

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

**[EPA-HQ-OAR-2014-0283; FRL 9921-82-OAR]**

**RIN 2060-AS19**

**Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to Maine's Southern Counties**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending the Clean Air Act's (CAA) prohibition against the sale of conventional gasoline in reformulated gasoline (RFG) areas to the southern Maine counties of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln (hereinafter, the "Southern Maine Counties"). This action is based on a request from the Governor of the State of Maine for areas within the ozone transport region established under the CAA. The CAA does not give the EPA discretion to deny a Governor's request on this matter. The scope of the EPA's discretion is limited to establishing the date that the prohibition commences. Consistent with the Governor's request, the EPA is finalizing as proposed a prohibition commencement date of May 1, 2015 for all refiners, importers, and distributors in the Maine counties referenced in the Governor's request, and June 1, 2015 for all retailers and wholesale purchaser-consumers in those counties. The EPA is also adding in its RFG opt-out rules a provision to reflect that there is a four-year minimum opt-in period for areas that opt into the RFG program on the basis of their location within the ozone

transport region. This clarification aligns the federal regulation for RFG opt-out requirements with the CAA.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2014-0283. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, e.g., 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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket, EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Patty Klavon, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan, 48105; telephone number: (734) 214-4476; fax number: (734) 214-4052; e-mail address: klavon.patty@epa.gov.

**SUPPLEMENTARY INFORMATION:**

The contents of this preamble are listed in the following outline:

I. General Information

- II. Background
- III. Description of the Final Rule
- IV. Rationale
- V. Statutory and Executive Order Reviews
- VI. Legal Authority and Statutory Provisions
- I. General Information

A. Does this Action Apply to Me?

Entities potentially affected by this rule are fuel producers and distributors who do business in Maine.

Examples of Potentially Regulated Entities	NAICS <sup>1</sup> Codes
Petroleum refineries	324110
Gasoline Marketers and Distributors	424710 424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220 484230

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities of which the EPA is aware that potentially could be affected by this rule. Other types of entities not listed on the table could also be affected by this rule. To determine whether your organization could be affected by this rule, you should carefully examine the regulations in 40 CFR 80.70. If you have questions regarding the applicability of this action to a particular entity, call the person listed in the **FOR FURTHER**

<sup>1</sup> North American Industry Classification System

**INFORMATION CONTACT** section of this preamble.

II. Background

A. Background on the Federal Reformulated Gasoline Program

The purpose of the federal RFG program is to improve air quality in certain areas through the use of gasoline that is reformulated to reduce motor vehicle emissions of tropospheric ozone-forming compounds, as set forth in CAA section 211(k)(1). The EPA first published regulations for the federal RFG program on February 16, 1994. (59 FR 7716). RFG makes up over 30 percent of the volume of motor vehicle gasoline consumed in the United States<sup>2</sup> and is used in 17 states and the District of Columbia.<sup>3</sup>

CAA section 211(k)(5) prohibits the sale of conventional gasoline (i.e., gasoline that the EPA has not certified as reformulated) in certain ozone nonattainment areas beginning January 1, 1995. CAA section 211(k)(10)(D) defines the areas initially covered by the federal RFG program as 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>4</sup> In addition, under CAA section 211(k)(10)(D), any area reclassified as a Severe ozone nonattainment area under CAA section 181(b) is also included in the federal RFG program. Finally, CAA sections 211(k)(6)(A) and (B) allow areas classified as Marginal, Moderate, Serious, or Severe ozone nonattainment areas, or areas within the ozone transport region established under CAA section 184, to opt into the RFG program at the request of the Governor of the State in which the area is located.

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<sup>2</sup> See the U.S. Energy Information Administration statistics on consumption and sales of petroleum and other liquids at: <http://www.eia.gov/petroleum/reports.cfm?t=164>.

<sup>3</sup> For a map showing current RFG areas, please visit the EPA's website at: <http://www.epa.gov/otaq/fuels/gasolinefuels/rfg/areas.htm>.

<sup>4</sup> Applying these criteria, the 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.

