

that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469-469c) without risking harm to the archaeological resource or to the site in which it is located.

(b) The Federal Land Manager shall make information available, when the Governor of any State has submitted to the Federal Land Manager a written request for information concerning the archaeological resources within the requesting Governor's state; provided that the request includes:

(1) The specific archaeological resource or area about which information is sought.

(2) The purpose for which the information is sought; and

(3) The Governor's written commitment to adequately protect the confidentiality of the information.

#### **§ 700.837 Report.**

Each Federal Land Manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

#### **§ 700.839 Permitting procedures for Navajo Nation lands.**

(a) If the lands involved in a permit application are Indian lands, the consent of the appropriate Indian tribal authority or individual Indian landowner is required by the Act and the regulations in this subpart.

(b) When Indian tribal lands are involved in an application for a permit or a request for extension or modification of a permit, the consent of the Indian tribal government must be obtained. For Indian allotted lands outside reservation boundaries, consent from only the individual landowner is needed. When multiple-owner allotted lands are involved, consent by more than 50 percent of the ownership interest is sufficient. For Indian allotted lands within reservation boundaries, consent must be obtained from the Indian tribal government and the individual landowner(s).

(c) The applicant should consult with the Office concerning procedures for obtaining consent from the appropriate Indian tribal authorities and submit the permit application to the Office that is responsible for the administration of the lands in question. The Office shall ensure that consultation with the appropriate Indian tribal authority or individual Indian landowner regarding terms and conditions of the permit occurs prior to detailed evaluation of the application. The Indian tribal authority or individual Indian landowner shall have 30 days from the

date of receipt of the consultation request from the Office to respond to such request. Failure of the Indian tribal authority or individual Indian landowner to respond timely to the consultation request shall be deemed to be consent to the request. Permits shall include terms and conditions requested by the Indian tribe or Indian landowner pursuant to § 700.817 of this part.

(d) The issuance of a permit under this part does not remove the requirement for any other permit required by Indian tribal law.

Dated: June 25, 1996.

Christopher J. Bavasi,  
*Executive Director, Office of Navajo and Hopi Indian Relocation.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 80**

[FRL-5528-6]

#### **General Procedures to Opt Out of the Reformulated Gasoline Requirements; Removal of Jefferson County, Albany and Buffalo, New York; Twenty-eight Counties in Pennsylvania; and Hancock and Waldo Counties in Maine From the Reformulated Gasoline Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the criteria and general procedures for states to opt out of the federal reformulated gasoline program for ozone non-attainment areas where the state had previously voluntarily opted into the program. This action describes the petition process a state must follow to be removed from the program, the criteria used by EPA to approve a petition, and the transition period before the opt-out becomes effective. This final rule also removes 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 § 80.70 of the reformulated gasoline rule.

Today's action only applies to opt-out requests submitted by states prior to December 31, 1997, unless this final rule is superseded by another rule which pertains to new criteria and general procedures for reformulated gasoline program opt-outs. The Agency intends to propose and solicit comments

on separate opt-out procedures for subsequent requests to opt out of the reformulated gasoline program.

**EFFECTIVE DATE:** This final rule is effective August 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mark Coryell, U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233-9014. Also, contact Christine Hawk at (202) 233-9672 or Pat Childers at (202) 233-9415.

#### **SUPPLEMENTARY INFORMATION:**

##### **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.
State governments.	State departments of environmental protection.

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 is regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 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.

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, 9600, 24.4K, or 48.8K 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:

```
<D>ownload, <P>rotocol, <E>xamine,
<N>ew, <L>ist, or <H>elp Selection or <CR>
to exit: D filename.zip
```

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.

#### Extended Summary

Based upon public comments that were solicited in the Notice of Proposed Rulemaking (60 FR 31269) published June 14, 1995, EPA has made the following decisions that are contained in this final rule.

This final rule provides the Agency's general rules concerning criteria and procedures for states to opt out certain non-attainment areas from the federal reformulated gasoline (RFG) program. This action applies to non-attainment areas where the state voluntarily opted into the program, and subsequently decides to withdraw from the reformulated gasoline program, an action referred to as "opt-out." This rule describes the process a state must follow to petition for removal from the program, the criteria used by EPA to evaluate a request, and the transition period before the opt-out becomes effective.

