



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1090

[EPA-HQ-OAR-2023-0289; FRL 10290-01-OAR]

RIN 2060-AV87

Reformulated Gasoline Covered Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action, the Environmental Protection Agency (EPA) is amending its reformulated gasoline (RFG) regulations to reflect the reclassification of several ozone nonattainment areas as Severe for the 2008 ozone national ambient air quality standard (NAAQS). The subject areas are the Dallas-Fort Worth, TX area (Dallas), the Denver-Boulder-Greeley-Fort Collins-Loveland, CO area (Denver), and the Eastern Kern County, CA area (Eastern Kern). The reclassification of the Dallas and Denver areas as Severe for the 2008 ozone NAAQS was effective on November 7, 2022, and results in the prohibition of the sale of conventional gasoline throughout the entire nonattainment area under the Clean Air Act (CAA) on November 7, 2023. Similarly, the reclassification of the Eastern Kern area was effective on July 7, 2021, and the Federal RFG requirement applied to the area on July 7, 2022.

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

FOR FURTHER INFORMATION CONTACT: Mark Coryell, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; email address: coryell.mark@epa.gov or Rudy Kapichak, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; email address: kapichak.rudolph@epa.gov.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the

following outline:

- I. General Information
- II. Action
- III. Background
- IV. Public Participation
- 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 final action are fuel producers and distributors who do business in the Dallas-Fort Worth, TX area, the Denver-Boulder-Greeley-Fort Collins-Loveland, CO area, and the Eastern Kern County, CA area.

Examples of Potentially Regulated Entities	NAICS ¹ Codes
Petroleum refineries	324110
	424710
Gasoline Marketers and Distributors	424720
Gasoline Retail Stations	457110
	457120
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 EPA is aware that potentially could be affected by this final action. Other types of entities not listed on the table could also be affected. To determine whether your organization could be affected by this final action, you should carefully examine the regulations in 40 CFR part 1090.

¹ North American Industry Classification System.

If you have questions regarding the applicability of this action to a particular entity, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. How Can I Get Copies of This Document and Other Related Information?

EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2023-0289. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information (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 electronically through *www.regulations.gov*.

II. Action

In this final action, the Environmental Protection Agency (EPA) is amending its reformulated gasoline (RFG) regulations at 40 CFR 1090.285(b) and (c) to reflect the reclassification of several ozone nonattainment areas as Severe for the 2008 ozone national ambient air quality standard. The subject areas are the Dallas-Fort Worth, TX area, the Denver-Boulder-Greeley-Fort Collins-Loveland, CO area, and the Eastern Kern County, CA area. The reclassification of the Dallas and Denver areas was effective on November 7, 2022, and results in the prohibition of the sale of conventional gasoline throughout the entire nonattainment area under CAA section 211(k)(10)(D) and section 211(k)(5) effective 1 year after the effective date of the reclassification, which is November 7, 2023.² Similarly, the reclassification of the Eastern Kern area was effective on July 7, 2021, and the Federal RFG requirement applied to the area on July 7, 2022.³

III. Background

² See 87 FR 60926, October 7, 2022.

³ See 86 FR 30204, June 7, 2021.

The CAA prohibits the sale of conventional gasoline in any ozone nonattainment area that is reclassified as Severe and requires that Federal RFG must instead be sold. The prohibition on the sale of conventional gasoline takes effect 1 year after the effective date of the reclassification (see CAA section 211(k)(10)(D)). For areas that are reclassified as Severe for the 2008 ozone NAAQS, States would not promulgate State fuel rules for implementing Federal RFG because the CAA requirements would be implemented as written. Air agencies are thus not required to submit a State Implementation Plan (SIP) revision addressing Federal RFG requirements. Areas already subject to Federal RFG requirements are listed in 40 CFR 1090.285(a)–(d). Federal RFG is already sold in four counties in the Dallas area because Texas opted those counties into RFG under CAA section 211(k)(6)(A). The reclassification of the Dallas area as Severe for the 2008 ozone NAAQS results in Federal RFG being required in all 10 counties in the nonattainment area for the 2008 ozone NAAQS.⁴ The sale of Federal RFG is a new requirement for the Denver area as Federal RFG is not currently required to be sold in any part of the Denver 2008 ozone NAAQS nonattainment area.⁵ With respect to Eastern Kern, California law requires the sale of California Phase 3 RFG (CaRFG3) throughout the State, and EPA has exempted gasoline meeting the CaRFG3 regulations from the requirements that would otherwise apply under the Federal RFG regulations.⁶ We granted this exemption because we found that gasoline complying with the CaRFG3 regulations provides emissions benefits equivalent to Federal RFG regulations and because California’s compliance and enforcement

⁴ Six counties in the Dallas area are subject to a SIP-approved requirement to provide gasoline to retailers and wholesale purchaser consumers with a maximum RVP of 7.8 psi per gallon from June 1 through September 15. The six counties are Ellis, Johnson, Kaufman, Parker, Rockwall and Wise. Beginning with the 2024 summer season (June 1 through September 15 for retailers and wholesale purchaser consumers, and May 1 through September 15 for all other persons) gasoline sold in these six counties in the Dallas area will be required to comply with the more stringent Federal RFG RVP per gallon cap of 7.4 psi. *See* 40 CFR 1090.215(a)(3).

