

(3) The source emits no more than 4.5 Mg (5 tons) of any one HAP per rolling 12-month period and no more than 11.4 Mg (12.5 tons) of any combination of HAP per rolling 12-month period, and at least 90 percent of the plantwide emissions per rolling 12-month period are associated with the manufacture of wood furniture or wood furniture components.

3. Section 63.801 is amended by revising the definitions for "certified product data sheet," "coating," and "VHAP of potential concern" to read as follows:

§ 63.801 Definitions.

Certified product data sheet (CPDS) means documentation furnished by coating or adhesive suppliers or an outside laboratory that provides:

(1) The VHAP content of a finishing material, contact adhesive, or solvent, by percent weight, measured using the EPA Method 311 (as promulgated in this subpart), or an equivalent or alternative method (or formulation data if the coating meets the criteria specified in § 63.805(a));

(2) The solids content of a finishing material or contact adhesive by percent weight, determined using data from the EPA Method 24, or an alternative or equivalent method (or formulation data if the coating meets the criteria specified in § 63.805 (a)); and

(3) The density, measured by EPA Method 24 or an alternative or equivalent method. Therefore, the reportable VHAP content shall represent the maximum aggregate emissions potential of the finishing material, adhesive, or solvent in concentrations greater than or equal to 1.0 percent by weight or 0.1 percent for VHAP that are carcinogens, as defined by the Occupational Safety and Health Administration Hazard Communication Standard (29 CFR part 1910), as formulated. Only VHAP present in concentrations greater than or equal to 1.0 percent by weight, or 0.1 percent for VHAP that are carcinogens, must be reported on the CPDS. The purpose of the CPDS is to assist the affected source in demonstrating compliance with the emission limitations presented in § 63.802.

Coating means a protective, decorative, or functional film applied in a thin layer to a surface. Such materials include, but are not limited to, paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, enamels, inks, and temporary protective coatings.

Aerosol spray paints used for touch-up and repair are not considered coatings under this subpart.

VHAP of potential concern means any VHAP from the nonthreshold, high concern, or unrankable list in Table 6 of this subpart.

4. Table 3 to subpart JJ is amended by revising the last line under item (b) and footnote b as follows:

TABLE 3—SUMMARY OF EMISSION LIMITS

	*	*	*	*	*
(b)	*	*	*	*	*
—thinners (maximum percent VHAP allowable); or	*	*	*	*	*
	*	*	*	*	*

^b Washcoats, basecoats, and enamels must comply with the limits presented in this table if they are purchased premade, that is, if they are not formulated on site by thinning other finishing materials. If they are formulated onsite, they must be formulated using compliant finishing materials, i.e., those that meet the limits specified in this table, and thinners containing no more than 3.0 percent VHAP by weight.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-5834-4]

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: Final rule.

SUMMARY: Under section 211(k)(6) of the Clean Air Act, as amended ("Act" or "CAA"), the Administrator of EPA must require the sale of reformulated gasoline ("RFG") 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. As requested by the Governor of Arizona, today's action extends the requirement to sell RFG to the Phoenix, Arizona moderate ozone nonattainment area, effective July 3, 1997 for all persons other than retailers and wholesale purchaser-consumers (i.e., refiners, importers, and distributors), and August 4, 1997 for retailers and wholesale purchaser-consumers. 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. The federal Phase I RFG program provides reductions in ozone-forming volatile organic compounds ("VOC") emissions and air toxics, and prohibits increase in oxides of nitrogen ("NO_x") emissions. Reductions in VOCs are environmentally significant because of the associated reductions in ozone formation. Exposure to ground-level ozone (or smog) can cause respiratory problems, chest pain, and coughing and may worsen bronchitis, emphysema, and asthma.

DATES: This final rule is effective July 3, 1997.

ADDRESSES: Materials relevant to the final rule 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 on business days 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 at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233-9856.

SUPPLEMENTARY INFORMATION:

Availability on the TTNBBS

The preamble, regulatory language and regulatory support document are also available electronically from the EPA Internet Web site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of Internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer per the following information. The official **Federal Register** version is made available on the day of publication on the primary Internet sites listed below. The EPA Office of Mobile Sources also publishes these notices on the

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At this point, choose the topic (e.g., Fuels) and subtopic (e.g., Reformulated Gasoline) of the rulemaking, and the system will list all available files in the chosen category in date order with brief descriptions. To download a file, type the letter "D" and hit your Enter key. Then select a transfer protocol that is supported by the terminal software on your own computer, and pick the appropriate command in your own software to receive the file using that same protocol. After getting the files you want onto your computer, you can quit the TTN BBS with the <G>oodbye command.

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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.

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 would have been regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in section 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.

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

- I. Background
 - A. Clean Air Act Opt-in Provision
 - B. EPA Procedures and Arizona Opt-in Request
- II. Action
- III. Response to Comments
 - A. EPA Interpretation of section 211(k)(6) of the Clean Air Act
 - B. Phoenix Circumstances
 1. Need for Air Quality Benefits of Federal RFG
 2. Supply
 - C. Implementation Issues
 1. Enforcement Relief Provided by EPA
 2. Other Implementation Issues
- IV. Environmental Impact
- V. Statutory Authority
- VI. Regulatory Flexibility
- VII. Public Participation
- VIII. Executive Order 12866
- IX. Paperwork Reduction Act
- X. Unfunded Mandates
- XI. Judicial Review
- XII. Submission to Congress
- XIII. List of Subjects in 40 CFR Part 80

I. Background

A. Clean Air Act Opt-in Provision

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Act. Subsection (k) requires the sale of gasoline that EPA has certified as reformulated in the nine worst ozone nonattainment areas beginning January 1, 1995. Section 211(k)(10)(D) defines the areas required to be 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 1989.¹ Under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) must also be included in

¹ 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.

the RFG program.² EPA published final regulations for the RFG program on February 16, 1994. See 59 FR 7716.

Any 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 ("CG") 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.³ 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 for a potential opt-in area may be extended beyond the one year required by section 211(k)(6)(A). Such an extension, as provided in section 211(k)(6)(B), would be based on a determination by EPA that there is "insufficient domestic capacity to produce" RFG. Finally, section 211(k)(6)(A) requires that EPA publish a governor's application in the **Federal Register**.

Although section 211(k)(6) provides EPA discretion to establish the effective date for this prohibition to apply to such areas, EPA does not have discretion to deny a Governor's request. Therefore, the scope of EPA's Notice of Proposed Rulemaking ("NPRM") was limited to proposing an effective date for Phoenix's opt-in to the RFG program. EPA solicited comments addressing the proposed implementation date and stated in the NPRM that it was not soliciting comments that supported or opposed Phoenix participating in the RFG program.

