

describes the Agency's proposal for general rules concerning criteria and procedures for states to opt out of the reformulated gasoline program. Finally, today's notice also proposes to extend the stay of application of the reformulated gasoline regulations in the designated counties during the pendency of this rulemaking, until the agency takes final action on the proposed opt-out for these areas.

II. Background

The reformulated gasoline (RFG) program is designed to reduce ozone levels in the largest metropolitan areas of the U.S. with the worst ground level ozone problems by reducing vehicle emissions of the ozone precursors, specifically volatile organic compounds (VOC), through fuel reformulation. Reformulated gasoline also achieves a significant reduction in air toxics. In Phase II of the program nitrogen oxides (NO_x), another precursor of ozone, are also reduced. The 1990 Amendments to the Clean Air Act requires reformulated gasoline in the nine cities with the highest levels of ozone. In section 211(k)(6), Congress provided the opportunity for states to choose to opt-in to the RFG program for their other nonattainment areas. Opting in under this provision is relatively straightforward. The only area of discretion for EPA involves establishing an appropriate effective date for the start of the program in the opt-in area. To date, EPA has acted under this provision on a case-by-case basis, given that the lead time needed to supply a new area is often dependent on the specific refineries that would supply the area and the specific distributional infrastructure available between the refineries and the local retail stations. While EPA is not now proposing regulations that would establish the effective date for an opt-in area, EPA is interested in receiving comment on the need and benefit of having such regulatory provisions, as well as the most appropriate provisions.

EPA recognizes that there is considerable interest in allowing attainment areas to participate in the federal reformulated gasoline program. The Ozone Transport Commission, established under section 184 of the Act to assess the degree of interstate transport of ozone throughout the ozone transport region,¹ is reviewing the viability of a region-wide reformulated gasoline program. Other areas which are

currently classified attainment for the ozone air quality standard but which have ozone monitoring data close to the federal ozone standard are considering various ozone control measures to mitigate the risk of future ozone violations. One such control measure is the reformulated gasoline program. In light of the expressed interest in allowing attainment areas to participate in the reformulated gasoline program, EPA is soliciting comment on the feasibility of and need for attainment area opt-in.

EPA questions whether section 211(k) of the Act provides the Agency with the discretion to allow attainment areas to opt-in to this federal program. For example, section 211(k)(6) specifies that EPA shall extend the prohibition of section 211(k)(5) to ozone nonattainment areas upon the request of a governor. In addition, section 211(k)(1) authorizes EPA to establish requirements for reformulated gasoline to be used in specified nonattainment areas. EPA invites comment on its authority under section 211(k). EPA also invites comment on whether the Agency has authority under section 211(c) of the Act to establish a requirement that federally certified RFG be sold in attainment areas that "opt-in" under such a program.

EPA issued final rules establishing requirements for reformulated gasoline on December 15, 1993. 59 FR 7716 (February 16, 1994). During the development of the RFG rule a number of States inquired as to whether they would be permitted to opt-out of the RFG program at a future date, or opt-out of certain of the requirements. This was based on their concern that the air quality benefits of RFG, given their specific needs, might not warrant the cost of the program, specifically focusing on the more stringent standards in Phase II of the program (starting in the year 2000). Such States wished to retain their ability to opt-out of the program. Other States indicated they viewed RFG as an interim strategy to help bring their nonattainment areas into attainment sooner than would otherwise be the case.

The regulation issued on December 15, 1993 did not include procedures for opting out of the RFG program because EPA had not proposed and was not ready to adopt such procedures. However, the Agency did indicate that it intended to propose such procedures in a separate rule.

Jefferson County and the other eight New York counties affected by this proposal were included as covered areas in EPA's reformulated gasoline regulations based on Governor Mario

Cuomo's request of October 28, 1991, that these areas be included under the Act's opt-in provision for ozone nonattainment areas (57 FR 7926, March 5, 1992). See 40 CFR 80.70(j)(10)(vi). On November 29, 1994, EPA received a petition from the Commissioner of New York's Department of Environmental Conservation, Mr. Langdon Marsh, to remove Jefferson County from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Marsh is acting for Governor Cuomo in this matter. The Administrator responded to the State's request in a letter to Commissioner Marsh dated December 12, 1994, stating EPA's intention to grant New York's request, and conduct rulemaking to implement this. In the letter of December 12, addressing the opt-out request for Jefferson County, the Administrator also indicated that effective January 1, 1995, and until the rulemaking to remove Jefferson County from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in Jefferson County for reformulated gasoline violations arising after January 1, 1995. This was based on the particular circumstances in Jefferson County.

On December 23, 1994, Commissioner Marsh of New York's Department of Environmental Conservation wrote to further request the opt-out of the Albany and Buffalo areas which include the counties of Albany, Greene, Montgomery, Rennselaer, Saratoga, Schenectady, Erie and Niagara. EPA Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Marsh dated December 28, 1994, stating EPA's intention to grant New York's request, and conduct rulemaking to implement this. The December 28 letter also indicated EPA's intent to stay the reformulated gasoline regulations from January 1, 1995, until July 1, 1995, in the specified counties while the Agency completes rulemaking to appropriately change the regulations. The letter stated, however, that the requirements of the reformulated gasoline program would apply in these areas until the stay becomes effective January 1, 1995.

Twenty-eight counties in Pennsylvania were included as covered areas in EPA's reformulated gasoline regulations based on Governor Robert P. Casey's request dated September 25, 1991. See 40 CFR 80.70(j)(11) (i) through (xxviii). The counties referred to are listed as follows: Adams, Allegheny, Armstrong, Beaver, Berks, Blair, Butler, Cambria, Carbon, Columbia,

¹ The ozone transport region is comprised of the following states: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia.