FACT SHEET

March 21, 1997

NOTICE OF PROPOSED RULEMAKING ON TRANSITIONAL AND GENERAL OPT-OUT PROCEDURES FOR PHASE II REFORMULATED GASOLINE

TODAY'S ACTION

- The Environmental Protection Agency (EPA) is issuing a proposed rule today to provide revised time periods for states with voluntary reformulated gasoline (RFG) programs to withdraw or opt-out areas from the program. The purpose of today's proposal is to help ensure a smooth transition from Phase I to Phase II RFG (beginning in the year 2000).

- Under the proposal, states that do not choose to opt-out by 1998 will be required to participate in Phase II RFG until December 31, 2003. The states are expected to have about five months to determine whether their voluntary opt-in area(s) will remain in the RFG program after the year 2000.

- Today's action achieves a balance between the interests of the states and industry. It maintains the states' flexibility of choosing other control measures to reduce ozone levels while providing refiners with a degree of market certainty (i.e., a stable RFG market to make necessary investment decisions) and the opportunity to recover a substantial portion of their capital investment.

- This proposed rule applies to ozone nonattainment areas (i.e., areas with ozone or "smog" problems) where the state voluntarily opted into the program and subsequently decides to withdraw from the RFG program to use other air quality control measures, if needed. Today's action does not affect the policies for opting into the RFG program.

BACKGROUND

- The RFG program is designed to reduce ozone levels in U.S. metropolitan areas with the worst ground-level ozone or "smog" problems by reducing vehicle emissions of compounds that form ozone, specifically volatile organic compounds (VOC).

- The 1990 amendments of the Clean Air Act require RFG in the ten areas of the country with the highest levels of ozone (i.e., Los Angeles, San Diego, Sacramento, Hartford, New York, Philadelphia, Baltimore, Chicago, Milwaukee, and Houston areas). Congress also provided states the opportunity to voluntarily include (i.e., opt-in) other ozone nonattainment areas not required by the Act in the federal RFG program.

- EPA issued final rules establishing requirements for RFG on December 15, 1993. On July 8, 1996, EPA published a final rulemaking on the procedures and criteria for states to opt areas out of the RFG program. [61 FR 35673].

- Phase I RFG requirements were implemented in January 1995 and will continue until

December 31, 1999. All areas that choose or are required to use RFG after year 2000 must implement the more stringent Phase II standards.

- Those refiners choosing to supply Phase II RFG need to make substantial industry investments in equipment (e.g., to remove sulfur) to meet the more stringent standards for NOx, VOC, and toxic reductions beginning year 2000. By a state committing to Phase II RFG for several years, the industry would be more inclined to make investments to produce the cleaner burning gasoline.

- During the public comment period for the current opt-out procedures, the U.S. Department of Energy (DOE) estimated that Phase II capital investments would be approximately $1 billion for East Coast refiners and $2 billion for Gulf Coast refiners. West Coast refiners are already producing California Phase II RFG which, in general, will meet Federal RFG specifications.

WHAT IS THE CURRENT OPT-OUT PROCESS?

- Current rules require the Governor to submit a request (i.e., a petition) to opt out of the RFG program. The petition must include specific information, on how, if at all, RFG has been relied upon by the state in its pending or approved air quality plans to reduce ozone levels and what they will use to replace RFG.

- EPA will review the opt-out petition to ensure it contains all the required elements or information, and will quickly notify the state in writing and through notification in the Federal Register when the request has been approved and what date the opt-out becomes effective.

- The effective date of the opt-out is dependent on how the RFG program is used by a state in its air quality plan(s) for attaining the national ambient air quality standards (NAAQS). The opt-out will be effective either 90 days after the Agency approves a revision to the state plan removing reformulated gasoline as a control or 90 days from the date EPA provides written notification to the state that the petition has been approved, whichever is applicable.

HOW DOES TODAY'S PROPOSAL DIFFER FROM THE CURRENT PROCESS?

- The proposal does not change the current process a state must follow to petition for removal from the program or the criteria used by EPA to evaluate a request. This proposal would only change the time period before the opt-out becomes effective (i.e., from 90 days to several years in some cases).

