

existing requirements and impose any new Federal requirements.

USEPA's denial of the State's redesignation request under section 107(d)(3)(E) of the CAA does not affect any existing requirements applicable to small entities nor does it impose new requirements. The area retains its current designation status and continues to be subject to the same statutory requirements. To the extent that the area must adopt regulations, based on its nonattainment status, USEPA will review the effect of those actions on small entities at the time the State submits those regulations. Therefore, the Administrator certifies that any disapproval of the redesignation request will not affect a substantial number of small entities.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate. Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. USEPA has examined whether the rules being disapproved by this action would impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements would be imposed by a disapproval. Moreover, as this action would merely leave the area with its current designation, it imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this action, and therefore there will be no significant impact on a substantial number of small entities.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### 40 CFR Part 81

Environmental protection, Air pollution control.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: February 6, 1997.

**Michelle D. Jordan,**

*Acting Regional Administrator.*

[FR Doc. 97-3925 Filed 2-14-97; 8:45 am]

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#### 40 CFR Part 80

[FRL-5689-3]

#### Regulations of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the Phoenix, Arizona Moderate Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Under section 211(k)(6) of the Clean Air Act, as amended (Act), the Administrator of EPA shall require the sale of reformulated gasoline in an ozone nonattainment area classified as Marginal, Moderate, Serious, or Severe upon the application of the governor of the state in which the nonattainment area is located. This action proposes to extend the prohibition set forth in section 211(k)(5) against the sale of conventional (*i.e.*, non-reformulated) gasoline to the Phoenix, Arizona moderate ozone nonattainment area. The Agency is proposing the implementation date of the prohibition described herein to take effect on the effective date of this rule or June 1, 1997, whichever is later, for all persons other than retailers and wholesale purchaser-consumers (*i.e.*, refiners, importers, and distributors). For retailers and wholesale purchaser-consumers, EPA is proposing the implementation of the prohibition described herein to take effect 30 days after the effective date of this rule, or July 1, 1997, whichever is later. As of the implementation date for retailers and wholesale purchaser-consumers, the Phoenix ozone nonattainment area will be a covered area for all purposes in the federal RFG program.

**DATES:** If a public hearing is held on today's proposal, comments must be received by April 10, 1997. If a hearing is not held, comments must be received by March 20, 1997. Please direct all correspondence to the address shown below. The Agency will hold a public hearing on today's proposal if one is requested by February 25, 1997. If a public hearing is held, it will take place on March 11, 1997. To request a hearing, or to find out if and where a hearing will be held, please call Janice Raburn 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 Janice Raburn at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460. A copy should also be sent to EPA Region IX, 75 Hawthorne Street, AIR-2, 17th Floor, San Francisco, CA 94105.

Materials relevant to this notice have been placed in Docket A-97-02. 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. An identical docket is also located in EPA's Region IX office in Docket A-AZ-97. The docket is located at 75 Hawthorne Street, AIR-2, 17th Floor, San Francisco, California 94105. Documents may be inspected from 9:00 a.m. to noon and from 1:00-4:00 p.m. A reasonable fee may be charged for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** Janice Raburn or Paul Argyropoulos 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
- (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: OPTOUT.ZIP. To download this file, type the instructions below 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.

**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.

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 should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 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.

### I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated ("conventional gasoline") in the nine worst ozone nonattainment areas beginning January 1, 1995. Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline (RFG) program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values

during the period 1987 through 1989.<sup>1</sup> Under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the RFG program. EPA published final regulations for the RFG program on February 16, 1994. See 59 FR 7716.

Any other ozone nonattainment area classified as Marginal, Moderate, Serious, or Severe may be included in the program at the request of the Governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a Governor, EPA shall apply the prohibition against selling conventional gasoline in any area requested by the Governor which has been classified under subpart 2 of Part D of Title I of the act as a Marginal, Moderate, Serious or Severe ozone nonattainment area. Subparagraph 211(k)(6)(A) further provides that EPA is to apply the prohibition as of the date the Administrator "deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later." In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is "insufficient domestic capacity to produce" RFG. Finally, EPA is to publish a governor's application in the **Federal Register**.

### II. The Governor's Request

EPA received an application from the Honorable Fife Symington, Governor of the State of Arizona, for the Phoenix moderate ozone nonattainment area to be included in the reformulated gasoline program. The Governor's letter is set out in full below.

January 17, 1997.

Ms. Carol Browner, Administrator,  
U.S. Environmental Protection Agency, 401  
M. Street, S.W. (1101) Washington, D.C.  
20460.

Dear Ms. Browner: The purpose of this letter is to request, under section 211(k)(6) of the Clean Air Act and 40 CFR § 81.303, that the U.S. E.P.A. extend the requirement for reformulated gasoline (RFG) to the Phoenix Ozone Nonattainment Area beginning June 1, 1997. This "opt-in" request is made in accordance with the guidance provided by your agency in letters to me of December 31, 1996 and January 13, 1997.

Furthermore, I am requesting waivers related to summertime Reid Vapor Pressure (RVP) and wintertime oxygenated fuels:

—From June 1 through September 30 of each year, that the current State standard of 7.0 pounds per square inch (psi) RVP be

<sup>1</sup> Applying these criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee.

enforced in the Phoenix Ozone Nonattainment Area; and

—That the U.S.E.P.A. preserve existing State standards for oxygenated gasoline blends.

These unique gasoline standards were submitted by Arizona in the 1993 ozone and carbon monoxide State Implementation Plan revisions required under the Clean Air Act, but no action was taken on our waiver request. I urge EPA to expeditiously approve these waivers in accordance with § 211(c)(4)(C) of the Act.

As you know, Arizona has made a good faith effort to implement its ozone nonattainment plan in compliance with all of the requirements of the Clean Air Act. Regardless, a significant proportion of the emissions reductions included in this plan were not realized due to the difficulties the State has experienced in attempting to fully implement the federal enhanced vehicular inspection and maintenance program. This problem, and continued violations of the ozone standard in Maricopa County have motivated the State to voluntarily develop and submit an ozone plan, which will include a variety of enforceable control programs designed to reduce pollution and bring about attainment of the ozone standard by 1999. Reformulated gasoline is critical to the success of this plan, and will probably provide the largest pollution reduction of any single control program contemplated in this plan.

The State will continue to evaluate gasoline formulations and other strategies for reducing ozone, carbon monoxide and particulate pollution, and may determine that another gasoline formulation provides equivalent or better emissions reductions, and is more cost-effective or represents a better overall solution to our pollution problems in the long term. In such case, the State will submit a complete opt-out request by December 31, 1997, or take other appropriate action, as described in the December 31, 1996 and January 13, 1997 letters previously mentioned.

I appreciate the prompt assistance that your Region IX staff provided on this issue. Thank you for your attention to this matter.

Sincerely,

s/Fife Symington  
Governor.

FS:sae

cc: Felicia Marcus, EPA, Region IX, Russell F. Rhoades, Arizona Department of Environmental Quality, John Hays, Arizona Department of Weights and Measures

### III. Action

Pursuant to the governor's letter and the provisions of section 211(k)(6), EPA is proposing to apply the prohibitions of subsection 211(k)(5) to the Phoenix, Arizona ozone nonattainment area as of the effective date of this rule, or June 1, 1997 whichever is later, for all persons other than retailers and wholesale purchaser-consumers. This date applies to the refinery level and all other points in the distribution system other than the retail level. For retailers and wholesale

purchaser-consumers, EPA is proposing to apply the prohibitions of subsection 211(k)(5) to the Phoenix, Arizona ozone nonattainment area 30 days after the effective date for this rule, or July 1, 1997, whichever is later. As of the implementation date for retailers and wholesale purchaser-consumers, this area will be treated as a covered area for all purposes of the federal RFG program.

The application of the prohibition of section 211(k)(5) to the Phoenix ozone nonattainment area could take effect no later than January 17, 1998 under section 211(k)(6)(A), which stipulates that the effective program date must be no "later than January 1, 1995 or 1 year after [the Governor's] application is received, whichever is later." For the Phoenix nonattainment area, EPA could establish an effective date for the start of the RFG program anytime up to this date. EPA considers that January 17, 1998 would be the latest possible effective date, since EPA expects there to be sufficient domestic capacity to produce RFG and therefore has no current reason to extend the effective date beyond one year after January 17, 1998. EPA believes that there is adequate domestic capability to support the current demand for RFG nationwide as well as the addition of the Phoenix area.

Like the federal volatility program, the RFG program includes seasonal requirements. Summertime RFG must meet certain VOC control requirements to reduce emissions of VOCs, an ozone precursor. Under the RFG program, there are two compliance dates for VOC-controlled RFG. At the refinery level, and all other points in the distribution system other than the retail level, compliance with RFG VOC-control requirements is required from May 1 to September 15. At the retail level (service stations and wholesale purchaser-consumers), compliance is required from June 1 to September 15. See 40 CFR 80.78 (a)(1)(v). Pipeline requirements and demands for RFG from the supply industry drive refineries to establish their own internal compliance date earlier than May so that they can then assure that terminals are capable of meeting the RFG VOC-control requirements by May 1. Based on past success with this implementation strategy, EPA proposes to stagger the implementation dates for the Phoenix opt-in to the RFG program.

The Governor's request seeks an implementation date of June 1 for the RFG program in the Phoenix area. However, pursuant to its discretion to set an effective date under § 211(k)(6), EPA is proposing two implementation dates. For all persons other than

retailers and wholesale purchaser-consumers (*i.e.*, refiners, importers, and distributors), EPA is proposing the implementation to take effect on the effective date of this rule, or June 1, 1997, whichever is later. For retailers and wholesale purchaser-consumers, EPA is proposing the implementation to take effect 30 days after the effective date of this rule or July 1, 1997, whichever is later. EPA believes these proposed implementation dates achieve a reasonable balance between requiring the earliest possible start date and providing adequate lead time for industry to prepare for program implementation. These dates are consistent with the state's request that EPA require that the RFG program begin in the Phoenix area as early as possible in the high ozone season, which begins June 1. These dates would provide environmental benefits by allowing Phoenix to achieve VOC reduction benefits for some of the 1997 VOC-controlled season. EPA believes these dates provide adequate lead time for the distribution industry to set up storage and sales agreements to ensure supply. EPA asks for comment on whether retailers and wholesale purchaser-consumers believe they could comply with federal RFG in less than 30 days from the effective date set for persons other than retailers and wholesale purchaser-consumers.

