

adverse comments. A comment is considered adverse if it objects to adoption of the rule as written.

(d) If not adverse comments or notice of intent to submit adverse comments are received within the specified period, the Coast Guard will publish a notice in the **Federal Register** to confirm that the rule will go into effect as scheduled.

(e) If the Coast Guard receives written adverse comment or written notice of intent to submit adverse comment, the Coast Guard will publish a notice in the final rule section of the **Federal Register** to announce withdrawal of the direct final rule. If adverse comments clearly apply to only part of a rule, and it is possible to remove that part without affecting the remaining portions, the Coast Guard may adopt as final those parts of the rule on which no adverse comments were received. The part of the rule that is the subject of adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate Notice of Proposed Rulemaking (NPRM) will be published unless an exception to the Administrative Procedure Act requirements for notice and comment applies.

Dated: June 2, 1995.

J.E. Shkor,

Rear Admiral, U.S. Coast Guard, Chief Counsel.

[FR Doc. 95-14554 Filed 6-13-95; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-5219-4]

Request for Opt-Out of the Reformulated Gasoline Program: Jefferson County, Albany and Buffalo, New York; Twenty-Eight Counties in Pennsylvania; and Hancock and Waldo Counties in Maine, General Procedures for Future Opt-Outs and Extension of Stay

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: In today's action, EPA is proposing to remove Jefferson County and the Albany and Buffalo areas in New York; twenty-eight counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas identified in section 80.70 of the reformulated gasoline rule. This is based on requests from the Governors

of New York, Pennsylvania and Maine that these areas opt out of this federal program. In a separate action signed by the EPA Administrator on December 29, 1994, EPA stayed the application of the reformulated gasoline regulations in Jefferson County and the Albany and Buffalo areas of New York; the twenty-eight opt-in counties in Pennsylvania; and Hancock and Waldo counties in Maine effective January 1, 1995 until July 1, 1995, to allow finalization of this rulemaking. Today's notice also proposes to extend this stay during the pendency of this rulemaking, until the agency takes final action on the proposed opt-out for these areas. This action does not affect the necessity for these areas to comply with the requirements of the anti-dumping program.

EPA is also proposing general rules establishing the criteria and procedures for states to opt-out of the RFG program. **DATES:** Regarding the proposal to extend the stay of the reformulated gasoline regulations in the designated New York, Pennsylvania, and Maine counties, no public hearing will be held. Comments must be received by June 28, 1995.

If a public hearing is held on the opt-out of the designated New York, Pennsylvania, and Maine counties or on the general procedures for future opt-outs, comments must be received by August 4, 1995. If a hearing is not held, comments must be received by July 14, 1995. Please direct all correspondence to the addresses shown below.

The Agency will hold a public hearing on the proposed opt-out of the designated New York, Pennsylvania, and Maine counties or on the general procedures for future opt-outs if one is requested by June 21, 1995. If a public hearing is held, it will take place on July 5, 1995. To request a hearing, or to find if and where a hearing will be held, please call Mark Coryell at (202) 233-9014.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A copy should also be sent to Mr. Mark Coryell at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460.

Materials relevant to this notice have been placed in Docket A-94-68. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M-1500 Waterside Mall. Documents may be inspected from 8:00

a.m. to 4:00 p.m. A reasonable fee may be charged for copying docket material. **FOR FURTHER INFORMATION CONTACT:** Mr. Mark Coryell, U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233-9014.

SUPPLEMENTARY INFORMATION: A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919-541-5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

- (M) OMS
- (K) Rulemaking and Reporting
- (3) Fuels
- (9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTOUT.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

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<D>ownload, <P>rotocol, <E>xamine,
<N>ew, <L>ist, or <H>elp Selection or
<CR> to exit: D filename.zip
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You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Introduction

This notice describes EPA's proposed action to remove Jefferson County and the Albany and Buffalo areas in New York (a total of nine counties in New York); the twenty-eight opt-in counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas defined by § 80.70 of the reformulated gasoline rule per the request of the States of New York, Pennsylvania and Maine. It also

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.

