

the environment. For the final NO_x SIP Call, the Agency conducted a general analysis of the potential changes in ozone and particulate matter levels that may be experienced by minority and low-income populations as a result of the requirements of that rule. These findings were presented in the RIA for the NO_x SIP Call. This action does not affect this analysis.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 78

Acid rain, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 97

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: June 1, 2007.

William L. Wehrum,

Assistant Administrator for Air and Radiation.

For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for Part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart G—Control Strategy

2. Section 51.121 is amended as follows:

- a. By revising paragraph (c)(2).
- b. By removing the entry for “Georgia” from the tables in paragraphs (e)(2)(i), (e)(4)(iii) and (g)(2)(ii).
- c. By removing and reserving paragraph (e)(2)(ii)(C).
- d. By removing paragraph (s).

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

* * * * *

(c) * * *

(2) With respect to the 1-hour ozone NAAQS, the portions of Missouri,

Michigan, and Alabama within the fine grid of the OTAG modeling domain. The fine grid is the area encompassed by a box with the following geographic coordinates: Southwest Corner, 92 degrees West longitude and 32 degrees North latitude; and Northeast Corner, 69.5 degrees West longitude and 44 degrees North latitude.

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[FR Doc. E7–11036 Filed 6–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0571; FRL–8324–1]

Approval and Promulgation of Implementation Plans for Arizona; Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour and Annual PM–10 Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 25, 2002, EPA approved under the Clean Air Act (CAA) the serious area particulate matter (PM–10) plan for the Maricopa County portion of the metropolitan Phoenix (Arizona) nonattainment area (Maricopa County area). Among other things, EPA approved the best available control measure (BACM) and most stringent measure (MSM) demonstrations in the plan and granted the State’s request for an attainment date extension for the area. EPA’s approval was challenged in the U.S. Court of Appeals for the Ninth Circuit. In response to the Court’s remand, EPA reassessed the BACM and MSM demonstrations for the significant source categories of on-road motor vehicles and nonroad engines and equipment exhaust, specifically regarding whether California Air Resources Board (CARB) diesel is a BACM and/or MSM. As a result of this reassessment, EPA again approved the BACM and MSM demonstrations in the plan and granted the State’s request to extend the attainment deadline from 2001 to 2006. In light of its recent finding that the Maricopa County area failed to attain the 24-hour PM–10 National Ambient Air Quality Standard (NAAQS) by December 31, 2006, EPA is again reassessing the BACM and MSM demonstrations in the plan and is again proposing to approve these demonstrations.

DATES: Any comments must arrive by July 9, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0571, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* weisner.carol@epa.gov.

3. *Mail or deliver:* Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the eRulemaking portal or e-mail. The eRulemaking portal is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. 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.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Carol Weisner, U.S. EPA Region 9, (415) 947–4107, weisner.carol@epa.gov or <http://www.epa.gov/region09/air/actions>.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

I. Background

A. EPA’s 2002 Approval

On July 25, 2002, EPA approved multiple documents submitted to EPA by Arizona for the Maricopa County area as meeting the CAA requirements

for serious PM-10 nonattainment areas for the 24-hour and annual PM-10 national ambient air quality standards.¹ Among these documents is the "Revised MAG 1999 Serious Area Particulate Plan for PM-10 for the Maricopa County Nonattainment Area," February 2000 (MAG plan) that includes the BACM demonstrations for all significant source categories (except agriculture) for both the 24-hour and annual PM-10 standards and the State's request and supporting documentation, including the most stringent measure analysis (except for agriculture) for an attainment date extension for both standards. EPA's July 25, 2002 final action included approval of these elements of the MAG plan.²

Under CAA section 189(b)(2), serious area PM-10 plans must provide assurances that BACM will be implemented no later than four years after a moderate PM-10 nonattainment area is reclassified as serious. For the Maricopa County area, the BACM implementation deadline was June 10, 2000. In short, a BACM demonstration starts with the identification of all source categories contributing significantly to nonattainment of the PM-10 NAAQS. Once the significant categories are identified, all potential BACM for these categories must be identified and a reasoned justification must be provided for any BACM that are not implemented. All BACM that are economically and technologically feasible must be implemented.³

In the case of the Maricopa County area, the MAG plan identified eight significant PM-10 source categories, including on-road motor vehicle and nonroad engines and equipment exhaust.^{4,5} In our 2002 approval of the