B. EPA Procedures and Arizona Opt-in Request

The Governor of Arizona established in May 1996 an Air Quality Strategies Task Force ("Arizona 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 ("NAAQS") for ozone, carbon monoxide and particulates. In July 1996, this task

² Sacramento was reclassified from Serious to Severe effective June 1, 1995 and became a mandatory covered RFG area effective June 1, 1996.

³ EPA recently published a proposed rulemaking that would allow areas previously classified as Marginal through Severe to opt-in. 62 FR 15074 (March 28, 1997).

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-in to the federal RFG program for Phoenix for the onset of the 1997 VOC control season. The subcommittee submitted its final report to the Arizona Task Force on November 26, 1996.⁴

By letter dated January 17, 1997, the Governor of the State of Arizona applied to EPA to include the Phoenix moderate ozone nonattainment area in the federal RFG program. The Governor requested an implementation date of June 1, 1997. EPA published the Governor's letter in the **Federal Register**, as required by section 211(k)(6). The Direct Final rule published by EPA on February 18, 1997 (62 FR 7164) extended the RFG program to the Phoenix moderate ozone nonattainment area by setting two implementation dates. EPA set an effective date of June 1, 1997 for refiners, importers, and distributors, and July 1, 1997 for retailers and wholesale purchaser-consumers. The Agency published a Direct Final Rule because it viewed setting the effective date for the addition of the Phoenix ozone nonattainment area to the federal RFG program as non-controversial and anticipated no adverse or critical comments.

Also on February 18, 1997 EPA published an NPRM (62 FR 7197), in which EPA proposed to apply the prohibitions of subsection 211(k)(5) to the Phoenix, Arizona nonattainment area. EPA proposed to adopt the same two implementation dates for Phoenix specified in the Direct Final Rule. EPA published an NPRM so that, in the event that it did receive an adverse comment in response to the Direct Final Rule, the Agency would proceed with notice-and-comment rulemaking. EPA is today taking final action on that NPRM.

After publication of the Direct Final Rule and the NPRM, EPA received several requests for a hearing. A copy of these comments can be found in Air Docket A-97-02. (See ADDRESSES) Since EPA received a request for a hearing, the Direct Final Rule adding the Phoenix ozone nonattainment area to the RFG program was withdrawn by the Administrator on March 31, 1997. See 62 FR 16082 (April 4, 1997.) EPA

published a Notice of public hearing on March 12, 1997 (62 FR 11405) and held a public hearing in Phoenix, Arizona on March 18, 1997.

II. Action

Pursuant to the governor's letter and the provisions of section 211(k)(6), EPA is today adopting regulations that apply the prohibitions of subsection 211(k)(5) to the Phoenix, Arizona moderate ozone nonattainment area. EPA believes the implementation dates adopted today achieve a reasonable balance between requiring the earliest possible start date to achieve air quality benefits in Phoenix 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 will provide environmental benefits by allowing Phoenix to achieve VOC reduction benefits for some of the 1997 VOC-controlled season.

EPA has concluded, based on its analysis of available information, including public comments received and discussed below (See III. Response to Comments), that the refining and distribution industry's capacity to supply federal RFG to Phoenix this summer exceeds the estimated demand. EPA has also concluded that the implementation dates adopted today provide adequate lead time to industry to set up storage and sales agreements to ensure supply of RFG to the Phoenix ozone nonattainment area.

The Governor's request seeks a single implementation date of June 1 for the RFG program in the Phoenix area. However, pursuant to its discretion to set an effective date under section 211(k)(6), EPA is establishing two implementation dates. For all persons other than retailers and wholesale purchaser-consumers (*i.e.*, refiners, importers, and distributors), implementation shall take effect on the effective date of this rule, July 3, 1997. 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, implementation shall take effect 30 days *after* the effective date of this rule, August 4, 1997. As of the implementation date for retailers and wholesale purchaser-consumers, the Phoenix ozone nonattainment area will be treated as a covered area for all purposes of the federal RFG program.

III. Response to Comments

A. EPA Interpretation of Section 211(k)(6) of the Clean Air Act

Several parties noted that EPA would be setting a precedent for future opt-ins by the criteria it uses to determine an appropriate effective date for the Phoenix opt-in. They noted that the decision would have a national impact and asked for assurance from EPA that it would apply these criteria uniformly. One commenter stated that the compliance date set for the first opt-in requests allowed refiners many months to set up the systems and organizations necessary to comply with the rules. This timing provided industry with the certainty it needed to make informed compliance decisions and the time it needed to implement the required changes either in the production of different fuels or in the administrative requirements for compliance. The commenter said that EPA had never contemplated such a rapid opt-in process as the one proposed for Phoenix and recommended that EPA avoid setting an undesirable precedent.

The Arizona opt-in request is the first request EPA has received since the federal RFG program began in January 1995.⁵ Previous opt-in requests were sent in from two to three and a half years before January 1, 1995. Section 211(k)(6)(A) authorizes EPA to set an effective date for an area's opt-in that is no later than one year from the date of the request, or January 1, 1995, whichever is later. In the case of these early opt-in requests, January 1, 1995, was later than one year from the date of the requests. Therefore, EPA set an effective date of January 1, 1995, for those areas to opt-in. EPA received one opt-in request shortly before the federal RFG program began. For that request, EPA set an effective date of June 1, 1995, less than one year from the Governor's opt-in request.⁶

⁵ Voluntarily covered federal RFG areas ("opt-in" areas) currently exist in twelve States and the District of Columbia. Each of these areas submitted opt-in requests (a letter from the State Governor to the EPA Administrator) between June 1991 and October 1992. EPA responded to these requests to set an effective date under section 211(k)(6)(A) of the CAA by (1) publishing a "Notice of Application for the Extension of the RFG program" in which EPA set an effective date of January 1, 1995, the date when the federal RFG program was required to begin; and (2) including these areas as "covered areas" under 40 CFR section 80.70(j) in the Final Rule for Standards for Reformulated and Conventional Gasoline 59 FR 7716, 7852 (February 16, 1994), as amended at 59 FR 36944, 36964 (July 20, 1994).

⁶ The Governor of Wisconsin requested to opt-in some areas in April 1994; in August 1994, the Governor requested the effective date of June 1995. EPA published a Direct Final Rule on January 11, 1995 (60 FR 2693) setting June 1, 1995 as the

⁴ See Docket A-97-02, II-A-3.

