

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-5803-5]

Regulation of Fuels and Fuel Additives: Modification of the Covered Areas Provision for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to modify 40 CFR 80.70(k) of the reformulated gasoline (RFG) regulations to allow states to opt into the RFG program for any area classified as a marginal, moderate, serious or severe ozone nonattainment area as of November 15, 1990, the date of the enactment of the Clean Air Act Amendments of 1990 (1990 Amendments), or any time later. This section currently provides that any area classified as a marginal, moderate, serious or severe ozone nonattainment area may be included in the RFG program on petition by the Governor of the State in which the area is located. Today's action will expand this provision to allow states to opt into the RFG program for areas which had been previously classified as marginal, moderate, serious or severe for ozone, but were subsequently redesignated to attainment. This will provide states an additional effective option that may be used to avoid the air quality problems that can lead to a violation of air quality standards. Allowing states to opt into the RFG program for these previously classified ozone nonattainment areas will help to ensure that these areas continue to achieve and maintain compliance with the ozone standard.

DATES: Comments on this proposed rule must be received by April 28, 1997.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A-96-30, at Air Docket Section, U.S. Environmental Protection Agency, Waterside Mall, Room M-1500, 401 M Street, S.W., Washington, D.C. 20460 (telephone 202/260-7540, fax 202/260-4400). The Agency requests that commenters also send a copy of any comments to Karen Smith at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Documents may be inspected at the Air Docket Section between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

Karen Smith, Policy Analyst, Fuels and Energy Division, US EPA, 401 M Street, S.W. (6406J), Washington, D.C. 20460. (202) 233-9674.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which produce, import or distribute gasoline for sale in areas formerly classified as marginal, moderate, serious or severe ozone nonattainment areas which opt into the RFG program, and retail gasoline stations located in those areas. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Refiners, importers, oxygenate blenders, terminal operators, distributors, retail gasoline stations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company or facility may potentially be regulated by this action, you should carefully examine the applicability criteria of Part 80, Subpart D, of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Availability on the TTNBBS

A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919-541-5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

- (M) OMS
- (K) Rulemaking and Reporting
- (3) Fuels
- (9) Reformulated Gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTINDFR.ZIP. To download this file, type the following instructions and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

The remainder of this preamble is organized into the following sections:

- I. Background
- II. Modification of § 80.70(k)
- III. Compliance with the Regulatory Flexibility Act
- IV. Administrative Designation
- V. Paperwork Reduction Act
- VI. Unfunded Mandates Act
- VII. Statutory Authority

I. Background

Section 107(d) of the Clean Air Act, as amended in 1990 (the Act), requires states to identify all areas that do not meet the national ambient air quality standards (NAAQS) for ozone, and directs EPA to designate these areas as ozone nonattainment areas. Section 181 of the Act requires EPA to classify each area designated as an ozone nonattainment area pursuant to section 107(d) as a marginal, moderate, serious, severe or extreme area, based on the design value for the area. Using this section 181 scheme, EPA classified all areas that were designated as in nonattainment for ozone at the time of the enactment of the 1990 Amendments, except for certain "nonclassifiable" areas.¹ 56 FR 56694 (November 6, 1991).

¹ "Nonclassifiable" areas include: "transitional" areas, defined in section 185A of the Act as areas which were designated as ozone nonattainment areas as of the date of enactment of the 1990 Amendments, but which had not violated the primary NAAQS for ozone over the 3-year period from 1987-1989; "submarginal" areas, defined by EPA as those areas which had violated the ozone NAAQS during the period 1987-1989, but had design values less than the lower limit for marginal areas due to an adjustment for missing data when

Areas that were designated as in attainment for ozone as of the date of the 1990 Amendments were categorized as "unclassifiable/attainment."