This final rule authorizes the EPA's Administrator to approve a petition to opt out all or a portion of an opt-in area. The final rule requires that the governor submit the opt-out petition, or the governor's authorized representative. It must include specific information on how, if at all, reformulated gasoline has been relied upon by the state in state or local implementation plans, or revisions to such plans, both pending or already approved.

This final rule specifies the effective date that an area will be removed from the list of covered areas defined in

§ 80.70 of the reformulated gasoline rule. If reformulated gasoline was included as a control measure in an approved State Implementation Plan (e.g. to demonstrate attainment or maintenance), then the opt-out would not become effective until 90 days from the effective date for Agency approval of a revision to the state plan removing reformulated gasoline as a control. If reformulated gasoline was relied upon in a plan pending Agency approval, then the opt-out would become effective 90 days from the date EPA provides written notification to the state that the petition has been approved. If the state does not have a plan or did not rely on reformulated gasoline in a pending plan, then the effective date is the same as for pending plans described above. The Agency would also publish a Federal Register notice announcing the approval of the petition and the effective date for the opt-out.

This final rule also removes 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. 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 these areas effective January 1, 1995 until July 1, 1995. 60 FR 2696 (January 11, 1995). EPA proposed to extend this stay until final action was taken on the opt-out requests. 60 FR 31269 (June 14, 1995). In a separate action signed by the EPA Administrator the Agency extended the stay on June 30, 1995. 60 FR 35488 (July 10, 1995).

The regulations adopted in today's action for processing opt-outs from the reformulated gasoline requirements would be applicable for opt-out petitions received or under Agency consideration beginning June 21, 1996, until December 31, 1997, unless superseded by a subsequent rulemaking.

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

##### A. Background

The federal 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<sub>x</sub>), another precursor of ozone, are also reduced. The 1990 Amendments to the Clean Air Act requires reformulated gasoline in the nine largest cities with the highest levels of ozone. In section 211(k)(6), Congress provided the opportunity for states to opt-in to the RFG program for their other nonattainment areas.

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 the flexibility 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.

##### B. Statutory Authority

The statutory authority for this rule is granted to EPA by section 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). A discussion of EPA's statutory authority may be found in the preamble to the proposal, at 60 FR 31271 (June 14, 1995).

##### C. General Rulemaking vs. Notice and Comment Rulemaking for Each Opt-Out Request

In the NPRM, EPA proposed a general rule that would apply for all future opt-out requests. Some industry representatives and associations provided opposing comments. Some commenters argued that under section 307(d) of the Act, EPA must provide public notice and a comment period for each opt-out request. They argued that EPA must conduct rulemaking for each opt-out request to consider the

ramifications of each opt-out request, for example, on long-term costs to state, local and tribal governments and private industry and possible adverse regional air quality consequences. Other commenters, however, preferred the Agency's proposal to develop general opt-out procedures rather than conduct a rulemaking for each state opt-out request.

EPA does not agree that a separate rulemaking must be conducted for each future opt-out request. Through this rulemaking, EPA is establishing a petition based process that will address, on a case by case basis, future individual state requests to opt out of the federal RFG program. The regulations establish clear and objective criteria for EPA to apply in these future non-rulemaking, adjudication actions. These criteria address when a state's petition is complete and the appropriate transition time under the regulations. This application of regulatory criteria on a case by case basis to future individual situations does not require notice and comment rulemaking, either under section 307(d) of the Clean Air Act or the Administrative Procedure Act.

It is not uncommon for the Agency to establish such a petition based process within a regulatory structure, in order to apply the criteria established in a regulation to a wide variety of individual cases. The reformulated gasoline regulations, for example, include a petition process for approval of individual baseline, augmentations of the complex model, exemptions, alternative test procedures, and the like. EPA believes that approach is most appropriate here as well, as it will allow for expeditious and consistent Agency action on the individual opt-out requests presented by states.

EPA believes that the general procedures adopted here will provide consistent opt-out decisions. This rule will also provide greater certainty in the market than individual rulemakings could provide. Lastly, this rule will provide quick approval for opt-out requests while maintaining a sufficient transition period to minimize costly market disruptions.

In certain cases, the affected parties will be able to comment on the state action. In those states where the reformulated gasoline program is included as a part of an approved state implementation plan (SIP), affected parties that are concerned with the impacts of an opt-out would have the opportunity to comment on a state's revised plan that removes reformulated gasoline as an air control measure.

The Agency is not taking action today on the portion of the proposed notice

concerning the question whether the Agency has the discretion under section 211(k) of the act to allow attainment areas to opt into this federal program. EPA has received comments on this question and is reviewing options that would permit opt-in opportunities to be expanded. EPA anticipates announcing a policy shortly.

#### *D. Applicability*

The regulations adopted in today's action for processing opt-outs from the reformulated gasoline requirements would be applicable for opt-out petitions received or under Agency consideration beginning June 21, 1996, until December 31, 1997, unless superseded by a subsequent rulemaking.

EPA received comments that complying with the Phase II reformulated gasoline requirements involves significantly greater capital investment than for the Phase I requirements. The transition periods set forth in today's rule for opting out of Phase I reformulated gasoline requirements would be, according to the comments, grossly inadequate for industry to recover in a reasonable time frame investment costs associated with the Phase II. EPA recognizes these different circumstances may call for different opt-out provisions and intends to propose separate rules for opting out areas from the Phase II reformulated gasoline requirements.

#### *E. Petition Process*

In the NPRM, EPA proposed that a state may petition the EPA to opt out of the reformulated gasoline program. Under the proposal, a petition would have to include specific information about how the program is used in a State Implementation Plan. If a state did include the reformulated gasoline program as a control measure in such plan or revision submitted to EPA for approval, 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 and, if so, when.

Several commenters raised concerns about the impacts that approved petitions would have on air quality, especially in nonattainment areas, since reformulated gasoline provides significant clean air benefits. A fuels association commented that petitions should demonstrate that there will be no unacceptable adverse air quality impacts to other areas or other states. Industry representatives commented that nonattainment areas should not be permitted to opt out unless the state has

binding commitments to adopt substitute measures to achieve attainment. Another commenter cautioned that a petition should not be approved if there is adequate showing that opting out would cause the area to return to nonattainment status. Regarding opportunity for public consideration, an association remarked that the petition process should include a formal comment period.

EPA is committed to ensuring that areas around the country attain the National Ambient Air Quality Standards (NAAQS), including the ozone standard. EPA recognizes, however, that under the Clean Air Act the states play a primary role in attaining the NAAQS, including choosing those control measures they prefer to include in its plans to attain and maintain the NAAQS. Today's action maintains the flexibility that states have in air quality planning by honoring their right to opt out and substitute alternative control measures where the state considers appropriate. EPA believes that the state should retain flexibility to revise the SIP by selecting control measures it desires to include in its plan as long as it makes the necessary demonstrations under the Act.

To begin the opt-out process, this final rule requires that a Governor, or his or her authorized representative, submit an opt-out petition to the Administrator of the Agency. The opt-out petition must 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. The petition must also include a geographic description of the opt-out area.

In the case where a state has included reformulated gasoline in a pending plan submission, the petition must identify whether the state is withdrawing the plan and what alternative air quality control measures, if any, that the state intends to use to replace RFG. In the case where a state intends to submit a revision to an approved plan or to a pending SIP submission, the petition must identify this intention as well as the alternative air quality control measures that will be substituted for reformulated gasoline to reach or maintain compliance with the federal ozone standard. Furthermore, the petition must include the status of any proposed revision to an approved plan or pending SIP submission and the projected schedule for the revised plan. In the event a state does not intend on

revising an approved plan or pending SIP submission, the petition must include a description why no revision is considered necessary. A revision may not be considered necessary, for instance, if the proposed opt-out area does not need to rely on reformulated gasoline to achieve or maintain attainment.

