

Dated: March 21, 1997

Carol M. Browner,
Administrator.

40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 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 80.70 is amended by revising paragraph (k) to read as follows:

§ 80.70 Covered areas.

* * * * *

(k) Any other area currently or previously classified under 40 CFR part 81, subpart C as a marginal, moderate, serious, or severe ozone nonattainment area as of November 15, 1990, or any time later, may be included on petition of the governor of the state in which the area is located.

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[FR Doc. 97-7954 Filed 3-27-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-5803-6]

Transitional and General Opt Out Procedures for Phase II Reformulated Gasoline Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule making.

SUMMARY: In this document EPA is proposing to change the regulations for states to opt-out of the federal reformulated gasoline (RFG) program for areas where a state had previously voluntarily opted into the program. Under this proposal, if a state has not submitted an opt-out petition to EPA by December 31, 1997, it must participate in Phase II RFG until December 31, 2003. The Agency believes this proposed process is necessary to ensure a smooth transition between the two phases of the reformulated gasoline program.

The Agency is also proposing, that effective January 1, 2004, the current opt-out procedures, which provide that EPA-approved opt-out petitions become effective 90 days from approval, become effective again.

In addition, this proposed rule would require that states decide and submit to

EPA a complete opt-out petition by December 31, 1997, if they want an opt-in area to continue to participate in Phase I of the RFG program up to December 31, 1999, but do not wish to participate in Phase II of the program.

This action does not affect the policies for opting in to the RFG program. In a separate action EPA is publishing a notice of proposed rulemaking, simultaneous with this proposal, which would permit former ozone nonattainment areas to opt into the federal reformulated gasoline program. EPA has not made a final determination on the policy for attainment area RFG implementation.

DATES: The Agency will hold a public hearing on this proposal if one is requested by April 4, 1997. If a public hearing is held, it will take place on April 18, 1997.

If a public hearing is held on this proposal, comments must be received by May 19, 1997. If a hearing is not held, comments must be received by April 28, 1997. Please direct all correspondence to the address shown below.

To request a hearing, or to find out if and where a hearing is held, please call Christine Hawk at (202) 233-9000.

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 Ms. Christine Hawk 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 5:30 p.m. A reasonable fee may be charged for copying docket material. **FOR FURTHER INFORMATION CONTACT:** Christine Hawk or Diane Turchetta at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233-9000.

SUPPLEMENTARY INFORMATION: A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS) and on the Office of Mobile Sources' World Wide Web site, <http://www.epa.gov/OMSWWW>. 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:

<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.

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.

Extended Summary

Based upon EPA and industry concerns regarding smooth implementation of Phase II of the RFG program and public comments that were solicited in the Notice of Proposed Rulemaking [60 FR 31269] published June 14, 1995, EPA is proposing the following changes to the existing opt-out rule, which provides criteria and general procedures for states to opt-out of the RFG program through December 31, 1997. 61 FR 35673 (July 8, 1996).

This notice applies to 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 proposed rule provides the Agency's rules concerning criteria and procedures for states to opt-out certain areas from the RFG program after December 31, 1997. This proposal would not change the process a state must follow to petition for removal from the program or the criteria used by EPA to evaluate a request. This proposal does change the time period before the opt-out becomes effective for opt-out petitions received from January 1, 1998, through December 31, 2003. This period includes the first four years of Phase II (January 1, 2000, to December 31, 2003). The proposal also maintains the requirements that the governor, or the governor's authorized representative, submit an opt-out petition.

This proposal specifies that for all opt-out petitions received as of December 31, 1997, the existing procedures will apply and that the effective date that an area will be removed from the list of covered areas defined in 40 CFR § 80.70 will be 90 days (or more at a state's request) from the date of EPA's letter of notification to the Governor of the requesting state or from the effective date of an agency approval of a revision to the State Implementation Plan (SIP) where applicable. States which have opted in to the RFG program that do not submit a completed opt-out request by December 31, 1997 and subsequently submit an opt-out request before January 1, 2004, will be required to participate in the federal RFG program, including Phase II of the program, until December 31, 2003. The opt-out request will be

effective January 1, 2004 or 90 days from the Agency written notification to the State approving the opt-out petition, whichever date is later. Today's proposed requirements will also cover those areas opting into the RFG program subsequent to December 31, 1997. (i.e. areas opting-in during the transitional period must remain in the program at least until December 31, 2003). The opt-out procedures would revert back to the existing rule (90 day requirements) as of January 1, 2004.