Cumberland, Dauphin, Erie, Fayette, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Mercer, Monroe, Somerset, Northampton, Perry, Washington, Westmoreland, Wyoming and York. On December 1, 1994, EPA received a petition from Governor Casey to remove these twenty-eight counties from the list of covered areas defined by § 80.70 of the reformulated gasoline rule. As with New York's request, the Administrator responded to the State's request in a letter to Governor Casey dated December 12, 1994, stating EPA's intention to grant Pennsylvania's request, and conduct rulemaking to implement this. Effective January 1, 1995, and until formal rulemaking to remove the twenty-eight counties from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in these twenty-eight counties for reformulated gasoline violations arising after January 1, 1995. This was based on the particular circumstances in Pennsylvania. EPA has reserved its authority to enforce the reformulated gasoline program for violations that may have occurred prior to January 1, 1995.

Hancock and Waldo Counties in Maine were included as covered areas in EPA's reformulated gasoline regulation based on Governor John R. McKernan's request of June 26, 1991, that these counties be included under the Act's opt-in provision for ozone nonattainment areas. (56 FR 46119, September 10, 1991) See 40 CFR 80.70(j)(5) (viii) and (ix). On December 27, 1994, EPA received a petition from the Acting Commissioner of Maine's Department of Environmental Protection, Ms. Deborah Garrett, to remove Hancock and Waldo Counties in Maine from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Garrett is acting for Governor McKernan in this matter. EPA Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Garrett, dated December 28, 1994, stating EPA's intention to grant Maine's request, and conduct rulemaking to implement this. The December 28 letter also stated 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. However, EPA has reserved its authority to enforce the reformulated gasoline program for violations that may have occurred prior to January 1, 1995.

III. EPA's Proposal To Grant New York's, Pennsylvania's and Maine's Requests To Remove Selected Opt-In Areas From the Requirements of the Reformulated Gasoline Program and Extension of the Stay of Application of the Reformulated Gasoline Regulations

EPA believes that it is reasonable to construe section 211(k) as authorizing the Agency to establish procedures and requirements for states to opt out of the reformulated gasoline program. This would only apply to areas that have previously opted in under section 211(k)(6); the mandatory covered areas would not be allowed to opt out of the program.

In section 211(k)(6), Congress expressed its clear intention regarding state opt-in to this program. That paragraph establishes that "upon the application of the Governor of a State, the Administrator shall apply the prohibition set forth in paragraph (5) in any (ozone nonattainment) area in the State * * * The Administrator shall establish an effective date for such prohibition * * *." ² However, with respect to opting out, "the statute is silent or ambiguous with respect to the specific issue" and the question is whether EPA's interpretation "is based on a permissible construction of the statute." *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). In addition, "[i]f Congress has explicitly left a gap for the Agency to fill, there is an express delegation of authority to the Agency to elucidate a specific provision of the statute by regulation." *Id.* at 843-44. If the delegation is implicit, the Agency may adopt a reasonable interpretation of the statute. *Id.* at 844.

Section 211(k)(1) provides that EPA is to promulgate "regulations establishing requirements for reformulated gasoline." This provision therefore delegates to EPA the authority to define the requirements for reformulated gasoline. Clean Air Act section 301(a)(1) also delegates to EPA the general authority to promulgate "such regulations as are necessary" for EPA to carry out its function under the Act. Given these delegations of legislative rulemaking authority, EPA's interpretation of section 211(k) with respect to opting out should be upheld unless manifestly contrary to the Act. *Chevron*, 467 U.S. at 843-44.