EPA recognizes that each ozone nonattainment area that submits an opt-in request will have a unique set of circumstances that has led the State to select federal RFG as a control measure. Section 211(k)(6)(A) of the Act gives the Administrator discretion to "establish an effective date * * * as he deems appropriate* * *." EPA interprets this provision to mean that it has broad discretion to consider any factors reasonably relevant to the timing of the effective date. This would include factors that affect industry and the potential opt-in area. The factors that affect industry could include productive capacity and capability, other markets for RFG, oxygenate supply, cost, lead time, supply logistics for the area, potential price spikes, and potential disruption to business. The circumstances of the potential opt-in area could include environmental benefits and the timing of such benefits; amount and types of reductions it needs; and effects of transport, geography, climate, and weather patterns on air quality. EPA will review each opt-in request and the particular facts pertaining to the potential opt-in area and the suppliers for that area to determine the appropriate implementation date. EPA believes that Phoenix is an ozone nonattainment area in extraordinary circumstances. (See discussion in III.B.1. below.) Thus, at the request of the Arizona Governor, EPA has reviewed this opt-in request as expeditiously as possible. EPA has provided the flexibility refiners need to meet the effective date by providing enforcement relief for several implementation issues. (See discussion in III.C. below.)

Some commenters were concerned that EPA viewed its scope of review for the Phoenix opt-in too narrowly. They suggested that EPA should consider all issues relevant to a successful and orderly implementation.⁷ One commenter argued that the Arizona Governor made four requests in his January 17, 1997 letter and that EPA should consider all these requests together: that EPA set an effective date

effective date. Wisconsin subsequently withdrew its opt-in request by letter dated March 31, 1995 and EPA published a Notice to Withdraw Final Rule on May 3, 1995 (60 FR 21724).

⁷ EPA stated in the Notice of public hearing (62 FR 16082 (March 12, 1997)) that comments regarding Arizona's decision to opt-in to federal RFG; EPA opt-out procedures; the Arizona Reid vapor pressure (RVP) waiver; and enforcement issues would not be relevant to the limited scope of the opt-in rulemaking. EPA has discussed the RVP waiver and enforcement issues, to the extent that they are relevant to setting the effective date, in the preamble to today's final rule.

for Phoenix to opt-in to federal RFG; that EPA grant two waivers under section 211(c)(4)(C) of the Act from EPA, one for a state Reid vapor pressure ("RVP") standard of 7.0 pounds per square inch ("psi") and one for a state wintertime oxygenated fuel standard; and that EPA allow Phoenix to opt-out of federal RFG.⁸ The commenter asked that EPA justify its decision to address opt-in first and separated from these other requests.

EPA interprets the Governor's January 17 letter as a request to opt-in to federal RFG. The first paragraph of the letter states that the purpose of the letter is to request that EPA require federal RFG to be supplied to the Phoenix ozone nonattainment area beginning June 1, 1997. In addition, the fact that the Governor's letter requesting to opt-in to RFG raises other issues on which EPA action may be pending does not require EPA to resolve those issues in conjunction with the Agency's action on the opt-in request.

The Governor's letter includes references to the pending RVP and oxygenated fuels standards waivers, but these references simply seek expeditious approval of these previously submitted waiver requests. EPA's Region 9 is currently considering these 211(c)(4)(C) waiver requests.⁹

Commenters stated that in determining an appropriate effective date EPA should consider the capacity to supply both RFG and low RVP gasoline. Commenters argued that EPA should address the RVP waiver request and the timing of the waiver decision, and acknowledge the impact on refiners. EPA has considered the effect of a state 7.0 psi RVP program on timing and supply for federal RFG. While refiners stated that they need to know exactly what the fuel specifications are going to be, EPA received comments from refiners stating that they could supply RFG to Phoenix without having a final 7.0 psi RVP waiver preemption in place. EPA acknowledges the importance for refiners to know what all the specifications will be for Phoenix gasoline. EPA also acknowledges that until EPA waives preemption for a state 7.0 psi RVP standard under section 211(c)(4)(C), Arizona is preempted from

⁸ See Docket A-97-02, II-D-1.

⁹ The Arizona Department of Environmental Quality ("ADEQ") re-submitted a formal request, (a SIP Revision with supporting documentation) for the RVP waiver by letter dated April 29, 1997 to Region 9. A copy of this letter (without attachments) is in Docket A-97-02, IV-D. A copy of the letter (with attachments) can be found in the Region 9 Docket for this rulemaking (A-AZ-97) and the Region 9 Docket for the RVP Waiver (AZ-RVP-97).

enforcing that standard. Nonetheless, the waiver of preemption is a separate action. If EPA waives preemption and refiners need some transition time, because the RVP program would be a state program, Arizona would have authority to provide the appropriate transition time.

Regarding the wintertime oxygenated fuel waiver request, the state has not yet submitted the documentation for this request. When it does, Region 9 will address it in a timely manner. Regarding Arizona's potential opt-out, EPA does not consider the January 17 letter to be an opt-out request. While the Governor asked for clarification of EPA opt-out procedures, he did not request to opt-out; he did not ask EPA to set an opt-out effective date or discuss any of the criteria required in the Opt-Out Procedures Rule.¹⁰ The Governor simply made a statement of current intent to submit an opt-out request if a certain condition exists. That is, if Arizona were to decide that a different fuel would better meet its needs, the Governor would submit an opt-out request by December 31, 1997.¹¹

Several commenters believe EPA should consider the Governor's statement of intent to opt-out in the future in setting the effective opt-in date. Given that EPA has not received from Arizona an opt-out request and thus no request for a particular opt-out effective date, EPA cannot determine what effect, if any, a potential opt-out would have on supply as of the opt-in effective date. While EPA is concerned with potential supply disruptions and uncertainty for the regulated community that could result with cyclic state opt-in and opt-out, the CAA allows states to determine which control measures for meeting federal air quality standards are most appropriate and best meet their needs.¹² In addition, the Opt-out Procedures Rule provides a process a state must follow to petition for removal from the program, the criteria used by EPA to evaluate a request, and the necessary transition period before the opt-out becomes effective.¹³

¹⁰ 61 FR 35673 (July 8, 1996).

¹¹ See 62 FR 15077 (March 28, 1997), EPA Notice of Proposed Rulemaking for Transitional and General Opt Out Procedures for Phase II Reformulated Gasoline Requirements. EPA proposed, *inter alia* that states decide and submit to EPA a complete opt-out petition by December 31, 1997, if they want a current opt-in area to opt-out before December 31, 1999.

¹² There is no indication that Arizona intends to initiate another cycle of federal RFG adoption.

¹³ 61 FR 35673, 35674 (July 8, 1996).