The purpose of the information required in the petition is to provide EPA the assurance that a state has considered the programmatic effects of the requested opt-out. For instance, EPA expects that states will fully consider the effects that an RFG opt-out would have on its SIP or 15% VOC rate of progress plan as well as its overall ability to attain and maintain the federal ozone standard. Through this petition exercise, a state may find that alternative control measures may not offer the cost-effectiveness, immediate benefits, or ancillary benefits such as toxics reduction that reformulated gasoline provides. Thus careful planning is needed by the state since reductions from other sources may be much less practicable, depending on the state's circumstances. Reformulated gasoline is one of the most cost-effective measures for ozone control available and also yields significant air toxics benefits. EPA believes that the information requirement will address some of the commenters' concerns that states consider the effects on air quality of their decision to opt out, stated earlier in this section.

After a state submits a petition, the Agency will review the document to determine whether it contains all of the required information. Once the Agency determines that the petition is complete with the required elements, EPA will send a letter to the state approving the petition and identifying the effective date of the opt-out. For those instances where the state does not include federal RFG in an approved plan, the effective date shall be 90 days from the date of the notification to the state. When the state has included RFG in an approved plan, the effective date will be 90 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure.

#### *F. Transition Period*

In the NPRM, EPA proposed to make the effective date for an opt-out dependent upon whether or not a state has an approved plan in place. If reformulated gasoline was relied upon as a control measure in an approved plan, EPA proposed to make the opt-out effective 30 days after the Agency had approved an appropriate revision to the

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

EPA received numerous comments on two aspects of the proposal. First, the majority of the commenters indicated that the proposed time period between the approval of an opt-out and the date the opt-out becomes effective (referred to in this preamble as the transition period) is insufficient for industry to change the supply of gasoline from reformulated gasoline to conventional without significant disruption to the supply infrastructure. Second, commenters recommended that the opt-out process should be more orderly, with the Agency giving expeditious and clear notification to the public as to when the opt-out becomes effective.

In response to the comments received on the timing of opt-outs, EPA is adopting opt-out provisions that are modified from the proposal. First, today's action provides for a single 90-day transition period. In determining an appropriate length of time for the transition period, EPA weighed the need for industry to plan and implement a change in gasoline throughout the distribution system to the retail stations against the request from states to opt out in a timely manner. The majority of commenters indicated that 60 to 90 days would be adequate for industry to turn over existing stocks of reformulated gasoline to conventional gasoline. Also, based upon comments from state associations, as well as EPA's experience in other opt-outs, states are concerned that the Agency make a timely decision on the opt-out and generally consider a 90-day transition

period reasonable once the opt-out approval by the Agency has been made.

This action finalizes a single transition period, not two periods as proposed. In the NPRM, states with plan revisions containing RFG pending before the Agency would be opted out of the RFG program in 120 days, but a state could shorten this period to 30 days simply by withdrawing the pending plan revision or indicating to EPA the state's intention to submit a revision to the pending plan. These two conditions provide little impediment to a state to effectively opt out in 30 days. Therefore, EPA believes that a single transition period length will simplify an opt-out and maximize affected parties' ability to plan for a smooth transition from the reformulated gasoline program.

EPA is also modifying the procedure for initiating the 90 day count for the transition period. Several commenters noted, and EPA concurs, that in some cases the proposed procedures not only would have created uncertainty surrounding the transition period start date, but also would have effectively shortened the proposed transition period. In the NPRM, EPA proposed to make the transition period begin upon receipt of a complete petition. As commenters pointed out, this method would create uncertainty about whether the petition was complete on the day that the Agency received the petition and did not provide a means for communicating the petition's approval or effective date to the regulated industry.

EPA believes that in those cases where reformulated gasoline is relied upon as a control measure in an approved plan, the procedures for re-approval of the state plan, with notice, comment, and publication of the revision, would sufficiently address commenters' concerns about clear notification of Agency action. Therefore, if RFG is relied upon as a control measure in an approved plan, the opt-out would become effective 90 days after the effective date of the Agency's approval of an appropriate revision to the state plan. Notice of this action would be published in the Federal Register. Prior to this notice in the Federal Register, the state must also submit a complete petition to opt out of the reformulated gasoline program.