Section 211(k)(5) of the Act prohibits the sale or dispensing by any person of conventional gasoline to ultimate consumers in any RFG covered area. Section 211(k)(6) of the Act, as amended in 1990, provides that, upon the application of the Governor of a State, the Administrator shall apply the prohibition contained in section 211(k)(5) in any area in the State classified under Section 181 of the Act as a marginal, moderate, serious or severe² area (the "opt-in" provision). In any such case, the Administrator must establish an appropriate effective date for such prohibition that is not later than 1 year after such application is received, and publish the application and effective date in the **Federal Register**.

In accordance with section 211(k)(6) of the Act, EPA promulgated § 80.70(k) at 40 CFR part 80, which provides that any area classified under 40 CFR part 81, subpart C, as a marginal, moderate, serious or severe ozone nonattainment area may be included as a RFG covered area on petition of the Governor of the State in which the area is located.

II. Modification of § 80.70(k)

The modification proposed today revises the opt-in provision of § 80.70(k) to apply it to areas classified as marginal, moderate, serious or severe ozone nonattainment areas as of November 15, 1990, the date the 1990 Amendments were enacted, or any time later. This proposed action will allow states to opt into the RFG program for areas which previously had been classified as marginal, moderate, serious or severe ozone nonattainment areas, but which have been redesignated to attainment. This will provide additional flexibility to the states to ensure continued compliance with the NAAQS for ozone. States with such redesignated areas will have the flexibility to include the RFG program in their maintenance plans or use RFG as a contingency measure for these areas.

This action is consistent with the text of section 211(k)(6), which states that areas "classified under subpart 2 of Part D of title I as marginal, moderate,

serious, or severe" for ozone can opt into the RFG program upon the application of the governor of a state. This provision does not expressly limit the state's opt-in ability to areas currently classified as marginal, moderate, serious or severe ozone nonattainment areas. It is reasonable and appropriate to allow areas classified as marginal, moderate serious, or severe for ozone as of the date of the enactment of the 1990 Amendments, or any time later, to opt into the RFG program, in light of the plain language of section 211(k)(6) and the intent of Congress in enacting it.

The Conference Report to the 1990 Amendments, as passed, states that the opt-in provision "clearly allows any nonattainment area which wants to opt-in to the reformulated gasoline programs to do so. They should be afforded every opportunity, and at the earliest possible date, to opt-in to the program subject to approval by EPA." (LH at 1024.) Although section 211(k)(6) allows states to opt into the RFG program only for nonattainment areas classified as marginal, moderate, serious or severe, Congress clearly intended this provision to provide states an opportunity to opt into the RFG program for these nonattainment areas if the state determines it is an appropriate means of achieving and maintaining the NAAQS for ozone. Today's action furthers this Congressional goal by ensuring that areas previously classified as marginal, moderate, serious or severe nonattainment areas, which have been redesignated to attainment, have the flexibility to participate in the RFG program. Many of these areas have ozone levels which are relatively close to the NAAQS, and are concerned about experiencing violations in the future, although currently in attainment. This will provide states an additional effective option that may be used to avoid the air quality problems that can lead to redesignation as a nonattainment area. Allowing states to opt into the RFG program for these previously classified ozone nonattainment areas will help to ensure that these areas continue to achieve and maintain compliance with the ozone NAAQS. States who have former nonattainment areas that become eligible for participation in the RFG program under this proposed rule should be cognizant of the fact that the current RFG opt-out procedures end December 31, 1997. The Agency is considering proposing opt-out procedures for the transitional period to Phase II of RFG, that will require voluntary states to remain in the program for a period of time

substantially longer than the current 90 day opt-out procedures. The agency reserves its discretion to set an effective date of up to one year from the receipt of an application to opt-into the RFG program if supply or other concerns exist, and may, extend the effective date for two additional one-year periods consistent with Section 211(k)(6)(b).

EPA requests comment on whether a minimum lead-time of up to one year should be used in setting the effective date and whether this should apply to former non-attainment areas that opt-in and/or areas that are classified as non-attainment when they opt-in.