B. Phoenix Circumstances

1. Need for Air Quality Benefits of Federal RFG

Many commenters addressed Phoenix's air quality situation, the conclusion by the Arizona Task Force that federal RFG was the most effective short-term control measure for Phoenix, and the consequences for Phoenix air quality if it does not receive those benefits.¹⁴ A representative of the Arizona Department of Environmental Quality ("ADEQ") testified at the hearing, providing the following reasons for why the State of Arizona needs EPA to expeditiously set an effective date for Phoenix to opt-in to federal RFG this summer. First, Arizona has some of the toughest combinations of strategies to address ozone pollution in the nation. Arizona implemented the Inspection and Maintenance 240 program, including the pressure test; has a trip reduction program more stringent than was required for Severe ozone nonattainment areas; has a regulatory remote sensing program; and has had a state low (7.0 psi) RVP standard since 1994.¹⁵

Despite these requirements, ozone violations persist in the Phoenix nonattainment area. Twenty-nine exceedances were recorded in the summer of 1995, and ten exceedances were recorded in 1996. In addition, Phoenix has a long ozone season; ADEQ documents violations from mid-May to early September. These ozone violations have significant health implications because they affect large numbers of people in the Phoenix metropolitan area. For example, ADEQ estimates that as many as 496,000 people could have been exposed to unhealthy levels of air quality due to violations on July 23, 1996.

ADEQ pointed out that Phoenix is currently a Moderate nonattainment area, but the State is concerned about potential redesignation to Serious because of the new source review ("NSR") requirements that would come with it. ADEQ believes, based on its current emissions inventory, that NSR requirements would not produce

significant air quality benefits and thus would not be an effective ozone attainment strategy for Phoenix.¹⁶ ADEQ has been working with EPA's Region 9 on a Voluntary Early Ozone Plan ("VEOP") to bring cleaner air to Phoenix sooner and obviate the need for reclassification to Serious. The tonnage reductions represented by federal RFG for 1997 through 1999 in Phoenix are a critical portion of the emissions reductions that ADEQ needs to show in the VEOP.

ADEQ also stated that the Arizona Task Force concluded that supply of RFG for Phoenix would not be at issue, based on an independent contractor study on fuel and refining capabilities.¹⁷ The report was reviewed by dozens of stakeholders, many of whom were fuel suppliers. The consultant determined that there was an adequate supply of federal RFG available for Phoenix.

One commenter who served on the Arizona Task Force stated at the hearing that, after reviewing the analysis done by a contractor, the Task Force concluded that opt-in to federal RFG was the single most effective measure that the state could adopt in the short term to improve air quality in Phoenix.¹⁸ In addition to providing the emissions reductions Phoenix needs, supply was available and the federal enforcement mechanism was in place. The commenter added that if there was a delay in the opt-in effective date for Phoenix, they would move into this summer's ozone season when humidity and higher temperatures could result in an ozone violation this summer, and this was what the Arizona Task Force was seeking to avoid by adopting a short-term fuels measure. One commenter, on the other hand, argued that the summer emissions benefits of federal RFG for Phoenix would be small (2-4 percent) for ground level ozone.

2. Supply

Commenters asked EPA to list the criteria it would use to determine that adequate supply of RFG exists in a

potential opt-in area. As stated earlier, EPA believes section 211(k)(6)(A) provides broad discretion to the Administrator to establish an appropriate effective date. In setting an effective date for a potential opt-in area, EPA believes it should review the many factors that could affect the supply of gasoline to that area. These include, but are not limited to, supply logistics, cost, potential price spikes, the number of current and potential suppliers for that market, whether such suppliers have experience producing RFG or the capability to produce RFG, intent of suppliers to withdraw from the market, availability of adequate gasoline volumes, and the amount of lead time needed by suppliers and the distribution industry to set up storage and sales agreements to ensure supply. By evaluating these and other factors, EPA can make a determination as to whether industry's capacity to supply RFG for an opt-in area meets or exceeds the demand.

EPA has determined that capacity to supply federal RFG to Phoenix this summer exceeds the estimated gasoline demand. EPA has concluded that refiners will be able to adequately supply federal RFG for Phoenix within 30 days of publication of the final rule, the effective date for terminal compliance. EPA has concluded that retailers will be able to supply RFG within 60 days of publication of the final rule, the effective date for retailers and wholesale purchaser-consumers. The following is a discussion of the factors EPA considered in reaching this conclusion.

a. Logistics

Many commenters stated that Phoenix is in a unique logistical situation. It has no pipeline access to the large production facilities on the Gulf Coast. It is relatively isolated from refineries and dependent on two common carrier pipelines, one coming from the east and one coming from the west.¹⁹ Commenters emphasized to EPA the importance of Phoenix having a reliable supply of gasoline from both the east and west because temporary shutdowns have occurred on each side, disrupting supply up to 24 hours or longer. One commenter testified at the hearing that these disruptions happen periodically. The pipelines are primarily constructed on railroad right-of-ways, so train derailments cause the pipeline to

¹⁴ Some commenters discussed what they considered to be the best fuel for Phoenix in the long-term. As stated in the NPRM and Notice of public hearing, Arizona's short-or long-term fuel choice is not relevant to this opt-in rulemaking.

¹⁵ A remote sensor is an instrument that measures emissions in a pathway across a road as a vehicle drives by. At the same time the vehicle drives by, a photograph is taken of the license plate. Remote sensing programs are designed to target the highest emitting vehicles in an unobtrusive way. Arizona's program requires owners of vehicles that are found to be exceeding emissions standards (with remote sensing) to bring their vehicle in for further emissions testing and possible repair.

¹⁶ ADEQ's current emissions inventory shows that contributions to ozone nonattainment from mobile sources are in excess of twenty-five percent and from stationary sources are approximately six percent. ADEQ is currently reevaluating the inventory that it used for the Voluntary Early Ozone Plan ("VEOP") because they have reason to believe that mobile emissions may have been underestimated and biogenic emissions overestimated.

¹⁷ See "Final Report: Assessment of Fuel Formulations Options for Maricopa County for State of Arizona Department of Environmental Quality" performed under Contract 97-0013AA by MathPro Inc. with Air Improvement Resource, Inc., November 7, 1996 ("MathPro Report"), EPA Air Docket A-97-02, II-A-2.

¹⁸ *Id.*

¹⁹ The Santa Fe Pacific Pipeline ("SFPP") is the common carrier that transports gasoline and other products (diesel, jet fuel, and heating oil) to Phoenix by one pipeline from the west (originating in Los Angeles, California) and one pipeline from the east (originating in El Paso, Texas).

shutdown. A shutdown occurred recently on the west pipeline due to a train derailment, and the downtime was 24 hours. The downtime could be longer, depending on the severity of the derailment or other problem, such as heavy rains.