⁵ The Denver area is subject to the Federal requirement to sell gasoline with a maximum RVP of 7.8 psi per gallon during the summer season (June 1 through September 15 for retailers and wholesale purchaser consumers, and May 1 through September 15 for all other persons). *See* 40 CFR 1090.215(a)(2). Beginning with the 2024 summer season, gasoline sold in the Denver area will be required to comply with the more stringent Federal RFG RVP per gallon cap of 7.4 psi. *See* 40 CFR 1090.215(a)(3).

⁶ *See* 40 CFR 1090.625. *See also* 85 FR 78412 at 78430, footnote 70 (December 4, 2020).

program is sufficiently rigorous to assure that the standards are met.⁷ Thus, reclassification of Eastern Kern to Severe does not impact the continued applicability of California's regulations that require the sale of CaRFG3 in the Eastern Kern area. Should California's regulations no longer apply in the future, EPA's RFG regulations would apply in keeping with CAA requirements.

IV. Public Participation

EPA is issuing this final action without prior notice and comment. The rulemaking procedures provided in CAA section 307(d) do not apply when the Agency for good cause finds that notice-and-comment procedures are impracticable, unnecessary, or contrary to the public interest pursuant to section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B). This is a ministerial action that amends 40 CFR 1090.285(b) and (c) to reflect that the Dallas, Denver, and Eastern Kern ozone nonattainment areas have been reclassified as Severe for the 2008 ozone NAAQS and that CAA section 211(k)(10)(D) requires that such reclassified areas become Federal RFG covered areas 1 year after the effective date of their reclassification. For this reason, EPA finds that notice-and-comment procedures under CAA section 307(d)(1) are unnecessary.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at

<https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

⁷ 70 FR 75914 (December 21, 2005).

B. Paperwork Reduction Act (PRA)

This action does not impose any information collection burden under the PRA, because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice-and-comment requirements because the Agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This final rule does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action amends the reformulated gasoline (RFG) regulations at 40 CFR 1090.285(b) and (c) to reflect the reclassification of several ozone nonattainment areas as Severe for the 2008 ozone NAAQS, which results in the prohibition of the sale of conventional gasoline throughout the entire nonattainment area under CAA section 211(k)(10)(D) and section 211(k)(5) effective 1 year after the effective date of the reclassification.

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.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175. This final rule affects only those refiners, importers or blenders of gasoline that chose to produce or import gasoline that meets Federal RFG program requirements for sale in the Dallas, Denver,

and Kern County areas 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 Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. EPA has no reason to believe that this action will disproportionately affect children since the RFG program results in lower emissions of ozone precursors in the Dallas, Denver, and Kern County areas.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rule does not involve technical 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) 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 (people of color and/or Indigenous peoples) and low-income populations.

The EPA believes that the requirement to sell RFG is likely to reduce existing disproportionate and adverse effects on people of color, low-income populations and/or

Indigenous peoples. This requirement in the areas referenced in this action will result in area-wide emission reductions for ozone precursors and provide clean air benefits. Therefore, disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result.

K. *Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice-and-comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section IV, including the basis for that finding.

VI. Legal Authority and Statutory Provisions

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

List of Subjects in 40 CFR Part 1090

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 1090 as follows:

**PART 1090—REGULATION OF FUELS, FUEL ADDITIVES, AND REGULATED
BLENDSTOCKS**

1. The authority citation for part 1090 continues to read as follows:

AUTHORITY: 42 U.S.C. 7414, 7521, 7522-7525, 7541, 7542, 7543, 7545, 7547, 7550, and 7601.

2. Amend § 1090.285:

a. In table 2 to paragraph (b) by adding entries for “Eastern Kern County, “Dallas”, and “Denver-Boulder-Greeley-Ft. Collins-Loveland” to the end of the table and adding footnotes 5 through 7 in numerical order; and

b. In table 3 to paragraph (c) by removing the entry “Dallas-Fort Worth”.

The additions read as follows:

§ 1090.285 RFG covered areas.

(b) * * *

Table 2 to Paragraph (b)—Additional RFG Covered Areas Under 42 U.S.C. 7545(k)(10)(D)

Area Designation	State or District	Counties	Independent Cities
* * * * *			
Eastern Kern County	California	Kern County ⁵	
Dallas	Texas	Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, Wise	
Denver-Boulder-Greeley-Ft. Collins-Loveland	Colorado	Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer County ⁶ , Weld County ⁷	

⁵ That portion of the county (with the exception of that portion in Hydrologic Unit Number 18090205 the Indian Wells Valley) east and south of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.

⁶ That portion of the county that lies south of a line described as follows: Beginning at a point on Larimer County's eastern boundary and Weld County's western boundary intersected by latitude 40 degrees, 42 minutes, and 47.1 seconds north, proceed west to a point defined by the intersection of latitude 40 degrees, 42 minutes, 47.1 seconds north and longitude 105 degrees, 29 minutes, and 40.0 seconds west, proceeding south on longitude 105 degrees, 29 minutes, 40.0 seconds west to the intersection with latitude 40 degrees, 33 minutes and 17.4 seconds north, proceeding west on latitude 40 degrees, 33 minutes, 17.4 seconds north until this line intersects Larimer County's western boundary and Grand County's eastern boundary.

⁷ That portion of the county that lies south of a line described as follows: Beginning at a point on Weld County's eastern boundary and Logan County's western boundary intersected by latitude 40 degrees, 42 minutes, 47.1 seconds north, proceeding west on latitude 40 degrees, 42 minutes, 47.1 seconds north until this line intersects Weld County's western boundary and Larimer County's eastern boundary.