One idea suggested by an outside party was that EPA should require that the Governor consider the costs of other programs in making the determination to adopt RFG. EPA requests comment on the approach, including whether EPA would have authority to impose such a requirement and whether it would be appropriate to do so. If EPA determines the legal authority exists for such a requirement and that it would be appropriate, it may be considered for adoption in the final rulemaking.

Today's action is consistent with EPA's interpretation of the opt-in provision of section 211(k)(6) as expressed in the preamble to the final rule establishing RFG and anti-dumping standards. See 59 FR 7808-7809 (April 16, 1994). Comments received on the rule included requests that certain areas categorized as unclassifiable/attainment areas, i.e., areas that were designated as in attainment for ozone as of the date of the 1990 Amendments, be allowed to opt into the RFG program. In response to these requests, EPA stated: "Because of statutory limitations, attainment areas will not be allowed to opt-in to the RFG program.* * * 59 FR 7808. While this language indicates that unclassifiable/attainment areas are precluded from opting into the RFG program, it does not address the areas covered by this rule; i.e., areas previously designated as in nonattainment for ozone which have been redesignated to attainment. Today's proposed rule, therefore, addresses a sub-category of areas that EPA has not previously considered. EPA's interpretation of section 211(k)(6) as it applies to such areas is compatible with EPA's interpretation of this provision as it applies to current nonattainment areas. Since section 211(k)(6) allows states to opt into the RFG program only for nonattainment areas classified as marginal, moderate, serious or severe, this action extends the application of section 211(k)(6) only to redesignated areas which had been classified as marginal, moderate, serious or severe.

calculating expected exceedances; and "incomplete/no data" areas, defined by EPA as areas that were designated nonattainment areas prior to enactment of the 1990 Amendments, but at the time of enactment did not have sufficient air quality monitoring data to determine whether they were or were not violating the NAAQS.

² The Los Angeles area is the only area classified as extreme for ozone, and it is a mandatory RFG covered area under the Act.

Any area that opts into the RFG program under § 80.70(k), whether currently or previously classified as marginal, moderate, serious or severe for ozone will be subject to all rules promulgated by the Agency for opting out of the RFG program.

III. Compliance with the Regulatory Flexibility Act

For the following reasons, the Agency has determined that this rule will not have a significant economic impact on a substantial number of small entities and that a regulatory flexibility analysis is not necessary. In promulgating the RFG and anti-dumping regulations, the Agency analyzed the impact of the regulations on small businesses. The Agency concluded that the regulations may possibly have some economic effect on a substantial number of small refiners, but that the regulations may not significantly affect other small entities, such as gasoline blenders, terminal operators, service stations and ethanol blenders. See 59 FR 7810-7811 (February 16, 1994). As stated in the preamble to the final RFG/anti-dumping rule, exempting small refiners from the RFG regulations would result in the failure of meeting CAA standards. 59 FR 7810. However, since most small refiners are located in the mountain states or in California, which has its own RFG program, the vast majority of small refiners are unaffected by the federal RFG requirements (although all refiners of conventional gasoline are subject to the anti-dumping requirements). Moreover, all businesses, large and small, maintain the option to produce conventional gasoline to be sold in areas not obligated by the Act to receive RFG or those areas which have not chosen to opt into the RFG program. A complete analysis of the effect of the RFG/anti-dumping regulations on small businesses is contained in the Regulatory Flexibility Analysis which was prepared for the RFG and anti-dumping rulemaking, and can be found in the docket for that rulemaking. The docket number is: EPA Air Docket A-92-12.