Where reformulated gasoline is relied upon as a control measure in a plan revision pending before the Agency, or is not relied upon in any plan, the state must petition the Agency to opt out of the reformulated gasoline program, and the opt-out will be effective 90 days after the Agency notifies the state that the state's petition is approved. The

Agency will provide written notification to the state indicating EPA's approval of the petition. The 90-day transition clock will start from the date of the approval notification sent to the opt-out state. To facilitate an orderly opt-out process and minimize any uncertainties that may result from an opt-out, EPA intends to quickly review opt-out petitions and expeditiously notify the public of the effective date of opt-outs. EPA intends to make a decision on the state's petition within two weeks from receipt of the petition. EPA will promptly notify the state and publish a notice in the Federal Register notifying the public of the effective date of the opt-out, thereby giving consistent and timely information to the affected parties. The Agency will make every effort to notify the associations of affected industries and states after EPA has approved a state's opt-out petition. In addition EPA will announce the opt-out's effective date on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). For information on how to access this system, see the **SUPPLEMENTARY INFORMATION** section of this rule for details.

Finally, at a state's request, the opt-out could be effective later than 90 days after the start of the transition period. In such a case, a state must indicate in its petition to the Agency the desired effective date for the opt-out. In this scenario, EPA recommends that a state consider an opt-out date which becomes effective on one of the reformulated gasoline program's natural transition points. EPA received comments supporting opt-out effective dates that are consistent with the natural transition points. These natural transition points are identified as January 1, the start of the averaging season, and May 1 and September 15, the beginning and end, respectively, of the VOC control season. The Agency understands these concerns and will support state efforts to accommodate these natural transition points.

#### *G. Cyclic Opt-outs and Opt-ins by a State*

The reformulated gasoline program is a cost-effective program designed to reduce ozone levels in participating metropolitan areas. But the cost effectiveness of the reformulated gasoline program is jeopardized by regulatory uncertainty, as it pertains to the regulated community's ability to plan for providing the manufacturing capacity to produce oxygenate and reformulated gasoline to specified control areas. Specifically, the uncertainty is increased by the

perceived absence of long term commitment to the reformulated gasoline program by those states who opted into the reformulated gasoline program and by the relatively simple process for states to opt out of the reformulated gasoline program provided for in this final rule.

EPA understands and expects that before a state submits an opt-out petition it will have given thoughtful consideration to the air quality consequences of its action and considered the substitute control measures that may be needed to achieve air quality standards and protect the health of its citizens. Therefore, the Agency believes it is improbable that a state would seek to reverse an opt-out decision by shortly thereafter requesting to opt back into the program.

However, comments from the oil industry expressed their concern that states may engage in a cycle of opt-ins and opt-outs. The Agency agrees that the integrity of the reformulated gasoline program would be jeopardized if states maintained a cycle of opt-ins and opt-outs, e.g. to create a customized seasonal program. The reformulated gasoline program is a year-round program.

Given the limited applicability of this final rule to December 31, 1997, EPA believes that it is unlikely that states would have the opportunity to complete a cycle of opt-out and opt-in. Although this final rule effectively allows states to quickly opt out of the reformulated gasoline program, the Agency may set the effective date of opt-in up to one year from the date of a governor's opt-in application. Section 211(k)(6). States would not be able to plan, with any certainty, the timing of opt-ins and opt-outs which would create a seasonal reformulated gasoline program. EPA does not believe that current conditions warrant any further restrictions on opt-ins and opt-outs. EPA may promulgate restrictions in the future if it is determined in the future that cyclic opt-outs and opt-ins are occurring.

#### *H. Effect on Averaging*

Under the RFG regulations, refiners and importers may elect to meet certain RFG standards either on a per-gallon basis or on average. This election, which must be made separately for each parameter and separately for each calendar year, applies to all RFG produced at a refinery by a refiner, or imported by an importer, during a calendar year.

Some commenters indicated that a refiner or importer who elects to comply with the RFG standards on average may be adversely affected by an area opting

out of the RFG program during an averaging period. This could occur where a refiner's or importer's average is out of compliance at the time of an unanticipated opt-out, and reduced future production or importation of RFG due to the opt-out results in the refiner or importer having insufficient volume in the remainder of the averaging period to bring the average into compliance.