Maine is in the ozone transport region established under CAA section 184, and its request to opt into the RFG program was made pursuant to CAA section 211(k)(6)(B). That provision specifies that upon petition of the Governor of a State in the ozone transport region, the EPA is to apply the prohibition against selling or dispensing of conventional gasoline in RFG covered areas in any area in the State other than an area classified as Marginal, Moderate, Serious, or Severe ozone nonattainment area under subpart 2 of part D of subchapter 1 of the Clean Air Act. This prohibition is to “commence as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State.” CAA section 211(k)(6)(B)(ii)(I). However, if the EPA determines that there is insufficient capacity to supply RFG, the EPA may extend the commencement date by no more than a year, and may renew that extension for two additional one-year periods. CAA section 211(k)(6)(B)(iii). The area may not opt out of the federal RFG program earlier than four (4) years after the RFG commencement date. CAA section 211(k)(6)(B)(ii)(II).

**B. Request from the State of Maine**

In 2013, the State of Maine enacted Public Law 2013 c.221 calling for the use of RFG in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln counties beginning May 1, 2014. On July 23, 2013, the Governor of Maine formally requested, pursuant to CAA section 211(k)(6)(B), that the EPA extend the requirement for the sale of RFG to these counties beginning on May 1, 2014.

The Maine legislature subsequently enacted an emergency law, Public Law 2013 c.453, effective March 6, 2014, to postpone the requirement for the sale of RFG in these counties until June 1, 2015. Pursuant to that legislation, the Commissioner for the State of

Maine's Department of Environmental Protection (DEP) submitted a request to the EPA dated March 10, 2014, modifying Maine's request for the implementation date for the sale of RFG in the Southern Maine Counties to coincide with June 1, 2015.<sup>5</sup>

Copies of the Commissioner's letter, the letter from the Governor of the State of Maine dated July 23, 2013, and the Maine legislation establishing the use of RFG in the Southern Maine Counties are available in the docket at EPA-HQ-OAR-2014-0283.

The EPA issued a proposal for public comment on August 28, 2014 (79 FR 51288), consistent with the State's request. No comments were received.

### III. Description of the Final Rule

Based on our evaluation of the appropriate lead time and start dates, and pursuant to Maine's request for a June 1, 2015 implementation date and the provisions of CAA section 211(k)(6), the EPA is amending its RFG regulation at 40 CFR 80.70 to add new paragraph (n)(1) extending the CAA section 211(k)(5) prohibition against the sale of conventional (i.e., non-reformulated) gasoline in RFG covered areas to the Southern Maine Counties. Based on Maine's request for a June 1, 2015 implementation date, the EPA is finalizing as proposed the prohibition on the sale of conventional gasoline in the Southern Maine Counties to commence as of May 1, 2015 for all regulated entities in these counties other than retailers and wholesale purchaser-consumers (i.e., refiners, importers, and distributors), and as of June 1, 2015 for retailers and wholesale purchaser-consumers. Thus, conventional gasoline may not be sold to consumers in the Southern Maine Counties as of June 1, 2015. Only RFG may be sold to consumers in these

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<sup>5</sup> The EPA has determined that the original petition from the Governor of Maine, together with the revised Maine legislation and the Commissioner's letter, serve as a petition from the Governor under CAA section 211(k)(6)(B) seeking commencement of the prohibition in CAA 211(k)(5) in the Southern Maine Counties on June 1, 2015.

counties as of June 1, 2015. The Southern Maine Counties are part of the ozone transport region as defined in CAA section 184. They are not currently classified under subpart 2 of Part D of CAA subchapter I as Marginal, Moderate, Serious, or Severe ozone nonattainment areas.

Further, in today's action, EPA is updating its RFG opt-out regulation at 40 CFR 80.72 to add a new paragraph (c)(8) to reflect that there is a four-year minimum opt-in period for areas that opt into the RFG program on the basis of their location within the ozone transport region. This clarification aligns the federal regulation for RFG opt-out requirements with CAA section 211(k)(6)(B)(ii)(II).

Thus, the State of Maine may not opt out of the federal RFG program for the Southern Maine Counties before May 1, 2019 for all regulated entities other than retailers and wholesale purchaser-consumers, and not before June 1, 2019 for retailers and wholesale purchaser-consumers, respectively.

#### IV. Rationale

The EPA has determined that the commencement dates for the prohibition of the sale of conventional gasoline in the Southern Maine Counties finalized in today's action provide a reasonable balance by achieving air quality benefits in southern Maine by the start of the 2015 peak ozone season and providing adequate lead time for industry to prepare for program implementation. The dates are consistent with the State's request that the EPA require RFG to be sold in the Southern Maine Counties to coincide with the beginning of the high ozone season, which begins June 1 of each year. Thus, the dates provide environmental benefits by allowing southern Maine to achieve volatile organic compound (VOC) reduction benefits for the 2015 VOC control season. The dates are also

consistent with the statutory requirement that the EPA set the date for commencement of the prohibition within two years of the EPA's approval of the application by the Governor.