Today's proposal will help provide certainty to the industry as it makes decisions that are likely to affect the supply and cost of reformulated gasoline, which in turn could affect the cost-effectiveness of Phase II RFG. Additionally, the proposal maintains the flexibility that states have in air quality planning to the degree possible and practicable.

I. EPA's Proposal for Opt-out Petitions Received January 1, 1998 Through December 31, 2003; and After December 31, 2003

A. Background

The federal reformulated gasoline (RFG) program is designed to reduce ozone levels and air toxics in areas of the country that are required to or volunteer to adopt the program. Reformulated gasoline reduces 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 require reformulated gasoline in the nine largest cities with the highest levels of ozone.¹ In section 211(k)(6), Congress provided the opportunity for states to opt-in to the RFG program for other ozone 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). States with that concern 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. Since then, the Agency has adopted general procedures for future opt-outs. 61 FR 35673 (July 8, 1996). These procedures apply to opt-out petitions received through December 31, 1997. Today's proposal provides new procedures for opt-out petitions received between January 1, 1998, through December 31, 2003. The existing procedures in place today will take effect again beginning January 1, 2004.

In the proposal to the previous opt-out rulemaking, EPA outlined its rationale for determining that it is appropriate to interpret section 211(k) as authorizing states to opt-out of the program. 60 FR 31269 (June 14, 1995). EPA concluded that any conditions on opting out should be focused on achieving a reasonable transition out of the program. There were two primary areas of concern to the Agency. The first was coordination of air quality planning. The second involved appropriate lead time for industry to transition out of the program.

Today's proposal addresses this lead time concern by changing the conditions for opting out during the period from January 1, 1998, to December 31, 2003. Before the effective date for Phase II RFG (January 1, 2000) approaches, industry must make investments decisions based in part on anticipated demand for RFG. Small, unanticipated changes in demand, whether due to market forces or changing regulatory requirements, can make cost recovery of investment difficult, and cause gasoline prices to rise or fall. Higher gasoline costs caused by regulatory uncertainty would diminish the benefits and cost-effectiveness of EPA's RFG program. Thus, EPA believes it must consider these special circumstances which affect industry directly and consumers indirectly and propose appropriate

¹ EPA recognizes that there are currently ten areas required to use Federal Reformulated Gasoline and that these areas currently do not have an opt-out option. Those areas are: Los Angeles—Anaheim—Riverside, CA; San Diego County, CA; Hartford—New Britain—Middletown—New Haven—Meriden—Waterbury, CT; New York—Northern New Jersey—Long Island—Connecticut area; Philadelphia—Wilmington—Trenton—Cecil County, MD; Chicago—Gary—Lake County, IL—Indiana—Wisconsin area; Baltimore, MD; Houston—Galveston—Brazoria, TX; Milwaukee—Racine, WI; Sacramento, CA.

changes to the opt-out procedures. Therefore, EPA today is proposing that states must decide by a certain date (December 31, 1997) if they intend for opt-in areas to participate in Phase I RFG up to December 31, 1999, and/or to participate in Phase II RFG, which begins on January 1, 2000. If a state has not submitted an opt-out petition by December 31, 1997, it must continue to participate in Phase I RFG through December 31, 1999, and participate in Phase II RFG until December 31, 2003.

B. Statutory Authority

The statutory authority for the action in 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). For a more complete discussion of statutory authority, see the proposal for general rules establishing criteria and procedures for states to opt-out of the RFG program, 60 FR 31271 (June 14, 1995).

As discussed there, EPA believes 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. EPA believes allowing states 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. Given this deference to state decision making, it follows that the conditions on opting out should be geared towards achieving a reasonable transition out of the RFG 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. The second involves appropriate lead time for industry to transition out of the program. Today's proposal addresses the latter concern. EPA's authority allows it the discretion to authorize opt-outs in a way that balances the interests of the parties affected by the regulations. The rule establishing opt-out criteria and procedures placed only limited conditions on the states, focusing on the information that must be submitted before EPA may approve an opt-out request. The rule also generally required a 90-day time period to pass before an EPA-approved opt-out became effective. Today, EPA is proposing to lengthen this time period for certain future opt-outs because it believes the circumstances affecting industry have changed enough to warrant an appropriate change.