EPA believes that the 90 day (minimum) transition period provides adequate time for refiners and importers to adjust to changes in the RFG market which may be attributed to opt-outs and that it is unlikely that a refiner's or importer's ability to comply with the RFG standards on average would be significantly impaired if an area opts out of the RFG program. As a result, EPA is not providing regulatory relief in today's action for such a possibility. Nevertheless, in setting a potential penalty in an enforcement action for violation of the RFG averaging standards, EPA will consider the effects of any opt-outs if the refiner or importer is able to demonstrate (1) that it would have been in compliance but for the opt-out, and (2) that it took all reasonable steps to address the averaging problem caused by the opt-out.

## **II. New York's, Pennsylvania's and Maine's Requests to Remove Selected Opt-In Areas From the Requirements of the Reformulated Gasoline Program**

### *A. Introduction*

In the NPRM, EPA proposed to grant the petitions from the governors of the States of New York, Pennsylvania and Maine 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 section 80.70 of the reformulated gasoline 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 was 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, 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, 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.

In separate notices signed by the EPA Administrator on December 29, 1994, and June 30, 1995, and for the reasons described therein, EPA has stayed the program in these thirty-nine counties, or portions thereof, effective January 1, 1995, until such time as the Agency completed rulemaking on the proposed opt-out for these areas. (60 FR 2696, January 11, 1995; 60 FR 35488, July 10, 1995) Based on this chronology, EPA proposed that these areas be removed from the reformulated gasoline program effective upon the issuance of final action in this rulemaking. (60 FR 31269, June 14, 1995)

### *B. EPA Grants New York's, Pennsylvania's and Maine's Requests To Remove Selected Opt-In Areas From the Requirements of the Reformulated Gasoline Program*

EPA believes that it is appropriate to interpret section 211(k) as authorizing states to opt out of the RFG program, provided that a process is established for a reasonable transition out of the program. 60 FR 31269 (June 14, 1995). The Agency has considered two key aspects in granting these opt-outs: the first involves coordination of air quality planning, and 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. These areas do not include or rely on reformulated gasoline as a control measure in any state implementation plan, maintenance plan or 15% rate of progress plan. Even if reformulated gasoline is included as a contingency measure in a maintenance plan for the redesignation packages, allowing an area 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, within the restrictions outlined in section 211(k)(6) of the Act.

As indicated above, the reformulated gasoline program is currently stayed in all of the affected areas, and Agency consideration of an appropriate lead time for industry to change the supply of gasoline is unnecessary.

Therefore, in today's action, EPA removes 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 as of July 8, 1996.

### III. 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<sub>x</sub>), 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<sub>x</sub> 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. These areas would be foregoing the air quality benefits obtained from the use of reformulated gasoline.

However, as discussed in the proposal, one of the central concepts behind this rule is a recognition that states have the primary responsibility to develop the mix of control strategies needed to attain and maintain the NAAQS, and should have flexibility in determining the mix of control measures needed to meet their air pollution goals. EPA expects that states will in fact prudently in exercising their rights to opt out under these rules. Any environmental impacts of opting out are therefore not expected to occur in isolation, but in a context of states exercising their responsibility and developing appropriate control strategies for their areas' air pollution goals.

#### IV. Regulatory Flexibility Analysis

This rule is not expected to result in any additional compliance cost to regulated parties and in fact is expected to decrease compliance costs to those entities who previously supplied reformulated gasoline to the area opting out. This rule also establishes a transition period which maximizes affected parties's ability to plan for smooth transition from the reformulated gasoline program, minimizing disruption to the motor gasoline marketplace. This transition period is reasonably expected to allow parties to turn over existing stocks of reformulated gasoline to conventional gasoline. Accordingly, EPA has determined that it is not necessary to prepare regulatory flexibility analysis in connection with this final rule. EPA has determined that this rule will have no significant adverse effect on substantial number of small businesses.

#### V. Public Participation

##### A. Public Comments

The Agency received submissions during the comment period for the NPRM from 36 commenters. Copies of all of the written comments submitted to EPA, as well as records of all oral comments received during the comment period, can be obtained from the docket for this rule (see **ADDRESSES**).

The Agency received comments from the public on three major issues: the opt-out process, EPA's authority to promulgate a rule on opt-outs, and transition period. A summary of these comments along with the Agency's responses are located throughout the preamble above. Discussion of public comments on the proposed opt-out

process and the Agency response can be located in Section I, Parts C and E of this preamble. Discussion of public comments on the proposed transition periods and the Agency response can be found in Section I, Part F. The Agency response to comments on statutory authority are located in Section I, Part B and in the preamble to the proposal, at 60 FR 31271.