EPA believes that it is appropriate to interpret section 211(k) as authorizing states to opt-out of this program, provided that a process is established

for a reasonable transition out of the program.³ There are really two aspects to this, the first being whether states should be allowed to opt out at all, the second being what conditions, if any, should be placed on opting out. With respect to the former, the ability to opt out is consistent with the Act's recognition that states have the primary responsibility to develop a mix of appropriate control strategies needed to reach attainment with the NAAQS. While various mandatory control strategies were established under the Clean Air Act, the Act still evidences a clear commitment to allowing states the flexibility to determine the appropriate mix of other measures needed to meet their air pollution goals. Section 211(k)'s opt-in provision reflects this deference to state choice, providing that opt-in will occur upon application by the governor. The only discretion EPA retains regarding opt-in is in setting or extending the effective date. Allowing states the ability to opt-out is a logical extension of these considerations of deference to state decision making.

Given such deference, it follows that opting out should be accomplished through application of the governor. It also follows that the conditions on opting out should be geared towards achieving a reasonable transition out of the reformulated gasoline program, as compared to requiring a state to justify its decision. EPA has identified two principal areas of concern in this regard. The first involves coordination of air quality planning. For example, reformulated gasoline in opt-in areas has been relied upon by several states in their State Implementation Plan submissions or in their redesignation requests. The second involves appropriate lead time for industry to transition out of the program.

With respect to air quality planning, EPA believes there is no reason to delay the removal of the 39 affected counties, or portions of counties, in New York, Pennsylvania and Maine. The 39 counties have not had an ozone exceedance over a consecutive three-year period. Certain of these thirty-nine

³ The preamble to the December 15, 1993, final regulations failed to provide a clear discussion of EPA's views on this issue. While EPA noted that it "may pursue a separate action in the future that would allow states to opt out of the RFG program, provided sufficient notice is given," the preamble also indicated there were concerns over whether EPA had authority to allow states to opt-out. 59 FR 7808 (February 16, 1994). The context for these statements, however, makes it clear that EPA's concerns were based on issues surrounding questions of opting-in for only Phase I of the reformulated gasoline program. See 59 FR 7809. As noted above, EPA believes that it does have authority to establish requirements that allow states to opt-out of this program.

² Paragraph 5 of section 211(k) prohibits the sale of conventional, or non-reformulated gasoline, in covered areas.

counties have pending requests with EPA for redesignation to attainment status, and the remaining areas intend to seek such redesignation. The State Implementation Plans for these areas do not include or rely on reformulated gasoline as a control measure. For the moderate areas in Pennsylvania, reformulated gasoline is included in the redesignation plan as a contingency measure in the maintenance plan. Allowing the areas to opt-out now would not interfere with implementing that contingency. The areas could opt into the reformulated gasoline program in the future, if necessary.

EPA's letters of December 12 and 28, 1994, to the States of New York, Pennsylvania and Maine state that reformulated gasoline will no longer be required in the specified areas effective January 1, 1995, pending completion of the rulemaking to remove the affected counties. These letters, combined with the requests from New York, Pennsylvania and Maine to opt-out, have given the industries involved in the supply, distribution and sale of reformulated gasoline to these areas notice of the Agency's intent to remove these areas from the reformulated gasoline program. This has provided time for industry to plan for the transition from reformulated gasoline to conventional gasoline in the affected areas. In a separate notice signed by the EPA Administrator on December 29, 1994, and for the reasons described therein, EPA has stayed the program in these thirty-nine counties, or portions thereof, effective January 1, 1995, until July 1, 1995. Based on this chronology, EPA proposes that these areas be removed from the reformulated gasoline program effective upon the issuance of final action in this rulemaking.

As mentioned above, on December 29, 1994, EPA issued a final rule staying the application of the reformulated gasoline regulations for certain areas that had opted in to the reformulated gasoline program. 60 FR 2696 (January 11, 1995). This stay applied to Jefferson County and the Albany and Buffalo areas of New York, the twenty eight opt-in counties in Pennsylvania, and Hancock and Waldo counties in Maine. It stayed the regulations in these areas effective January 1, 1995 until July 1, 1995. EPA now proposes to extend this stay during the pendency of this rulemaking, until the agency takes final action on the proposed opt-out for these areas. This extension of the stay is based on the reasons described in the December 29, 1994 rule, and the fact that EPA will not be able to complete the opt-out rulemaking for these areas prior to July 1, 1995.

