the Southeast Florida Area. An analogous emissions ceiling for maintenance of the 8-hour standard can be approximated. Although the three-county Southeast Florida Area has never violated the 8-hour standard, the years 1988 and 1989 had the closest design values to the level of the standard (84 ppb and 83 ppb, respectively). Since VOC emissions have steadily decreased over the last two decades, emissions in 1988 and 1989 were greater than 1990 emissions. Thus, the 1990 attainment-

[2] Air Quality Maintenance Plan (2005–2015) Dade, Broward, Palm Beach Counties, December 2002.

[3] The total VOC emissions in this area also include a biogenic component that is assumed constant over time. The biogenic VOC emissions for the individual counties are estimated at 211.3 tpd for Miami-Dade, 174.5 tpd for Broward, and 399.6 tpd for Palm Beach. These amounts can be added to the man-made emissions to get the total VOC emissions.

year emissions ceiling, as determined for the 1-hour standard, represents a reasonable emissions ceiling for maintenance of the 8-hour standard, and the logic given above for noninterference with maintenance of the former 1-hour standard applies also to the current 8-hour standard. As mentioned previously in this rulemaking, the Southeast Florida Area has current monitoring data that demonstrates attainment with the 8-hour ozone standard.

It is expected that the removal of the Stage II gasoline vapor recovery program in the Southeast Florida Area will not interfere with continued compliance with the $PM_{2.5}$ standard. EPA's review of the available information indicates that sulfates and carbon make up approximately 70 percent of the precursors for $PM_{2.5}$ formation in Florida. As mentioned previously in this rulemaking, the Southeast Florida Area has current monitoring data that demonstrates attainment with both the annual and the daily $PM_{2.5}$ standards.

Based on the factors mentioned above, EPA believes that Florida's demonstration to remove the Stage II requirement from the Florida SIP for the Southeast Florida Area is consistent with section 110(l) of the CAA and will not interfere with compliance for the new NAAQS in the Southeast Florida Area.

B. Requested Approval of Statewide Stage I Vapor Control Requirements

Florida's Stage I vapor recovery is currently required for gasoline dispensing facilities in the seven counties designated as maintenance areas for ozone (Duval, Orange, Hillsborough, Pinellas, Palm Beach, Broward, and Miami-Dade). In addition to removing Stage II requirements for Southeast Florida, this SIP revision will require Stage I vapor recovery at new and upgraded gasoline dispensing facilities statewide; phase in Stage I vapor recovery statewide for existing gasoline dispensing facilities not previously required to have Stage I; and require tanker trucks and trailers to ensure connection of the vapor return line at facilities equipped for Stage I vapor recovery statewide. The phase-in of Stage I vapor control on a statewide basis will likely result in a net reduction in air pollutant transport across Florida's borders.

III. Final Action

EPA is approving the SIP revision submitted by the State of Florida for the purpose of removing Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in Miami-Dade, Broward, and Palm Beach Counties, and phasing out Stage II requirements for existing facilities in those counties. EPA is also approving rule changes which would require new and upgraded gasoline dispensing facilities and new bulk gasoline plants statewide to employ Stage I vapor control systems, and it would phase in Stage I vapor control requirements statewide for existing gasoline dispensing facilities. This SIP revision includes changes to F.A.C. Chapters 62–210.200 Definitions, 62–210.310 Air General Permits, 62–210.920 Air General Permit Forms, 62–252.200 Definitions, 62–252.300 Gasoline Dispensing Facilities—Stage I Vapor Recovery, 62–252.400 Gasoline Dispensing Facilities—Stage II Vapor Recovery, 62–252.500 Gasoline Tanker Trucks, 62–296–418 Bulk Gasoline Plants, and 62–296.509 Bulk Gasoline Plants (Repealed).

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 17, 2008 without further notice unless the Agency receives adverse comments by October 16, 2008.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 17, 2008 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 29, 2008.

Russell L. Wright, Jr.

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart K Florida

■ 2. Section 52.520(c) is amended by:

■ a. Revising entries for ''62–210.200'', ''62–210.300'', ''62–252.200'', ''62–252.300'', ''62–252.400'', ''62–252.500'', ''62–296.509'' and

■ b. Adding entries for ''62–210.310'', ''62–210.920'', and ''62–296.418'' to read as follows:

52.520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED FLORIDA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 62–210 Stationary Sources—General Requirements				
*	*	*	*	*
62–210.200	Definitions	9/4/06	9/16/08 [Insert citation of publication].	
*	*	*	*	*
62–210.300	Permits Required	9/4/06	9/16/08 [Insert citation of publication].	
62–210.310	Air General Permits	9/4/06	9/16/08 [Insert citation of publication].	
*	*	*	*	*
62–210.920	Air General Permit Forms	9/4/06	9/16/08 [Insert citation of publication].	
*	*	*	*	*
Chapter 62–252 Gasoline Vapor Control				
*	*	*	*	*
62–252.200	Definitions	9/4/06	9/16/08 [Insert citation of publication].	
62–252.300	Gasoline Dispensing Facilities—Stage I Vapor Recovery.	9/4/06	9/16/08 [Insert citation of publication].	
62–252.400	Gasoline Dispensing Facilities—Stage II Vapor Recovery.	9/4/06	9/16/08 [Insert citation of publication].	
62–252.500	Gasoline Tanker Trucks	9/4/06	9/16/08 [Insert citation of publication].	
*	*	*	*	*
Chapter 62–296 Stationary Sources—Emission Standards				
*	*	*	*	*
62–296.418	Bulk Gasoline Plants	9/4/06	9/16/08 [Insert citation of publication].	
*	*	*	*	*
62–296.509	Bulk Gasoline Plants	.....	.....	Repealed.
*	*	*	*	*

* * * * *

[FR Doc. E8–21303 Filed 9–15–08; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

FMCSA Policy on Considering the Preventability of Crashes in Administrative Review Requests of Hazardous Materials Safety Permit Denials Based Upon Crash Rates in the Top 30 Percent of the National Average Under 49 CFR 385.407

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of enforcement policy.