Today's proposal changes the conditions for opting out during the period from January 1, 1998 to December 31, 2003. As the effective date for Phase II RFG (January 1, 2000) approaches, industry must make investment decisions based in part on anticipated demand for reformulated gasoline. These decisions are likely to affect supply and ultimately affect the cost of reformulated gasoline. Uncertainty of supply and cost fluctuations could cause problems for and possibly diminish the benefits and cost-effectiveness of EPA's RFG program. Section 211(k) of the Act requires that reformulated gasoline achieve the greatest reductions in VOCs and toxics emissions, "taking into consideration the cost of achieving such emission reductions . . ." Thus, EPA believes it must consider these circumstances affecting industry that could potentially affect cost. EPA's proposal is designed to reduce the potential for adverse cost and supply impacts on the reformulated gasoline program.

C. Need for a Required Participation Period Until January 1, 2004

Under EPA's current opt-out provisions, some states may effectively opt-out of the reformulated gasoline program as of 90 days from the date EPA approves a state petition for the opt-out. 61 FR 35673 (July 8, 1996). The U.S. Department of Energy expressed its concerns in comments during the previous rulemaking that such a time frame to opt-out by states who originally intended to participate in Phase II of the reformulated gasoline program makes it more difficult for refiners to recover their investments in refinery facilities needed to comply with the requirements of Phase II reformulated gasoline. (Air Docket A-94-68) The Department further explained in its comments that the ability to price gasoline at a level that recovers investments depends very heavily on marginal supply and demand. Small unanticipated changes in demand, whether due to market forces or changing regulatory requirements, can make cost recovery of investment difficult, and cause gasoline prices to rise or fall.

EPA shares the Department's concerns and, in the interest of minimizing the adverse supply and cost impacts for this gasoline program, is proposing a required participation period for reformulated gasoline opt-in areas intending to participate in Phase II of the reformulated gasoline program.

Refinery investments for Phase II RFG have been estimated by the U.S. Department of Energy to be about \$1

billion for East Coast refiners and \$2 billion for Gulf Coast PADD III refiners. Refiners who expect to be producing Phase II reformulated gasoline starting January 1, 2000, and who need additional facilities to meet the requirements of that gasoline, are likely to be making commitments to refinery investments through 1997, two years in advance of the Phase II start date. This decision to invest in the refining equipment needed to comply with Phase II is based on each refiner's product capabilities and likely anticipated demand for Phase II reformulated gasoline.

To comply with the Phase II requirements in 2000, each refiner is uniquely situated. For those refiners that plan to modify their refineries, different levels of investment would be required. The largest investments are expected to be made in the areas of desulfurization and alkylation to control sulfur and olefins. Some are expected to make early refinery changes to come into compliance with the complex model requirements in 1998. While the economic burden of Phase II compliance will fall disproportionately on some refiners, the Agency's main concern in this proposal is to provide a stable regulatory environment which will not inhibit cost recovery, given that this could lead to supply problems and cost fluctuations that could diminish the overall cost-effectiveness of the RFG program.

The Agency, in its estimates of the Phase II reformulated gasoline program costs [as stated in the regulatory impact analysis (RIA) for the final RFG rulemaking 59 FR 7716], has assumed a 10 percent real rate of return. Based on this assumed rate of return, refiners would need a six year investment recovery period. The Agency is soliciting comments on the range of investment recovery periods needed by the refineries who plan to invest capital in refining equipment for Phase II reformulated gasoline, the impact of future opt-outs on this period, and the expected impacts on supply and cost from such opt-outs.

The time required to recover refinery investments is highly variable, depending on a number of factors, including the size and type of investment, the refiner's financial situation and market conditions. The U.S. Department of Energy believes, based on the National Petroleum Council 1993 refinery study and on the Department's own examination of this issue, that at a minimum, a four-year period is required for the industry as a whole to recover its Phase II investments. The Department also

emphasized that an eight-year period was more adequate given the current competitive gasoline market.

If the Agency were to extend the current opt-out provisions, it would reduce the ability of refiners to plan for a relatively stable level of demand for Phase II reformulated gasoline and refiners would have a disincentive to invest in Phase II of the reformulated gasoline program. Without greater assurance of the markets for Phase II reformulated gasoline for a period sufficient for investment recovery, refiners may limit or delay investment and prepare for a smaller than currently-predicted reformulated gasoline demand. Refiners could minimize their production of and stocks for reformulated gasoline to protect refiners and gasoline distributors from the potential loss of reformulated gasoline markets. If refiners react to uncertain market conditions in these ways, there would be the increased potential for reformulated gasoline cost increase and supply shortages.