MAG plan, we stated that Arizona had one of the most comprehensive programs for addressing on-road motor vehicle emissions and that the additional measures in the MAG plan would strengthen and go beyond that program. For nonroad engines, EPA stated that Arizona had committed to adopt measures that would strengthen the overall nonroad engine program making it go beyond the existing federal program. 65 FR at 19972-19974; 66 FR at 50258-50260. Strengthening and expanding existing programs are key criteria for demonstrating the implementation of BACM. 59 FR at 42013. EPA noted that CARB diesel was rejected in the MAG plan as a BACM due to high costs, but believed the cost analysis was too uncertain to judge. 65 FR at 19973; 67 FR at 48725. EPA concluded that, overall, the on-road and nonroad measures in the MAG plan constituted BACM for the Maricopa County area without the implementation of CARB diesel. 67 FR at 48725.

As a serious PM-10 nonattainment area, the Maricopa County area was required to attain the annual and 24-hour PM-10 standards by no later than December 31, 2001. CAA section 188(c)(2). However, CAA section 188(e) allows us to extend the attainment date for a serious PM-10 nonattainment area for up to five years if attainment by 2001 is impracticable and certain specified additional conditions are met. Among these conditions is that the State must demonstrate to our satisfaction that its serious area plan includes the most stringent measures that are included in the implementation plan of any state and/or are achieved in practice in any state and are feasible for the area. EPA determined that CARB diesel was not required as a MSM because it did not advance the attainment date. Therefore EPA granted an attainment date extension for the Maricopa County area without it. *Id.* at 48739.

B. *Vigil v. Leavitt*

The Arizona Center for Law in the Public Interest (ACLPI), on behalf of Phoenix area residents, subsequently filed in the U.S. Court of Appeals for the Ninth Circuit a petition for review of EPA's approval of several elements in the MAG plan. As relevant to this proposed rule, ACLPI asserted that EPA's approval was arbitrary and capricious because the plan did not

mandate the use of CARB diesel and thus did not satisfy the CAA requirements for BACM and MSM for mobile sources. ACLPI further asserted that we granted an extension of the statutory deadline for attainment to December 31, 2006 based on an inadequate MSM demonstration.

On May 10, 2004, the Court issued its opinion which upheld EPA's final approval in part but remanded to EPA the question of whether CARB diesel must be included in the serious area plan as a BACM and a MSM. Specifically, with respect to whether CARB diesel was appropriately rejected as BACM, the Court stated that "* * * Arizona has offered one explanation, which EPA has declined to ratify, and EPA has not proffered an adequate explanation of its own." The Court further stated that "[i]n light of our disposition with respect to CARB diesel as a BACM, we remand to EPA for further consideration of whether CARB diesel satisfies MSM as well." Finally, the Court remanded the question of Maricopa County area's eligibility for an extension of the attainment date to 2006, but only insofar as that question depends on EPA's determination regarding CARB diesel as a MSM. *Vigil v. Leavitt*, 366 F.3d 1025, amended at 381 F. 3d 826 (9th Cir. 2004).

C. EPA's 2006 Approval

In response to the *Vigil* Court's remand, on August 3, 2006, EPA again approved the BACM and MSM demonstrations in the MAG plan for the significant source categories of on-road motor vehicles and nonroad engines and equipment exhaust without CARB diesel and granted the State's request to extend the attainment deadline from 2001 to 2006. 71 FR 43979. In this final action, EPA concluded that CARB diesel is not feasible for on-road motor vehicles because Arizona would not be able to obtain a CAA section 211(c)(4)(C)(i) waiver for purposes of PM-10 attainment. In reaching this conclusion, EPA reasoned that Arizona would not be able to provide a demonstration that CARB diesel is "necessary" to achieve the PM-10 NAAQS, as required by that section, because EPA had already approved the State's demonstration of attainment of the PM-10 NAAQS without relying on CARB diesel. *Id.* at 43983. Also in this final action, EPA noted that in August 2005, CAA section 211(c)(4)(C) was amended by the Energy Policy Act of 2005 (EPAAct), 42 U.S.C. 15801 *et seq.*, which placed additional restrictions on EPA's authority under that provision. We did not, however, address the effect of the new restrictions on our action

¹ Effective December 18, 2006, EPA revoked the annual PM-10 standard. 71 FR 61144 (October 17, 2006). References to the annual standard in this proposed rule for historical purposes only. EPA is not taking any regulatory action with regard to this former standard.