The west pipeline now delivers approximately 70 thousand B/D of gasoline to Phoenix and about 12 percent (8,000) of that continues on to Tucson. The east pipeline now delivers approximately 25 thousand B/D of gasoline to Phoenix.²⁰ Both the east and west pipelines have significant additional capacity beyond what is currently being shipped.²¹ About 20 percent of the Phoenix total is ultimately shipped to markets outside Maricopa County and will not be RFG unless market conditions result in a give-away.²²

Phoenix is considered part of the West Coast distribution area that supplies 1.3 million B/D of gasoline.²³ Industry representatives believe that it is inconsequential whether a small shortfall in RFG supply for Phoenix occurs in the east or the west pipeline. The west pipeline has the capacity, with some disruption, to adjust and meet the majority of the Phoenix demand for all types of gasoline in the event of loss of the east line supply. The loss of the east supply has happened before, when one of the two suppliers was down for periodic maintenance and a breakdown occurred at the other. Several refiners agreed that the only situation that is likely to cause an RFG shortage in Phoenix is a break or stoppage in the west pipeline.²⁴ Given that the total Phoenix/Tucson area gasoline demand is 110 thousand B/D and the maximum east pipeline flow rate is 55 thousand B/D for all products, shortages and price increases are inevitable if the west pipeline goes down.²⁵ This would occur regardless of the type of gasoline required by Arizona; therefore, the state's opt-in to RFG does not affect this situation.

b. Estimated Phoenix Gasoline Market and Refiner Capability to Supply

The total gasoline demand for the state of Arizona is approximately 130

thousand B/D. The total gasoline now being delivered to Phoenix terminals by both pipelines is about 88 thousand B/D. Approximately 80 percent (70 thousand B/D) of the Phoenix terminal volume is used in Maricopa County (the Phoenix ozone nonattainment area). The remaining 20 percent of the Phoenix terminal volume is shipped to five other Arizona counties.²⁶

Based on the comments received, EPA believes at least six refiners will supply federal RFG from the west and two to three refiners will supply RFG from the east. This assures some supply of federal RFG to Phoenix from both the west and the east. Most of the refiners that commented, with one exception, stated that they intend to supply federal RFG for the Phoenix market for the summer of 1997. In addition, one company stated that it intends to supply Phoenix by displacement; that is, it supplies the Texas and California markets with federal RFG and California RFG ("CaRFG"), thus making it possible for Texas and California refiners to supply the Phoenix market. Furthermore, one commenter submitted a plot of the price difference between RFG and CG in the New York, Gulf Coast, and California markets. The commenter concluded that the very narrow differential, which was about 2 cents in the federal program and about 4 cents for the California gasoline, indicates that supplies are more than adequate. And finally, the Arizona Task Force contractor stated in its report that its analysis of the gasoline distribution system (which includes the refineries, the SFPP South Pipeline System, and the local bulk terminals) led to the finding that in general "the existing distribution system has the capability to deliver the required volumes of special Maricopa County gasolines meeting any of the proposed standards [the Arizona Task Force considered several fuels options] ."²⁷

One refiner commented that it currently supplies Phoenix from a refinery located in El Paso and will not be able to produce RFG for this summer at that refinery. The company stated, however, that they are looking at various options to replace those volumes. Another party stated that for the few refiners that might not be able to meet the RFG specifications this summer, the industry has an often-utilized method of arranging exchanges or trades of gasoline in one market for gasoline in another. This arrangement is designed to provide relief for refiners

and marketers during company-specific supply disruptions.

c. Potential for Phoenix RFG Supply Shortage

Industry has told EPA in written comments and in meetings that the continuous buying, selling and trading of gasoline stocks in response to the spot prices makes supply shortages of types of gasoline, like RFG, very unlikely.²⁸ The short term price increases that occurred when CaRFG was introduced in California was caused by an unusual and unexpected combination of refinery disruptions not expected to occur in Phoenix. Typical spot prices are: (1) CaRFG—\$0.70/gallon; (2) federal RFG—\$0.69/gallon; and (3) CG—\$0.66/gallon. Generally, the differences in price correspond to difference in refining costs. Thus, in order to supply RFG, a trader could opt to buy any of the gasoline types, whether barged from Texas, San Francisco, Washington, or other more distant locations, and, if necessary, turn CG into RFG, at a cost of 3 cents/gallon.²⁹ In effect, the cost of purchasing of RFG would be about the same as the cost of purchasing CG and converting it to RFG. The Energy Information Administration (EIA) recently informed EPA that there was an oversupply of gasoline in California and the price of CaRFG dropped 8 cents during the first week in May.³⁰ One commenter, however, argued that the Phoenix requirement to supply federal RFG with a 7.0 psi RVP makes the gasoline unique. This commenter believes that fewer refiners will supply the Phoenix gasoline, resulting in recurring shortages, accompanied by price spikes. As discussed in this preamble, however, most refiners that currently supply gasoline to Phoenix commented that they intend to continue to do so.

d. Oxygenate Supply

Federal RFG requires the addition of oxygenates (2.0 percent by weight). This addition of oxygenate will increase the volume of gasoline supply by approximately 10 percent. If Phoenix requires 65 thousand B/D of RFG and industry continues to provide that amount of gasoline, the supply will

²⁸ "Spot Market" is defined as commodity transactions whereby participants make buy-and-sell commitments of relatively short duration, in contrast to the "contract" market in which transactions are long term. U.S. Petroleum Refining, Meeting Requirements for Cleaner Fuels and Refiners, Volume I—Analyses and Results, National Petroleum Council, August 1993 at GL-8. "Spot prices" are the prices for a single sale of a product, i.e., gasoline, on the Spot Market.

²⁹ See Docket A-97-02, IV-E-7.

³⁰ See Docket A-97-02, IV-E-8.

²⁰ MathPro Report at pages 20-27.

²¹ See Docket A-97-02, IV-E-7, Memorandum to EPA Air Docket regarding telephone conversations between EPA and industry representatives on the issue of supply to Phoenix.

²² MathPro Report at pages 20-27. A give-away occurs when higher quality gasoline, that costs more to produce, is sold at a lower price, one reflective of conventional gasoline. MathPro Report at page 30.

²³ See Docket A-97-02, IV-E-7.

²⁴ *Id.*

²⁵ MathPro Report at pages 20-27.

²⁶ *Id.*

²⁷ *Id.* at pages 76-77.

increase by approximately 6500 B/D just by the addition of oxygenate. Several commenters provided information that there is a plentiful supply of oxygenates. A commenter stated that given that oxygenate producers are presently operating at approximately 90 percent of manufacturing capacity, an RFG program for Phoenix is not expected to cause any disruptions in oxygenate supply or drastic impacts on the oxygenate marketplace.

e. Infrastructure and Reformulation

EPA received comments that the needed infrastructure, blending, and segregation capability are in place for Phoenix. Phoenix has had a winter oxygenated gasoline program since 1989, so the infrastructure associated with oxygenate blending and product segregation is already present. This will help ensure a smooth transition to RFG. A commenter stated that based on its study of Arizona's distribution system, it believed that the time required to get RFG to the marketplace will be a month or less after it is produced.