EPA intends to take final action on the proposed extension of the stay before July 1, 1995, to avoid the serious disruption to the gasoline distribution system, the regulated industry and the public that would be caused by a temporary imposition of the reformulated gasoline requirements in these areas. Based on this potential for serious disruption, and the reasons noted by EPA when it issued the stay in December 29, 1994 (60 FR 2698, January 11, 1995), EPA has determined that there is good cause under 5 U.S.C. 553(b) and Clean Air Act section 307(d)(1) to limit the public comment period on the proposed extension of the stay to June 28, 1995, and to not provide an opportunity for a public hearing on this proposed extension. EPA finds that additional notice and public procedure would be impracticable, unnecessary, and contrary to the public interest.

IV. General Procedures for EPA's Processing of Future Opt-Out Requests

EPA is also proposing general rules to cover future opt-out requests by states. EPA's proposal would authorize the Administrator to approve a petition to opt-out all or a portion of an opt-in area. Such a petition would have to be submitted by the governor, or their authorized representative, and would need to include information describing how, if at all, reformulated gasoline has been relied upon by the state in its State Implementation Plans, revisions to such plans, or redesignation requests, both pending or already approved. This would include, for example, attainment as well as maintenance plans.

If a state did rely on reformulated gasoline as a control measure in such plans or requests, then the state would have to describe if and how it intended to replace reformulated gasoline as a control measure. In addition, the state would need to identify whether it intended to submit a revision to its Plan or request for redesignation, the current schedule for submitting any revised submission, and the current status of state action on such revised submission, and if not, the reasons for not submitting a revision. This would include, for example, the status of any legislative or administrative action, including notice and comment on such a revision.

The Administrator would have authority to establish an appropriate effective date for removal of an area from the list of covered areas defined in § 80.70 of the reformulated gasoline rule, subject to certain important limitations. For example, if reformulated gasoline was relied upon as a control measure in an approved

plan, then the opt-out would not become effective until 30 days after the Agency had approved an appropriate revision to the state plan. Likewise, if reformulated gasoline was not relied upon in an approved or pending SIP, SIP revision, or redesignation request, then the opt-out would become effective 30 days from receipt of a complete opt-out petition. If reformulated gasoline was relied upon as a control measure in a plan that had been submitted to the Agency but is still pending, and the Agency has found the plan to be complete and/or made a protectiveness finding under 40 CFR 51.448 and 93.128, then the opt-out would become effective 120 days from the date a complete petition is received. When the state has a pending plan that the Agency has determined complete and/or for which the Agency has made a protectiveness finding and the state has decided to withdraw the submission or has indicated to the Agency the state's intention to submit a revision, then the opt-out would become effective 30 days from receipt of a complete petition from the state, as described above and specified in the proposed regulatory language.

Under this proposal, the regulated community would typically have thirty days lead time to transition out of the program for that area, from the point a complete opt-out petition had been received by EPA. Where a state's approved SIP includes reformulated gasoline as a control measure, there would typically be a longer period of notice, as the opt-out would not be effective until 30 days from the effective date for EPA approval of a revised SIP which removes reformulated gasoline as a control measure. EPA's experience to date with the current opt-out requests indicates that the regulated community can, in most cases, act relatively quickly to reroute supplies and change plans. It also is clear that a short transition period will avoid problems of market uncertainty and market disruptions. Some representatives of industry have communicated to EPA their concern for sufficient lead time for affected industries to make adjustments to their infrastructure and the need for a period of public comment on each reformulated gasoline program covered area opt-out request. Some have suggested that opt-out not be effective until 90 days after a governor's request is received by EPA, while others have suggested that the opt-out timeframe be dealt with on a case-by-case basis. EPA will consider this suggestion and specifically requests comments on these issues and other suggestions.