Today's proposed rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in areas which opt into the RFG program as a result of this action, and gasoline distributors and retail stations in those areas. As discussed above, EPA determined that, because of their location, the vast majority of small refiners would be unaffected by the RFG requirements. For the same reason, most small refiners will be unaffected by today's action. Other small entities, such as gasoline

distributors and retail stations, located in areas which may become covered areas as a result of today's action, will be subject to the same requirements as those small entities which are located in current RFG covered areas. The Agency did not find the RFG regulations to significantly affect these entities. Since this action does not mandate any area to be included in the federal RFG program, but rather allows states the discretion to opt into the RFG program for certain areas, an estimate of the number of small entities which may ultimately be affected by this rule is unavailable.

IV. Administrative Designation

Pursuant to 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 entitlements, 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.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a significant regulatory action within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

V. Paperwork Reduction Act

This action does not add any new requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping and has assigned OMB control number 2060-0277 (EPA ICR NO. 1951.03)

Burden means the total time, effort, or financial resources expended by the persons to generate, maintain, retain,

or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

VI. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditures by State, local, and tribal governments, in the aggregate; or by the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by this rule.

EPA has determined that the action taken today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

VII. Statutory Authority

The statutory authority for the action proposed today is granted to EPA by sections 211(c) and (k) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7545(c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: March 21, 1997

Carol M. Browner,
Administrator.

40 CFR part 80 is amended as follows:

PART 80—REGULATION 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. Section 80.70 is amended by revising paragraph (k) to read as follows:

§ 80.70 Covered areas.

* * * * *

(k) Any other area currently or previously classified under 40 CFR part 81, subpart C as a marginal, moderate, serious, or severe ozone nonattainment area as of November 15, 1990, or any time later, may be included on petition of the governor of the state in which the area is located.

* * * * *

[FR Doc. 97-7954 Filed 3-27-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-5803-6]

Transitional and General Opt Out Procedures for Phase II Reformulated Gasoline Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule making.

SUMMARY: In this document EPA is proposing to change the regulations for states to opt-out of the federal reformulated gasoline (RFG) program for areas where a state had previously voluntarily opted into the program. Under this proposal, if a state has not submitted an opt-out petition to EPA by December 31, 1997, it must participate in Phase II RFG until December 31, 2003. The Agency believes this proposed process is necessary to ensure a smooth transition between the two phases of the reformulated gasoline program.

The Agency is also proposing, that effective January 1, 2004, the current opt-out procedures, which provide that EPA-approved opt-out petitions become effective 90 days from approval, become effective again.

In addition, this proposed rule would require that states decide and submit to

EPA a complete opt-out petition by December 31, 1997, if they want an opt-in area to continue to participate in Phase I of the RFG program up to December 31, 1999, but do not wish to participate in Phase II of the program.

This action does not affect the policies for opting in to the RFG program. In a separate action EPA is publishing a notice of proposed rulemaking, simultaneous with this proposal, which would permit former ozone nonattainment areas to opt into the federal reformulated gasoline program. EPA has not made a final determination on the policy for attainment area RFG implementation.

DATES: The Agency will hold a public hearing on this proposal if one is requested by April 4, 1997. If a public hearing is held, it will take place on April 18, 1997.

If a public hearing is held on this proposal, comments must be received by May 19, 1997. If a hearing is not held, comments must be received by April 28, 1997. Please direct all correspondence to the address shown below.

To request a hearing, or to find out if and where a hearing is held, please call Christine Hawk at (202) 233-9000.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A copy should also be sent to Ms. Christine Hawk at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460.

Materials relevant to this notice have been placed in Docket A-94-68. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M-1500 Waterside Mall. Documents may be inspected from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material. **FOR FURTHER INFORMATION CONTACT:** Christine Hawk or Diane Turchetta at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233-9000.

SUPPLEMENTARY INFORMATION: A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS) and on the Office of Mobile Sources' World Wide Web site, <http://www.epa.gov/OMSWWW>. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919-541-

5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

- (M) OMS
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Regulated Entities

Entities potentially regulated by this action are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Petroleum refiners, motor gasoline distributors and retailers.
State governments	State departments of environmental protection.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you