EPA received comment that relatively small quality changes will be required by refiners to produce RFG. Most refiners providing conventional gasoline to Phoenix currently meet the RFG specifications except for benzene. The most significant change in the formulation will be the reduction of benzene to one volume percent. The addition of two weight percent oxygen to the gasoline will contribute to the reduction of benzene.

f. Effective Dates

In the NPRM, EPA proposed that 30 days be allowed between the terminal and retail compliance dates and requested comment on whether a shorter time period would be appropriate. The Agency received two comments on this issue. One refiner stated that under the best conditions, thirty days was feasible but not guaranteed. The refiner explained that thirty days at a minimum was needed due to potential difficulties in blending gasoline and in order to assure compliance at low-volume stations. Another refiner stated it supported the 30 days but thought 15 sufficient. Two commenters did not speak directly to this issue but included in their comments potential schedules for opt-in compliance. One allowed 21 days and one allowed 15 days between the two dates. EPA has decided that 30 days is an appropriate time period to allow between terminal and retail compliance dates. While it appears that 15 days would be sufficient for high-volume

stations, the additional 15 days could be important for low-volume stations.

EPA proposed that the terminal effective date be 30 days following the publication of the final opt-in rule. One commenter argued that 45 days would be more appropriate because a longer transition time would allow terminals to gradually convert to RFG by slowly replacing their normal inventory levels of conventional gasoline. A shorter time period would mean that the terminal must draw down their conventional gasoline to lower levels in order to accelerate the conversion. If a refinery outage were to occur while inventories are artificially low, the possibility of a physical shortage would increase and higher prices could result. This situation could be exacerbated by the timing of the conversion, well into the high demand summer driving season. One commenter concerned with the precedent set by an effective date 30 days after publication questioned whether this would provide adequate lead time regardless of ability to supply.

EPA has decided that a terminal effective date of 30 days after publication of the final rule provides refiners sufficient lead time. Refiner ability to supply RFG is one of the factors EPA considers in setting the effective date for an opt-in request, and several refiners who supply Phoenix have stated that they have the ability to supply federal RFG to Phoenix within 30 days of publication of the final rule. One commenter stated that if EPA resolved issues regarding enforcement of the RFG requirements in Phoenix by May 1, service stations could supply federal RFG in Phoenix by mid-July. Moreover, as several commenters stated, industry has been on notice that Phoenix would opt-in since the date of the Arizona Governor's letter, January 17, 1997. EPA proposed that the terminal compliance date be 30 days after publication of the final rule or June 1, whichever was later. Based on this proposed date, SFPP stated in its comments that it would have to begin shipments by April 22. Refiners testified at the hearing that they could supply RFG to Phoenix by the proposed date of June 1 if EPA worked with them to resolve certain implementation issues. EPA has agreed to provide enforcement relief on several implementation issues (See discussion in III.C.1. below) and expects that refiners will be ready to supply RFG by the terminal compliance date, which will be later than the proposed date. The fact that EPA has set an effective date of 30 days from publication of the final rule does not mean, however, that EPA will decide that is the appropriate amount of lead

time for future opt-in requests. As discussed above, pursuant to section 211(k)(6)(A), EPA will review all relevant factors for each opt-in request to determine the appropriate effective date for a particular area.

EPA received one comment requesting that in setting a Phoenix opt-in effective date, EPA consider any effect that could have on the supply of CaRFG in California. The commenter stated that a reduction in production of CaRFG could have an adverse effect on gasoline price and availability in California. Several California refiners commented that they intend to supply federal RFG to Phoenix. None of these refiners indicated that producing federal RFG would limit their production of CaRFG. EPA has not received any information that would indicate that the Phoenix opt-in effective date will affect the supply of CaRFG in California.

EPA asked parties at the hearing to comment on whether supplying RFG to Phoenix would affect the supply of CG to Arizona. EPA received one comment on this issue from a refiner who stated that it could meet its CG contracts for Arizona.

C. Implementation Issues

Several refiners and one trade association representing the refiners identified implementation and enforcement issues they faced in preparing to provide RFG to Phoenix in the summer of 1997. These issues resulted from the lead time available for the Phoenix opt-in resulting from the date of the Arizona Governor's opt-in request and his requested implementation date; and the fact that much of the gasoline supplied to Phoenix (approximately two-thirds) is produced at refineries located in California. These California refineries are covered by the California Enforcement Exemption in the federal RFG rules (40 CFR 80.81). The association stated, however, that it did not support delay of the proposed effective date. Its members could supply RFG to Phoenix if EPA could provide some enforcement relief for the identified implementation issues. In addition, one refiner commented that while it encouraged EPA to grant enforcement relief, it did not believe the issues were any reason to delay the implementation date because refiners had actually been on notice that they would need to prepare to supply Phoenix with RFG since January 17, 1997, the date of the Governor's letter to EPA.

1. Enforcement Relief Provided by EPA

EPA provided enforcement relief from certain RFG requirements related to compliance in an April 18, 1997 letter from Steven A. Herman, EPA Assistant Administrator for Enforcement and Compliance Assurance, to Urvan Sternfels, President of the National Petroleum Refiner's Association.³¹ The enforcement relief is provided only until January 1, 1998, and consists of the following:

a. Registration of Parties

40 CFR 80.76 requires that refiners, importers and oxygenate blenders register with EPA no later than three months prior to the date they intend to produce or import RFG in order to provide EPA with information about the companies and their facilities. In light of the timing associated with the Phoenix opt-in, EPA will not enforce the requirement to register three months in advance, provided a party registers before producing any RFG for Phoenix, including the requirement to notify EPA of which independent laboratory a party will use.

b. Submittal of RFG Survey Plan

Section 80.68 requires certain refiners to submit to EPA a plan for conducting gasoline quality surveys in each RFG covered area. This plan must be submitted no later than September 1 of the year preceding the year the surveys are to be conducted. However, given the date of Governor Symington's opt-in letter, EPA will not enforce the requirement to submit a Phoenix survey plan by September 1, 1996, provided that within 30 days of EPA's final Phoenix opt-in rule a Phoenix survey plan that meets all the requirements of section 80.68 is submitted.

c. Use of California Test Methods

Both the federal RFG and the California Air Resources Board ("CARB") Phase 2 programs require refiners to use certain test methods to demonstrate compliance with the standards applicable under these programs. In the case of the tests for certain parameters the methods specified under the two programs are different.

Section 80.81 allows California refiners to use CARB test methods as an acceptable federal test method when producing CARB gasoline. This exemption is limited to gasoline used in California, and refiners are required to use federal test methods for gasoline exported from California.

A letter of February 29, 1996 from Steve Herman to the Western States Petroleum Association allows California refiners to use CARB test methods for CG exported from California, subject to certain conditions, but does not allow non-federal test methods for RFG exported from California because of the stringent requirements associated with federal RFG. However, the Phoenix opt-in presents a situation where limited use of CARB test methods for certain federal RFG requirements is appropriate in the case of RFG used in Phoenix.