These potential actions, taken by refiners reacting to Phase II reformulated gasoline market uncertainty, would increase costs to refiners, ultimately resulting in higher gasoline prices for consumers. Limited or delayed investment in Phase II reformulated gasoline would create the potential for spot shortages or some refiners may attempt to quickly recoup their investment in Phase II, both situations causing gasoline price increases. EPA is concerned that the cost-effectiveness of the reformulated gasoline program would be jeopardized by regulatory uncertainty, as it pertains to the regulated community's ability to plan for providing the manufacturing capacity to produce reformulated gasoline to specified control areas. Section 211(k) of the Clean Air Act Amendments of 1990 requires that reformulated gasoline achieve the greatest reductions in volatile organic compounds (VOCs) and toxics emissions, "taking into consideration the cost of achieving such emission reductions . . ." Today's proposal is designed to reduce the potential for the adverse cost and supply impacts on the reformulated gasoline program.

The Agency is not trying to assure that all refiners will recover investments made in Phase II reformulated gasoline production in a given time period. EPA is instead seeking to structure the federal reformulated gasoline program in a way that minimizes the potential cost and supply impacts that could occur to refiners, thereby making it difficult to recover investments associated with producing this product.

A refiner's decision to invest in reformulated gasoline is based, in part, upon an opt-in state's decision to have EPA require the sale of RFG in a particular area. Reformulated gasoline market uncertainty is increased when opt-in states are not bound to remain in the reformulated gasoline program and by the relatively simple process for states to opt out of the reformulated gasoline program provided for in the existing rule.

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 their plans to attain and maintain the NAAQS. EPA is committed to maintaining, to a degree possible and practicable, the flexibility that states have in air quality planning by establishing procedures to opt out and substitute alternative control measures where the state considers appropriate.

EPA believes that today's proposal achieves a balance between allowing states with voluntary RFG areas the flexibility to opt-out of the program and giving industry a certain level of assurance as to a predictable demand for Phase II reformulated gasoline during the important investment recovery period of the program's early years. Today's proposal helps maintain a consistent market, adequate supplies and reasonable prices, thus maintaining the reformulated gasoline program's cost-effectiveness. EPA's own estimate of Phase II reformulated gasoline costs suggests consideration of a required participation period of six years, but the Agency believes that requiring reformulated gasoline in opt-in states for a period greater than four years may create a disincentive for continued participation in those areas where this program is currently considered a cost-effective control measure for the control of ground-level ozone and toxics.

Although a longer recovery period of six or eight years may be needed by some refiners to fully recover all Phase II investments and less time for those who already have the capability to produce Phase II reformulated gasoline, the ability of states to opt-out again after 2004 does not mean that such opt-outs will occur. Refiners in general will still have significant demand for Phase II RFG for many years after 2004. EPA is proposing four years to attempt to strike a balance between the potential adverse impacts if refiners have too short of a time to recoup their Phase II

investments and the need of states for some flexibility in using reformulated gasoline. EPA further believes that this balance benefits reformulated gasoline consumers by attempting to provide market consistency which should encourage adequate supplies and reasonable prices.

D. Effective Date for Approved Opt-Out Petitions

Today's proposal changes the date on which EPA-approved opt-out petitions become effective for opt-out petitions received January 1, 1998, through December 31, 2003.

This proposal modifies the existing requirement for any opt-out request received between January 1, 1998, and January 1, 2004. States which previously opted in to the RFG program that do not submit an opt-out request by December 31, 1997, and subsequently submit a completed opt-out request before January 1, 2004, will be required to participate in Phase II of the program until December 31, 2003. The opt-out request will be effective January 1, 2004 or 90 days from the Agency's written notification to the State approving the opt-out petition, whichever is later.

If a state submits an opt-out request prior to December 31, 1997, the state can designate the opt-out to occur at any future date beyond the minimum 90-day period required under current opt-out procedures as long as it is not a date beyond December 31, 1999. For example, a state could submit an opt-out request before the December 31, 1997, deadline which specifies that the opt-out would not be effective until the end of the year 1999. Areas opting into the RFG program subsequent to December 31, 1997, will be treated the same as areas opting in prior to that date and will also be included in Phase II of the program until December 31, 2003.