² For a detailed discussion of the MAG plan and the serious area PM-10 requirements, please see EPA's proposed and final approval actions at 65 FR 19964 (April 13, 2000), 66 FR 50252 (October 2, 2001) and 67 FR 48718 (July 25, 2002).

³ For a detailed discussion of EPA's preliminary interpretation of the CAA's BACM requirements, see "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998, 42008-42014 (August 16, 1994).

⁴ "Nonroad vehicles" and "nonroad engines" are used interchangeably in EPA's proposed and final approval actions on the MAG plan. In addition, CARB and other state air agencies typically refer to these sources as "off-road." "Nonroad engines and equipment," "nonroad vehicles," "nonroad engines," "nonroad" and "off-road" are used interchangeably in today's proposed rule.

⁵ A list of all potential BACM was compiled for each of the significant source categories and a detailed analysis of whether the potential BACM were technically and economically feasible was provided by the MAG plan and evaluated by EPA. 65 FR at 19964, 66 FR at 50252.

because of our conclusion that CARB diesel was not necessary to achieve the NAAQS. *Id.* at 43980, footnotes 2 and 3.

With respect to nonroad engines and equipment, EPA concluded that CARB diesel is not feasible because of the uncertainties with fuel availability, storage and segregation and concerns about program effectiveness due to owners and operators fueling outside the Maricopa County area. *Id.*

II. Proposed Action

On March 23, 2007, EPA proposed to find that the Maricopa County area⁶ failed to attain the 24-hour PM-10 NAAQS by the December 31, 2006 deadline mandated by the CAA. 72 FR 13723. On May 24, 2007, the Regional Administrator signed a final rule finding that the Maricopa County area failed to attain.⁷ As a result, the Agency can no longer rely on its August 3, 2006 conclusion that the State would not be able to obtain a section 211(c)(4)(C)(i) waiver for CARB diesel because it is not necessary for attainment of the PM-10 NAAQS. Thus EPA has reassessed the BACM demonstration for the onroad motor vehicle exhaust source category in light of the new EPAct provisions that it did not previously consider. As discussed further in section III.A. below, EPA has concluded it could not approve a CAA section 211(c)(4)(C)(i) waiver for Arizona for CARB diesel because the effect of such an approval would unlawfully increase the total number of fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004. Therefore, EPA is again proposing to approve the BACM demonstration in the MAG plan without CARB diesel.

Because our August 2006 approval of the BACM demonstration for nonroad engines and equipment exhaust relied to some extent on our conclusion with respect to onroad motor vehicle exhaust, we are also proposing again to find that CARB diesel is not required as a BACM for the nonroad category because of the uncertainties with fuel availability, storage and segregation and program effectiveness due to owners and operators fueling outside the Maricopa County area.

Finally, since EPA granted the State's request for an attainment date extension in August 2006, the December 31, 2006 attainment deadline has passed. Therefore the extension request is now moot. However, if CARB diesel had been required as a MSM in order for

EPA to grant the extension request, the State would now be required to continue to implement it absent the requisite showing under CAA section 110(1). Therefore EPA is again proposing to approve the MSM demonstration in the MAG plan without CARB diesel. We are also confirming that we appropriately granted Arizona's request for an attainment date extension in our 2002 and 2006 actions.

III. Reassessment of the BACM Demonstration for the Maricopa County Area

A. On-Road Motor Vehicle Exhaust

Section 211(c)(4)(A) of the CAA generally preempts states from prescribing or attempting to enforce controls respecting motor vehicle fuel characteristics or components that EPA has controlled under section 211(c)(1),⁸ unless the state control is identical to the Federal control. EPA currently has nationwide regulations prescribing limits on various characteristics and components of motor vehicle diesel fuel (e.g., sulfur content limits, minimum cetane index and limits on aromatic content). 55 FR 34120 (August 21, 1990). Thus Arizona would need to obtain a CAA section 211(c)(4)(C) waiver in order to implement a different requirement governing these characteristics and components of on-road diesel fuel, i.e., CARB diesel, in the Maricopa County area.

Under section 211(c)(4)(C)(i), EPA may waive preemption by approving a non-identical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the NAAQS. We may approve a state fuel requirement as "necessary" if no other measures would bring about timely attainment, or if other measures exist and are technically possible to implement but are unreasonable or impracticable.

Section 211(c)(4)(C)(v)(I), added by the EPAct, further restricts EPA's authority to waive preemption by providing that the Agency cannot approve, under section 211(c)(4)(C)(i), any state fuel if the effect of such approval increases the total number of fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004. The EPAct required EPA to determine the total number of fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004, and to publish the list for public review and comment.