Section 80.65(e) requires RFG refiners to use federal test methods to analyze each RFG batch in order to certify compliance with the federal RFG standards, and under section 80.75(a) to report results to EPA on a quarterly basis. In addition, section 80.65(e) provides that before a refiner can ship RFG the refiner must have received the results of federal tests for parameters that are subject to downstream standards, *i.e.*, the federal test results for oxygen and benzene, and RVP for VOC-controlled RFG, in order to prevent the introduction into commerce of RFG that violates a downstream standard.

EPA believes that refiners in California can meet the requirement to use federal test methods for purposes of determining batch properties that are reported to EPA, either by using the federal test methods at the refinery or by using an independent laboratory to conduct federal tests. However, a refiner using an independent laboratory may not have received the test results before the RFG normally would be shipped. As a result, such a refiner would be required to purchase the equipment necessary to conduct the federal tests on site, which EPA estimates would cost about \$150,000 for both the oxygen and the benzene tests. The federal RVP test equipment costs much less, and is already owned by most or all refiners.

Given the fact that Governor Symington's letter states that he may request to opt-out of the RFG program by December 31, 1997, and the cost of the equipment necessary to conduct the federal oxygen and benzene tests, EPA believes it is appropriate to allow use of CARB test methods to meet the RFG pre-shipment testing requirement. However, refiners and importers using the CARB test methods also must test each RFG batch using federal test methods, and the results of the federal tests must be used to satisfy the batch reporting requirements of section 80.75(a).

Therefore, EPA will not enforce the requirement at section 80.65(e)(1) that refiners and importers must have received the results of federal oxygen and benzene tests before shipping RFG,

provided the following conditions are met.

(1) The refiner or importer does not have the equipment necessary to conduct the federal benzene and/or oxygen tests at its refinery or import facility.

(2) The refiner or importer has received the results of CARB benzene and/or oxygen tests before shipping any RFG batch, these test results have been correlated with the federal test method, and these test results must demonstrate compliance with the federal downstream standards. If the results of federal benzene and/or oxygen tests show the RFG violated the federal downstream standards the refiner or importer will have violated these standards regardless of the results of the CARB tests. This would be true whether the federal tests are conducted by the refiner's independent laboratory, by another regulated party or by EPA.

(3) The refiner or importer must retain the results of any tests conducted using CARB methods, and records demonstrating correlation between the CARB and federal test methods, and must supply these records to EPA on request. Enforcement of the RFG requirements in this manner will expire on January 1, 1998.

d. Adjustment of the Reid Vapor Pressure Lower Limit

The federal RFG program includes standards for the RVP of gasoline. The *maximum* RVP of RFG is controlled primarily because of the increased VOC emissions that result from gasoline with higher RVP levels. A minimum RVP is included because of limited availability of RVP data at the time the simple model standards were developed. In addition, the *minimum* RVP standard addresses vehicle driveability problems, such as poor starting and running, that can occur when low volatility gasoline does not vaporize in the vehicle engine. As a result, under section 80.42(c)(1) the minimum RVP allowed for RFG is 6.6 pounds per square inch ("psi"), although under section 80.45(f)(1) this minimum RVP standard changes to 6.4 psi beginning in 1998.

Arizona has regulations that require that Phoenix be subject to a maximum summertime volatility standard of 7.0 psi. As a result, refiners supplying RFG for Phoenix for use during the summer will have to meet an RVP standard of 6.6 psi minimum (the federal RFG standard) and 7.0 psi maximum (the state-imposed standard). Some refiners have said this narrow RVP range would create gasoline production problems because of testing variability, but that this problem would be resolved if the

³¹ See Docket A-97-02, IV-C-6.

RVP minimum standard were 6.4 psi. In addition, the American Automobile Manufacturers Association commented, stating that it did not believe a summertime 6.4 RVP minimum in Phoenix would pose significant risk of vehicle performance problems.

For these reasons, EPA believes it is appropriate to allow a minimum RVP of 6.4 psi for VOC-controlled RFG in Phoenix. As a result, EPA will not enforce the 6.6 psi minimum RVP standard under section 80.42(c)(1) for VOC-controlled RFG used in Phoenix, including RFG produced for the Phoenix market that is used in non-RFG areas around Phoenix, provided the following conditions are met.

(1) RFG must meet a minimum RVP standard of 6.4 psi during the period May 1 through October 31.

(2) All other RFG must meet a minimum RVP standard of 6.6 psi.

(3) The refiner or importer must specify in the product transfer documents, required in section 80.77, the VOC-controlled RFG is for use only in the Phoenix covered area.

2. Other Implementation Issues

One refiner stated its support of EPA extension of the CARB certified laboratory tests for gasoline properties as an alternative for all refineries. This would include recognition of the GC-FTIR (ASTM 5986) for Aromatics, Benzene and Oxygen content. EPA intends to issue proposed regulations establishing a performance based analytical test method approach for the measurement of the RFG parameters specified in section 80.46. Under this approach, quality assurance specifications would be developed under which the performance of alternate analytical test methods would be deemed acceptable for compliance. The Agency envisions that this approach, if adopted, would provide additional flexibility to the regulated industry in their choice of analytical test methods to be utilized for compliance under the RFG and conventional gasoline programs for analytical test methods that differ from the designated analytical test method.

Refiners raised the issue that due to modeling effects, winter gasoline via simple (and complex) model gives a lower toxics reduction than summer gasoline. Since it is difficult to meet the toxics reduction on a per gallon basis with winter gasoline, supply flexibility is enhanced by averaging. With only part of the year being available for averaging, it is important to implement the rule early enough so that the partial year does not have more winter than

summer months than a full calendar year would have.

EPA proposed that if refiners produce RFG prior to June 15, 1997, it would not be necessary to change anything because there is a balance of summer and winter days. EPA proposed to refiners (that have registered) that any gasoline produced and federally certified as Federal RFG, even if produced before the effective date for Phoenix, will count for refiner averaging. Various refiners indicated to EPA that this approach satisfactorily addressed their concerns on this issue.³²

Another implementation issue raised by refiners arose from the independent laboratory sampling program required in the RFG regulations. While this should not pose a problem in areas such as Los Angeles, Houston or Dallas where many such labs are located, there could be a lead time problem in West Texas and New Mexico where the refineries are more isolated and there are no labs. EPA proposed to refiners that enforcement discretion was not needed because isolated refiners could meet the independent lab requirements by mail. Various refiners indicated to EPA that this approach satisfactorily addressed their concerns on this issue.³³

One refiner commented that a minor implementation problem results from the fact that in-line blender certification by EPA could require six months to a year. The refiner suggested that a solution would be for EPA to certify promptly new in-line blenders within thirty days. EPA believes the appropriate way to address this issue is contained in the RFG regulations (40 CFR 80.65(f)(4)). In addition, EPA has expeditiously reviewed any in-line blending petitions received to address any supply issues.