Today's final action has no effect on the approved Maine State Implementation Plan (SIP). The State of Maine intends to submit a proposed SIP revision requesting the removal of its existing 7.8 Reid Vapor Pressure fuel requirements for the Southern Maine Counties. The EPA will consider Maine's request when it is received.

As stated previously, the EPA received no comments on the proposed rulemaking.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563. (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3. The OMB has approved the information collection requirements that apply to the RFG program (see 59 FR 7716, February 16, 1994), and has assigned OMB control number 2060-0277 (EPA ICR No. 1591.25).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a

regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant adverse impact on a substantial number of small entities. In promulgating the RFG regulations for conventional gasoline, the EPA analyzed the impact of the regulations on small entities. The EPA 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 1994 RFG rule, exempting small refiners from the RFG regulations would not meet CAA requirements. 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 potentially subject to the RFG requirements). Moreover, all businesses, large and small, maintain the option to produce conventional gasoline to be sold in areas not obligated by the CAA to receive RFG or those areas which have not chosen to opt into the federal RFG program. A complete analysis of the effect of the RFG regulations on small businesses is contained in the Regulatory Flexibility Analysis which was prepared for the 1994 RFG regulations, and can be found in the docket for that rulemaking. The docket number is: EPA Air Docket A-92-12.

Today's final rule affects only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the Southern Maine Counties, and gasoline distributors and retail stations in those areas. As discussed above, the EPA determined that, because of their location, the vast majority of small refiners will 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 the Southern Maine Counties, which will become a covered area under today's final rule, will be subject to the same requirements as those small entities which are located in current RFG covered areas. The EPA did not find the previous RFG regulations to significantly affect these entities.

D. Unfunded Mandates Reform Act (UMRA)

This final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA. Although the EPA does not believe that UMRA imposes requirements for this rulemaking, the EPA notes that the environmental and

economic impacts of the federal RFG program were assessed in the EPA's Regulatory Impact Analysis for the 1994 RFG regulations.

This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule imposes requirements only on certain refiners and other entities in the gasoline distribution system, and not on States. The requirements of the final rule will be enforced by the federal government at the national level. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Today's final rule affects only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the Southern Maine Counties, and gasoline distributors and retail stations in those areas. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and

because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations of the United States.

The EPA has determined that this final rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

K. Congressional Review Act

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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

VI. Legal Authority and Statutory Provisions

The statutory authority for this action is granted to the EPA by Sections 211(k) and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7545(k), 7601(a).

List of Subjects in 40 CFR Part 80

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

Dated: January 23, 2015.

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Gina McCarthy,

Administrator

For the reasons discussed in the preamble, the Environmental Protection Agency is amending 40 CFR part 80 as follows:

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

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

**AUTHORITY:** 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

2. Section 80.70 is amended by adding paragraph (n) to read as follows:

**§ 80.70 Covered areas.**

\* \* \* \* \*

(n) The areas included in paragraph (n) of this section are located within the ozone transport region established under Clean Air Act section 184(a), are not classified as a Marginal, Moderate, Serious, or Severe ozone nonattainment area, and have opted into the reformulated gasoline program. They are covered areas for the purposes of subparts D, E, and F of this part.

(1) The southern Maine counties of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln are a covered area beginning June 1, 2015. The prohibitions of Clean Air Act section 211(k)(5) apply to all persons other than retailers and wholesale purchaser-consumers in these counties beginning May 1, 2015. The prohibitions of section 211(k)(5) of the Clean Air Act apply to retailers and wholesale purchaser-consumers in these counties beginning on June 1, 2015.

(2) [Reserved]

3. Section 80.72 is amended by adding paragraph (c)(8) to read as follows:

**§ 80.72 Procedures for opting out of the covered areas.**

\* \* \* \* \*

(c) \* \* \*

(8) Notwithstanding any other provision of paragraph (c) of this section, for an area that opted in pursuant to Clean Air Act section 211(k)(6)(B), the Administrator shall not set the effective date for removal of the area earlier than four years after the commencement date of opt-in.

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[FR Doc. 2015-02185 Filed 02/05/2015 at 8:45 am; Publication Date:  
02/06/2015]