- Under the proposed rule, opt-out petitions that are received prior to December 31, 1997 will become effective 90 days after approval (i.e., current procedures apply). A state would have the option of requesting an effective opt-out date greater than 90 days from approval, but the date must be before 2000. Thus, a state may choose to remain in Phase I until it ends on December 31, 1999.

- Under this proposal, opt-out petitions after 1997 will not become effective until 2004. This change to the current regulation is to provide refiners the certainty that there would be a set amount of demand for Phase II RFG for at least four years. This would help industry to make decisions on capital investments needed to comply with Phase II RFG requirements.

- Today's rulemaking proposes to revert back to the current opt-out procedures after 2003.

WHY IS A COMMITMENT TO PHASE II RFG NECESSARY?

- A state's commitment to the Phase II program is necessary to ensure a cost-effective and flexible program by minimizing negative impacts on key players, including consumers, states, and fuel suppliers (e.g, minimize impacts on gasoline prices) .

- Refiners need to begin investing in Phase II RFG by late 1997. Industry has commented that Phase II costs depend on the demand for RFG. By a state committing to Phase II RFG for several years, the industry would be more inclined to make investments to produce the cleaner burning gasoline. If opt-outs were allowed to occur after refiners invest in Phase II, market uncertainty would limit investments which could thereby cause higher gasoline prices (due to a constricted supply), and reduce the cost-effectiveness of Phase II NOx standards.

WHY A FOUR (4) YEAR COMMITMENT TO PHASE II?

- The proposed rule provides a balance between the interest of states and industry:

  - States desire maximum flexibility to choose air quality control measures. The current procedures have a 90-day transition period to withdraw from RFG.

  - Industry desires market certainty and the maximum opportunity to recover investment costs. The Agency believes that refiners on average require 6 years to recover its investments costs. DOE has commented that an 8-year period is adequate to fully recover costs.

  - Four years would provide market certainty and allow most refiners to recover a substantial portion of investments while providing states as much flexibility that is reasonable and practicable.

- Consumers benefit from this proposal since a stable market helps reduce possible price fluctuations and it ensures adequate supply of the cleaner burning gasoline.

WHAT ARE THE HEALTH AND ENVIRONMENTAL CONSEQUENCES?

- This rule assures that the program maintains the existing health and environmental benefits because:

  - Although areas that choose to opt out of the RFG program will not receive the reductions in volatile organic compounds (VOC.), oxides of nitrogen (NOx), and air toxics that are expected from the program, these areas will not be relieved from their responsibility of

meeting the federal air quality standards

- q States would continue to be encouraged to assess the air quality ramifications of withdrawing from the program. EPA recognizes that states have the primary responsibility to meet the NAAQS and should have the flexibility in determining the mix of control measures needed to attain their goals.

- q For States that choose to remain in the program into Phase II, a reduction (from the refiners' 1990 baseline levels) of NOx (5%-7%), VOCs (25%-29%), and toxics (20%-22%) will be realized with the more stringent standards.

HOW WILL THE REGULATION AFFECT INDUSTRY?

- This proposal would benefit industry by providing a more stable market for Phase II RFG. This would help them to plan their investments for the production of Phase II beginning year 2000. Also, the proposal provides refiners the opportunity to recover a substantial portion of their investments.

HOW DOES THE FINAL RULE ASSIST STATES?

- EPA is committed to ensuring that areas around the country attain the NAAQS, including the ozone standard. EPA recognizes, however, that under the 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 flexibility (as much as practicable) that states have in air quality planning by honoring their right to opt out (except in the ten mandatory RFG areas) and substitute alternative control measures where the state considers appropriate. EPA believes that the state should retain flexibility to revise the air quality plans (i.e., State Implementation Plans) by selecting control measures it desires to include in its plan as long as it makes the necessary demonstrations required under the Act.

FOR FURTHER INFORMATION...

- For further information, feel free to contact one of the following people: Christine Hawk (202-233-9672) or Diane Turchetta (202-233-9036).

- A copy of this proposal 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. The phone number is (919) 541-5742. It can also be accessed on the Internet at "http:\\www.epa.gov\omswww\".