Refiners commented that transitions from conventional gasoline to RFG always pose unique problems. One refiner stated it was willing to work with industry, EPA, and Arizona to ensure a successful transition. Another refiner commented that Phoenix may be facing two fuel transitions in rapid succession—a transition from conventional gasoline to federal RFG and a transition from federal RFG to federal RFG plus 7.0 RVP. The refiner urged EPA to work with Arizona to educate the public about these changes because public acceptance of the fuels changes coming to Phoenix is critical to acceptance of longer-term presumably more stringent, fuels solutions now being devised for the Phoenix area.

EPA agrees that a public education strategy is important for fuel changes. EPA's Office of Mobile Sources and Region 9 have been working with Arizona, which has prepared a public outreach and education plan that includes meetings with stakeholders, television advertisements, hotlines, informational brochures provided directly to motorists, and training for technicians and service station employees. EPA has also provided some funding for the Phoenix federal RFG public education program.

IV. Environmental Impact

Gasoline vapors and vehicle exhaust contain VOCs and NO_x that react in the atmosphere in the presence of sunlight and heat to produce ozone, a major component of smog. Vehicles also release toxic emissions, one of which (benzene) is a known human carcinogen. Federal RFG contains less of the ingredients that contribute to these harmful forms of air pollution. Consequently, RFG reduces the exposure of the U.S. public overall to ozone and certain air toxics.

The federal Phase I RFG program provides reductions in ozone-forming VOC emissions and air toxics, and prohibits any increase in NO_x emissions. 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 damage sensitive lung tissue, reduce lung function, cause lung inflammation, increase susceptibility to respiratory infection, and increase sensitivity of asthmatics to allergens (e.g., pollen) and other bronchoconstrictors. Symptoms from short-term exposure to ozone include coughing, eye and throat irritation, and chest pain. Animal studies suggest that long-term exposure (months to years) to ozone can damage lung tissue and may lead to chronic respiratory illness.

Toxic emissions from motor vehicles have been estimated to account for roughly half of the total exposure of the urban U.S. population to toxic air emissions. 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 reduction of benzene provides the majority of air toxics emission reductions from RFG. New monitoring data from the 1995 EPA Air Quality Trends Report shows that in RFG areas, benzene was reduced by 43 percent. A number of adverse non-

³² See Docket A-97-02, IV-E-6.

³³ *Id.*

cancer health effects, such as eye, nose, and throat irritation, have also been associated with exposure to elevated levels of these air toxics.

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

V. 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.

VI. Regulatory Flexibility

For the following reasons, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this 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 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.

VII. Public Participation

The Agency held a public hearing on March 18, 1997 to hear comments on the Notice of Proposed Rulemaking (62 FR 7197) published February 18, 1997. Comments were provided at the hearing by the Arizona Department of Environmental Quality, fuel oxygenate producers, and representatives of the oil industry, environmental organizations, and other businesses that participated on the Arizona Air Quality Strategies Task Force. In addition, EPA reviewed and considered written comments on the proposal submitted by the same groups. These comments have been presented and addressed in the preamble above (See III. Response to Comments). All comments received by the Agency are located in the EPA Air Docket A-97-02 (See ADDRESSES).

VIII. Executive Order 12866

Under Executive Order 12866,³⁴ 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.³⁵

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. Paperwork Reduction Act

Today's action does not impose any new information collection burden. Refiners are currently subject to the information collection requirements for federal reformulated gasoline and conventional gasoline. Today's rule adds an additional ozone nonattainment area as a federal RFG covered area; the rule does not change the information collection requirements already associated with federal RFG. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the final RFG/antidumping rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0277 (EPA ICR No. 1951).

Burden means the total time, effort, or financial resources expended by 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 the information.

Copies of the ICR document(s) may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (mail code 2136); Washington, DC 20460 or by calling (202) 260-2740. Include the ICR and/or OMB number in any correspondence.

X. 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,

³⁴ See 58 FR 51735 (October 4, 1993).

³⁵ Id. At section 3(f) (1)-(4).

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 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.

XI. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to extend the federal RFG program to the Phoenix ozone nonattainment area must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

XII. Submission to Congress

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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

Dated: May 28, 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 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) 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 July 3, 1997. The prohibitions of section 211(k)(5) will apply to retailers and wholesale purchaser-consumers August 4, 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. 97-14442 Filed 6-2-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[TX-29-1-6085a; FRL-5834-2]

Designation of Areas for Air Quality Planning Purposes; Texas; Revised Geographical Designation of Certain Air Quality Control Regions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and correction of error.

SUMMARY: This action approves a July 2, 1993, request by the Governor of Texas to revise the geographical boundaries of seven Air Quality Control Regions (AQCRs) in the State of Texas to conform with the Texas Natural Resource Conservation Commission (TNRCC) regional boundaries. This action also corrects an error in the list of counties for another AQCR in Texas.

DATES: This action is effective on August 4, 1997 unless adverse or critical comments are received by July 3, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning

Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, One Fountain Place, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Bill Deese of EPA Region 6 Air Planning Section at (214) 665-7253 and at the Region 6 address above.

SUPPLEMENTARY INFORMATION:

I. Background

The boundaries of AQCRs designated by the Administrator of the EPA pursuant to section 107 of the Clean Air Act (the Act) are codified in 40 CFR 81, subpart B—Designation of Air Quality Control Regions. Below is a list of the twelve AQCRs located partly or entirely in the State of Texas. The section of 40 CFR 81 subpart B where the boundary of the AQCR is defined is given in parenthesis following the name of the AQCR.

AQCR 022—Shreveport-Texarkana-Tyler Interstate (81.94)
AQCR 106—Southern Louisiana-Southeast Texas Interstate (81.53)
AQCR 153—El Paso-Las Cruces-Alamagordo Interstate (81.82)
AQCR 210—Abilene-Wichita Falls Intrastate (81.132)
AQCR 211—Amarillo-Lubbock Intrastate (81.133)
AQCR 212—Austin-Waco Intrastate (81.134)
AQCR 213—Brownsville-Laredo Intrastate (81.135)
AQCR 214—Corpus Christi-Victoria Intrastate (81.136)
AQCR 215—Metropolitan Dallas-Fort Worth Intrastate (81.039)
AQCR 216—Metropolitan Houston-Galveston Intrastate (81.038)
AQCR 217—Metropolitan San Antonio Intrastate (81.040)
AQCR 218—Midland-Odessa-San Angelo Intrastate (81.137)

Section 107(e) of the Act permits a state to request realignment of AQCRs within the state if the state determines that the realignment will provide for more efficient and effective air quality management. The state must have the