The proposal is structured so that the effective date for opting out is based on coordination with the state's air quality planning. Where no state SIP or redesignation request relies on reformulated gasoline, no further coordination is needed. Where a submission pending before the Agency contains reformulated gasoline as a control measure, and the Agency has not taken final action on the submission, it would be appropriate to allow opt-out to occur quickly where the state either withdraws the pending SIP submission or indicates its intention to make a substitute for RFG at some future date. This would provide flexibility for the states and allow for orderly state planning, as the state's planning would be consistent with the use of RFG in the area. On the other hand, where the Agency has taken final action approving a SIP, it is appropriate for the Agency to maintain the status quo until the state submits and EPA approves a revision removing RFG as a control measure in the approved SIP. This recognizes the requirement that states implement an approved plan until such time EPA approves its revision. Finally, where a plan submission is pending before EPA, and EPA has made a protectiveness finding for purposes of conformity and/or the submission has been found or deemed complete, then opt-out should be delayed for 120 days to provide the Agency an adequate opportunity to review the current completeness determination and/or protectiveness finding on the SIP submission without the use of RFG as a control measure and to communicate to the state any potential change in SIP status.

EPA believes that it is important that a state choosing to opt-out of the reformulated gasoline program should plan to make any appropriate revisions to its SIP, if necessary, to replace the reformulated gasoline program as a control measure. Careful planning is needed by the state as EPA analysis indicates that reductions from other sources are often much less practicable. Reformulated gasoline is one of the most cost-effective measures for ozone control available and also yields significant air toxic benefits.

EPA specifically reserves its authority to monitor compliance with the reformulated gasoline program and to take appropriate action to address violations that may occur prior to the effective date for any opt-out.

V. Environmental Impact

If an area opts out of the reformulated gasoline program, it will not receive the reductions in volatile organic

compounds, oxides of nitrogen (NO_x), and air toxics that are expected from this program. Instead, the areas would be subject to the federal controls on Reid vapor pressure for gasoline in the summertime, and would receive control of NO_x and air toxics through the requirements of the conventional gasoline anti-dumping program. These latter requirements are designed to ensure that gasoline quality does not degrade from the levels found in 1990. The specific areas covered by this rule have data showing compliance with the National Ambient Air Quality Standard (NAAQS) for ozone for three or more consecutive years. With regard to the general rule for opt-out, EPA is proposing that before opt-out is allowed, States requesting opt-out must provide information on substitutes for the reformulated gasoline program or in some cases have substitutes approved, depending on the status of EPA's processing of the SIP. EPA expects that this and the SIP process will ensure that our air quality is maintained. However, these areas would be foregoing the additional air quality benefits obtained from the use of reformulated gasoline.

VI. Economic Impact

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant impact on a substantial number of small entities. This proposed rule is not expected to result in any additional compliance cost to regulated parties and in fact is expected to decrease compliance costs and decrease costs to consumers in the affected areas.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993) 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 or 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 the Executive Order.

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.

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must obtain Office of Management and Budget (OMB) clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. While this proposed rule does require information from a state requesting opt-out, EPA does not believe it will receive more than nine opt-out requests per year. If EPA determines that 10 or more states will be affected in any year, EPA will prepare an Information Collection Request and make it available for public review and comment.

Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

VIII. Statutory Authority

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

List of Subjects in 40 CFR Part 80

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

Dated: June 2, 1995.

Carol M. Browner, Administrator.

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

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.2 is amended by adding paragraph (vv) to read as follows:

§ 80.2 Definitions.

* * * *

(vv) Opt-in area. An area which becomes a covered area under § 80.70 pursuant to section 211(k)(6) of the Clean Air Act.

3. Section 80.70 is amended by revising the first sentence of paragraph (j) introductory text to read as follows:

§ 80.70 Covered areas.