#### **IV. Public Participation and Effective Date**

The Agency is publishing this action both as a proposed rulemaking and as a direct final rule because it views setting the effective date for the addition of the Phoenix ozone nonattainment area to the federal RFG program as non-controversial and anticipates no adverse or critical comments. The Agency will hold a public hearing on today's proposal if one is requested by February 25, 1997.

The Governor of Arizona established in May 1996 an Air Quality Strategies Task Force to develop a report describing long- and short-term strategies that would contribute to attainment of the federal national ambient air quality standards for ozone, carbon monoxide and particulates. In July 1996, this task force recommended establishment of a Fuels Subcommittee to evaluate potential short-term and long-term fuels options for the Phoenix ozone nonattainment area. The Fuels Subcommittee was composed of representatives of a diverse mixture of interests including gasoline-related industries, public health organizations, and both in-county and out-of-county interests. Several members of the

refining industry supported the opt into the federal RFG program for Phoenix for the onset of the 1997 VOC control season. The subcommittee submitted its final report to the Air Quality Strategies Task Force on November 26, 1996.

Section 211(k)(6) states that, "[u]pon the application of the Governor of a State, the Administrator shall apply the prohibition" against the sale of conventional gasoline in any area of the State classified as Marginal, Moderate, Serious, or Severe for ozone. Although § 211(k)(6) provides EPA discretion to establish the effective date for this prohibition to apply to such areas, and allows EPA to consider whether there is sufficient domestic capacity to produce RFG in establishing the effective date, EPA does not have discretion to deny a Governor's request. Therefore, the scope of this action is limited to setting an effective date for Phoenix's opt-in to the RFG program, and not to decide whether Phoenix should in fact opt in. For this reason, EPA is only soliciting comments addressing the implementation date and is not soliciting comments that support or oppose Phoenix participating in the program.

#### **V. Environmental Impact**

The federal RFG program provides reductions in ozone-forming VOC emissions, oxides of nitrogen (NO<sub>x</sub>), and air toxics. Reductions in VOCs are environmentally significant because of the associated reductions in ozone formation and in secondary formation of particulate matter, with the associated improvements in human health and welfare. Exposure to ground-level ozone (or smog) can cause respiratory problems, chest pain, and coughing and may worsen bronchitis, emphysema, and asthma. Animal studies suggest that long-term exposure (months to years) to ozone can damage lung tissue and may lead to chronic respiratory illness. Reductions in emissions of toxic air pollutants are environmentally important because they carry significant benefits for human health and welfare primarily by reducing the number of cancer cases each year.

The Arizona Governor's Task Force estimates that if federal RFG is required to be sold in Phoenix, VOC emissions will be cut by more than nine tons/day. In addition, all vehicles would have improved emissions and the area would also get reductions in toxic emissions.

#### **VI. 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. 7545(c) and (k) and 7601.

### VII. Regulatory Flexibility

For the following reasons, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. 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 the Phoenix ozone nonattainment area, 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 Phoenix, which will become a covered area 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.

Therefore, for the reasons dated in this section the Agency certifies that this action will not have a significant impact on a substantial number of entities.

### VIII. Executive Order 12866

Under Executive Order 12866<sup>2</sup>, the Agency must determine whether a regulation 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 of 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 this Executive Order.<sup>3</sup>

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.

### IX. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), P.L. 104-4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least

burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that today's proposed rule does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of \$100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

### List of Subjects in 40 CFR Part 80

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

Dated: February 7, 1997.

**Carol M. Browner,**  
Administrator.

40 CFR part 80 is proposed to be amended as follows:

### PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

**Authority:** Secs. 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 adding paragraph (m) to read as follows:

#### § 80.70 Covered areas.

\* \* \* \* \*

(m) The prohibitions of section 211(k)(5) will apply to all persons other than retailers and wholesale purchaser-consumers June 1, 1997. The prohibitions of section 211(k)(5) will apply to retailers and wholesale purchaser-consumers July 1, 1997. As of the effective date for retailers and wholesale purchaser-consumers, the Phoenix, Arizona ozone nonattainment area is a covered area. The geographical extent of the covered area listed in this paragraph shall be the nonattainment boundaries for the Phoenix ozone nonattainment area as specified in 40 CFR 81.303.

[FR Doc. 97-3927 Filed 2-14-97; 8:45 am]

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<sup>2</sup> See 58 FR 51735 (October 4, 1993).

<sup>3</sup> *Id.* at section 3(f)(1)-(4).