On June 6, 2006, EPA's notice of its draft list was published in the **Federal Register**. 71 FR 32532. On December 28,

2006, EPA's notice of its final list, known as the Boutique Fuels List, was published in the **Federal Register**. 71 FR 78192. The final list includes eight types of fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004. CARB fuels are approved into California's SIP, but because the approval is not under CAA section 211(c)(4)(C)(i), we did not place CARB fuels on the list of fuel types. 71 FR 78196. Thus, CARB diesel is not one of these eight fuel types. As a result, EPA has no authority to approve, under section 211(c)(4)(C)(i), CARB diesel for on-road motor vehicles in the Maricopa County area because the effect of such approval would be to increase the total number of fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004.⁹ Thus, the State would not be able to obtain a section 211(c)(4)(C)(i) waiver necessary to implement CARB diesel for on-road motor vehicles. Consequently EPA is again proposing to approve the BACM demonstration for the on-road category in the MAG plan without CARB diesel.

B. Nonroad Engines and Equipment Exhaust

EPA is not changing its assessment in its August 3, 2006 final rule that requiring CARB diesel for the control of nonroad engines and equipment exhaust is not currently feasible and is therefore not required as BACM in the Maricopa County area. Therefore, except as specifically modified below, EPA is relying for this proposed rule on its discussion of Nonroad Engines and Equipment Exhaust in Section II.B(2) of the Agency's July 1, 2005 proposed rule. 70 FR at 38066-38067. We are also relying on our responses to public comments on this issue in Section II.B. of our August 3, 2006 final rule. 71 FR at 43981-43983.

We note one update to the information in footnote 7 of the August 2006 final rule. There are currently six, rather than four, approval letters on the

⁹Note that under the EPAct, in cases where our approval would not increase the total number of fuels on the list because the total number of fuels in SIPs at that point is below the number of fuels as of September 1, 2004, then our approval requires a finding that the new fuel will not cause supply or distribution problems or have significant adverse impacts on fuel producibility in the affected or contiguous areas. CAA section 211(c)(4)(C)(v)(IV). In addition, we may not approve a state fuel unless that fuel is already approved in at least one SIP in the applicable Petroleum Administration for Defense District (PADD). CAA section 211(c)(4)(C)(v)(V). Because we believe that approval of CARB diesel is not allowed as it would increase the total number of fuels on the Boutique Fuels list above the number of fuels as of September 1, 2004, we do not address these additional restrictions on our approval authority under CAA section 211(c)(4)(C)(i).

⁶In its proposed and final nonattainment finding actions, EPA refers to the Maricopa County area as the Phoenix nonattainment area. These terms are interchangeable.

⁷The final rule will be published shortly in the **Federal Register**.

⁸This prohibition applies to all states except California, as explained in section 211(c)(4)(B).

Texas Low Emission Diesel fuel program web site providing for the use of alternative diesel fuel formulations. The second sentence in footnote 7 should now read as follows: "Although Section 114.312(f) provides that alternative diesel fuel formulations must provide comparable or better reductions of NO_x and PM, three of the six alternative diesel fuel formulation approval letters to date have cited NO_x reductions alone, or (in one case) reductions of NO_x and hydrocarbons, but not PM, as the basis for approval."

IV. MSM Demonstration and Extension of Attainment Date

In our August 3, 2006 final action, we determined that CARB diesel was not required as a MSM because it did not advance the attainment date. Today's proposed approval of the BACM demonstration in the MAG plan for the on-road and nonroad vehicle exhaust source categories for the Maricopa County area without CARB diesel does not affect that determination. Therefore, we are again proposing to approve the MSM demonstration in the MAG plan. If we again take final action to approve the MSM demonstration, the attainment date extension granted to the Maricopa County area in our August 3, 2006 final action would not be affected.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not

have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submission, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 31, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 07-2848 Filed 6-7-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2007-0165; FRL-8323-9]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 17, 2007 (72 FR 19144), EPA proposed certain approvals and certain disapprovals of revisions to the Nevada State Implementation Plan (SIP) submitted to EPA by the Nevada Division of Environmental Protection. These revisions involve State rules governing applications for, and issuance of, permits for stationary sources, but not including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act. EPA is extending the comment period to August 17, 2007.

DATES: Any comments on this proposal must arrive by August 17, 2007.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2007-0165, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

2. *E-mail:* rios.gerardo@epa.gov.

3. *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.