SUMMARY: FMCSA may not issue a hazardous materials safety permit (safety permit) to a motor carrier that has a crash rate, driver, vehicle or hazardous material out-of-service rate in the top 30 percent of the national average pursuant to 49 CFR 385.407. This document provides notice of FMCSA policy that it will consider preventability when a motor carrier contests the denial of a safety permit based upon a crash rate in the top thirty percent of the national average and presents compelling evidence that one or more of the crashes listed in the Motor Carrier Management Information System (MCMIS) was not preventable and thus not reflective of the motor carrier's suitability to transport the type and quantity of hazardous materials that require a safety permit. Preventability is determined by the following standard: If a driver who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable. FMCSA currently uses this standard in evaluating accident factors under its safety rating process.

DATES: *Effective Date:* September 16, 2008.

FOR FURTHER INFORMATION CONTACT: James O. Simmons, Office of Enforcement and Compliance, Hazardous Materials Division, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 493–0496 (voice), *james.simmons@dot.gov* (e-mail), Debra S. Straus, Office of the Chief Counsel, (202) 366–2266 (voice), or *debra.straus@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On June 30, 2004, FMCSA issued a Final Rule containing the regulations implementing the safety permit program. 69 FR 39350. The Final Rule, codified at 49 CFR part 385, identifies who must hold a safety permit, establishes the application process for a safety permit, and the conditions that must be satisfied before FMCSA will issue a safety permit to a carrier. These conditions are set out in 49 CFR 385.407.

Background

Section 385.407 requires that a carrier have a ''Satisfactory'' safety rating, certify that it has a satisfactory security program, and be properly registered with the Pipeline and Hazardous Materials Safety Administration (PHMSA). 49 CFR 385.407(a)(1), 385.407(b) & (c). Section 385.407(a)(2) additionally states that:

> FMCSA will not issue a safety permit to a motor carrier that: (ii) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA Motor Carrier Management Information System (MCMIS); or
>
> (iii) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS;

The safety permit requirement became effective for motor carriers on the date after January 1, 2005, when the motor carrier was required to file a Motor Carrier Identification Report Form (MCS–150) according to a schedule set forth in 49 CFR 390.19(a). The application for the safety permit was incorporated into the MCS–150, as an expanded form entitled ''MCS–150B or Combined Motor Carrier Identification Report and HM Permit Application.''

On or about January 3, 2005, the Office of Enforcement and Compliance (OEC) published on its public Web site [1] the formula used to determine the national averages and the crash rates and driver, vehicle and hazmat out-of-service (OOS) rates that establish the thresholds for the ''top 30 percent of the national average.'' The Web site also instructed motor carriers on how to calculate their own out-of-service rates. This information on calculating the national averages, crash rates and out-of-service rates was subsequently published in the **Federal Register**. 72 FR 62795 (Nov. 7, 2007).

Crash Rates

FMCSA may not issue a safety permit to a motor carrier that has a crash rate in the top 30 percent of the national average as indicated in the MCMIS. 49 CFR 385.407(a)(2)(ii). The threshold crash rate above which a carrier falls within the worst performing or top thirty percent of the national average is recalculated every two years using the crash data from the previous two years. The cut-off for motor carrier crash rates above which a carrier will fall into the top 30 percent of the national average has remained at 0.125 since the inception of the program.

To determine the crash rate for an individual carrier that is applying for a safety permit, FMCSA examines one year of crash data. FMCSA divides the number of crashes for the previous twelve-month period by the total number of power units that the motor carrier operated during that twelve-month period. For example, if a motor carrier had 2 crashes and 10 power units, the crash rate would be 0.20 based upon a calculation of (2 ÷ 10 = 0.20). FMCSA examines one year of data to remain consistent with FMCSA practice of reviewing one year of records during a compliance review. FMCSA does not consider a single crash to be statistically valid. Thus, crash rates will be calculated only for carriers with more than one crash in the relevant twelve-month period.

Preventability

Petitions for rulemaking filed by the Institute of Makers of Explosives and The Fertilizer Institute requested the Agency to consider crash preventability when evaluating a motor carrier's crash rate under the safety permit program, in the same manner that accident preventability is considered when a motor carrier contests an unfavorable safety rating. In the Agency's response to these petitions issued on June 21, 2007, the FMCSA Administrator agreed that the same preventability criteria used in assessing the ''Accident Factor'' under 49 CFR part 385, Appendix A.III.B(d), should be applied when a carrier contests denial of a safety permit application based upon its crash rate and provides compelling evidence a crash was not preventable.

The preventability standard found in Appendix A to Part 385, section III.B(d) states:

> The FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. *Preventability will be determined according to the following standard: ''If a driver who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact*

[1] *http://www.safersys.org/HazMatRatesPost.aspx#OOSRates.*