The docket also contains a document that provides a more detailed summary of the comments, including some issues not covered in this preamble because they were minor or less contentious issues, and EPA's rationale for its response.

##### B. Public Hearing

The Agency held a public hearing on July 5, 1995 to hear comments on the Notice of Proposed Rulemaking (60 FR 31269) published June 14, 1995. Comments at the hearing were provided by representatives of the oil industry and fuel oxygenate producers. These comments have been presented and addressed in the preamble above.

#### VI. Executive Order 12866

Under Executive Order 12866<sup>1</sup>, 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.<sup>2</sup>

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.

#### VII. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995

("UMRA"), Pub.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, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. 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 the final rule promulgated today 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.

#### VIII. Judicial Review

Because this final action is nationally applicable, under section 307(b)(1) of the Clean Air Act judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the D.C. Circuit within sixty days of publication of this action in the Federal Register.

#### VIII. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended 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 section 804(2) of the APA as amended.

#### List of Subjects in 40 CFR Part 80

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

Dated: June 21, 1996.

Carol M. Browner,  
Administrator.

40 CFR part 80 is amended as follows:

<sup>1</sup> See 58 FR 51735 (October 4, 1993).

<sup>2</sup> *Id.* at section 3(f)(1)-(4).

## 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.

\* \* \* \* \*

*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 paragraph (j) introductory text; by removing paragraphs (j)(5)(viii), (5)(ix), (j)(10)(i), (10)(iii), (10)(v) through (10)(xi); by redesignating paragraphs (j)(10)(ii) and (iv) as (10)(i) and (10)(ii); by removing paragraph (j)(11) and redesignating (j)(12) through (14) as (j)(11) through (13) respectively; and by adding a new paragraph (l) to read as follows:

### § 80.70 Covered areas.

\* \* \* \* \*

(j) The ozone nonattainment areas listed in this paragraph (j) are covered areas for purposes of subparts D, E, and F of this part. The geographic extent of each covered area listed in this paragraph (j) shall be the nonattainment area boundaries as specified in 40 CFR part 81, subpart C:

\* \* \* \* \*

(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.

4. Section 80.72 is added to read as follows:

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

(a) For petitions received prior to and including December 31, 1997 and 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. If the Administrator approves a petition, he or she shall set an effective date as provided in paragraph (c) of this section. The Administrator shall notify the state in writing of the Agency's action on the petition and the effective date of the removal when the petition is approved.

(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;

(iii) 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;

(iv) 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) 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) of this section, the Administrator shall set an effective date for removal of an area under paragraph (a) of this section of 90 days from the Agency's written notification to the state approving the opt-out petition.

(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 90 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure.

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

[FR Doc. 96-16668 Filed 7-5-96; 8:45 am]

BILLING CODE 6560-50-P

## 40 CFR Part 425

RIN 2040-AC48

[FRL-5527-4]

### Leather Tanning and Finishing Effluent Limitations Guidelines; Pretreatment Standards; New and Existing Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** EPA is promulgating changes modifying the pretreatment standards for existing and new sources applicable to certain facilities in the leather tanning and finishing point source category that conduct unhairing operations and that discharge process wastewater to publicly owned treatment works ("POTW"). This rule responds to a petition submitted by the leather tanning industry. The Agency conducted an informal survey of a small number of POTWs, permitting authorities, and industry representatives knowledgeable of leather processing operations and wastewater treatment. EPA is promulgating these changes as a "direct" final rule because the Agency does not expect significant adverse or critical comments. EPA also wants to provide prompt implementation of the rule to minimize any potential hazards to worker safety and health that may occur in the absence of this rule. Prompt implementation will also allow affected facilities in this category to reduce the use of treatment chemicals.

**DATES:** This rule is effective on October 7, 1996 unless significant adverse or critical comments are received by September 6, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Send comments in triplicate on this rule to Mr. Ed Terry, Engineering and Analysis Division (4303), U.S. EPA, 401 M St. S.W., Washington, DC 20460.