* * * *

(j) The ozone nonattainment areas listed in this paragraph (j) of this section are covered areas beginning on January 1, 1995, except that those areas listed in paragraphs (j)(5)(viii) and (ix), (j)(10)(i), (iii) and (v) through (xi) and (j)(11) of this section shall not be covered areas until EPA takes final action on the proposal to remove these areas as covered areas. * * *

* * * *

§ 80.70 [Amended]

4. Section 80.70 is amended by removing paragraphs (j)(5)(viii) and (ix).

5. Section 80.70 is amended by removing paragraphs (j)(10)(i), (iii) and (v) through (xi), and redesignating paragraphs (j)(10)(ii) and (iv) as (j)(10)(i) and (ii).

6. Section 80.70 is amended by removing paragraph (j)(11) and redesignating paragraphs (j)(12) through (15) as (11) through (14).

7. Section 80.70 is amended by adding paragraph (l) to read as follows:

§ 80.70 Covered areas.

* * * *

(l) Upon the effective date for removal under § 80.72(a), the geographic area covered by such approval shall no longer be considered a covered area for purposes of subparts D, E and F of this part.

8. Section 80.72 is added to read as follows:

§ 80.72 Procedures for opting out of the covered areas.

(a) In accordance with paragraph (b) of this section, the Administrator may approve a petition from a state asking for removal of any opt-in area, or portion of an opt-in area, from inclusion as a covered area under § 80.70. In approving any such petition, the Administrator shall establish an appropriate effective date for such removal, pursuant to paragraph (c) of this section.

(b) To be approved under paragraph (a) of this section, a petition must be signed by the governor of a state, or his or her authorized representative, and must include the following:

(1) A geographic description of each opt-in area, or portion of each opt-in area, which is covered by the petition;

(2) A description of all ways in which reformulated gasoline is relied upon as a control measure in any approved state or local implementation plan or plan revision, or in any submission to the Agency containing any proposed plan or plan revision (and any associated request for redesignation) that is pending before the Agency when the petition is submitted; and

(3) For any opt-in areas covered by the petition for which reformulated gasoline is relied upon as a control measure as described under paragraph (b)(2) of this section, the petition shall include the following information:

(i) Identify whether the state is withdrawing any such pending plan submission;

(ii)(A) Identify whether the state intends to submit a revision to any such approved plan provision or pending plan submission that does not rely on reformulated gasoline as a control measure, and describe the alternative air quality measures, if any, that the state plans to use to replace reformulated gasoline as a control measure;

(B) A description of the current status of any proposed revision to any such approved plan provision or pending plan submission, as well as a projected schedule for submission of such proposed revision;

(C) If the state is not withdrawing any such pending plan submission and does not intend to submit a revision to any such approved plan provision or pending plan submission, describe why no revision is necessary;

(D) If reformulated gasoline is relied upon in any pending plan submission, other than as a contingency measure consisting of a future opt-in, and the Agency has found such pending plan submission complete or made a protectiveness finding under 40 CFR 51.448 and 93.128, demonstrate whether

the removal of the reformulated gasoline program will affect the completeness and/or protectiveness determinations;

(4) Upon request by the Administrator, the Governor of a State, or his or her authorized representative, shall submit additional information upon request of the Administrator

(c) (1) Except as provided in paragraph (c)(2) and (3) of this section, the Administrator shall set an effective date for removal of an area under paragraph (a) of this section of 30 days from receipt of a complete petition by EPA.

(2) If reformulated gasoline is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date under paragraph (a) of this section shall be 30 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure.

(3) Unless the state has withdrawn the submission or indicated its intention to submit a revision, if reformulated gasoline is contained as an element in any plan or plan revision that has been submitted to and is pending approval by the Agency, other than as a contingency measure consisting of a future opt-in, and where such pending plan or plan revision has been found or deemed to be complete and/or the Agency has made a protectiveness finding under 40 CFR 51.448 and 93.128 concerning such submission, then the effective date under paragraph (a) of this section shall be 120 days from the date a complete petition is received by the Agency.

(d) The Administrator shall publish a notice in the Federal Register of any petition approved under paragraph (a) of this section, announcing the effective date for removal.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 95-72; FCC95-212]

End User Common Line Charges

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking seeks comment on the application of End User Common Line Charges, hereinafter referred to as