EPA also proposes that, beginning on January 1, 2004, opt-out requests from states again be approved based on the opt-out provisions in effect before January 1, 1998.

EPA requests comments on two specific possible variations to this proposal in anticipation of interest in these options by outside parties:

(1) a possible exception to the required participation for areas which are redesignated as attainment areas during the period of January 1, 1998, through December 31, 2003. Such an exception would allow an opt-out request to be approved by EPA using the same 90 day opt-out effective date applicable before December 31, 1997 [See 61 FR 35673, July 8, 1996.]

(2) a similar participation period for areas first opting into the RFG program

subsequent to December 31, 1999, requiring these area to participate in Phase II of the program for at least four years from the date of their opt-in. This variation would establish the effective date for the removal of an area from the program as January 1, 2004, or 90 days from the Agency's written notification approving the opt-out, or four years from the effective date of their opt-in, whichever date is later, for all opt-out requests received after January 1, 2000.

II. Environmental Impact

If an area opts out of the reformulated gasoline program, it will not receive the reductions in VOCs, 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 only 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. These areas would be foregoing the air quality benefits obtained from the use of reformulated gasoline.

In this proposal, EPA continues to recognize 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. However, the proposal also seeks to ensure through the required participation period that the potential for a state to decide to opt-out of Phase II of the RFG program does not cause adverse impacts on the market demand for RFG and thus maintains the cost-effectiveness of the RFG program. EPA expects that states will in fact act prudently in exercising their ability 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.

III. Executive Order 12866

Under Executive Order 12866,² 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.³

Pursuant to the terms of Executive Order 12866, Office of Management and Budget (OMB) has notified EPA that it considers this a significant regulatory action within the meaning of the Executive Order. EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

IV. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 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 today's proposed rule does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

V. Economic Impact and Impact on Small Entities

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 by providing more certainty for regulated parties. This proposed rule imposes no new requirements on states.

With respect to the portion of today's action which proposes to require participation until January 1, 2004, of opt-in areas unless they request to opt-out prior to January 1, 1998, today's proposal is not expected to result in any additional compliance cost to regulated parties. It does no more than maintain the status quo for those entities who have been supplying reformulated gasoline to the reformulated gasoline opt-in areas and imposes no additional requirements on parties that must comply with the RFG regulations.

With respect to the portion of today's proposed rule which would apply to opt-out requests applied for on or after January 1, 2004, the proposed 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' 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.

VI. Paperwork Reduction Act

This action does not add any new requirements under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final FRG/anti-dumping rule and has assigned OMB control number 2060-0277 (EPA ICR No. 1591.03).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop,

² See 58 FR 51735 (October 4, 1993).

³ *Id.* at section 3(f)(1)-(4).

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

List of Subjects in 40 CFR Part 80

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

Dated: March 21, 1997.

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

2. Section 80.72 is amended by revising paragraphs (a), (c)(1) and (c)(2) and by adding paragraphs (c)(3) through (c)(7) 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. 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.

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(c)(1) For opt-out petitions received prior to and including December 31, 1997, 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 as requested by the Governor, but no less than 90 days from the Agency's written notification to the state approving the opt-out petition, and no later than December 31, 1999.

(2) For opt-out petitions received prior to and including December 31, 1997, where 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.

(3) For opt-out petitions received January 1, 1998 through December 31, 2003, except as provided in paragraph (c)(4) of this section, the Administrator shall set January 1, 2004 or 90 days from the Agency's written notification to the

state approving the opt-out petition, whichever date is later, as the effective date for removal of an area under paragraph (a) of this section.

(4) For opt-out petitions received January 1, 1998 through December 31, 2003, where 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 for removal of an area under paragraph (a) of this section shall be January 1, 2004, or 90 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure, whichever date is later.

(5) For opt-out petitions received on or after January 1, 2004, except as provided in paragraph (c)(6) of this section, the Administrator shall set an effective date for removal of an area as requested by the Governor, but no less than 90 days from the Agency's written notification to the state approving the opt-out petition.

(6) For opt-out petitions received on or after January 1, 2004, where 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 for removal of an area 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.

(7) An area opting into the RFG program after December 31, 1997, will be subject to all requirements of this section.

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