Disclaimer for pre-publication versions of rulemaking files

The Administrator signed the following rule on June 16, 2006 and we are submitting it for publication in the *Federal Register*. While we've taken steps to ensure the accuracy of this Internet version of the rule, it's not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming *Federal Register* publication or on GPO's Web Site. You can access the *Federal Register* at: www.gpoaccess.gov/fr/index.html. When using this site, note that "text" files may be incomplete because they don't include graphics. Instead, select "Adobe Portable Document File" (PDF) files.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

Regulation of Fuel and Fuel Additives: Reformulated Gasoline Requirements for former severe nonattainment areas under the 1-hour ozone standard that were redesignated to attainment for the 1-hour standard prior to its revocation, and which are current nonattainment areas for the the 8-hour ozone standard.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking

SUMMARY: EPA is seeking comment on two alternative proposals regarding reformulated gasoline requirements for an area formerly classified as a severe ozone nonattainment area under the 1-hour ozone national ambient air quality standard ("NAAQS" or "standard") that was redesignated to attainment for that standard before its revocation, and which is currently designated as nonattaiment for the 8-hour ozone standard. Under the first option, this area would be required to use federal reformulated gasoline (RFG) at least until it is redesignated to attainment for the 8-hr NAAQS. Under the second option, the State could request the removal of RFG, and EPA would grant such a request upon a demonstration that removal would not result in loss of any RFG-related emission reductions relied upon in the State's Implementation Plan (SIP) for ozone. Atlanta is the only area that falls within the scope of this proposal.

DATES: Comments: All public comments must be received on or before [INSERT DATE:60 days from date of publication in the FEDERAL REGISTER]. To request a public hearing, contact Kurt Gustafson at (202) 343-9219 or gustafson.kurt@epa.gov. If a hearing is requested no later than [INSERT DATE:20 days after date of publication in the FEDERAL REGISTER], a hearing will be held at a time and place to be published in the Federal Register. Persons wishing to testify at a public hearing must contact Kurt Gustafson at (202) 343-9219, and submit copies of their testimony to the docket and to Kurt Gustafson at the addresses below, no later than 10 days prior to the hearing. After the hearing, the docket for this rulemaking will remain open for an additional 30 days to receive comments. If a hearing is held, EPA will publish a document in the Federal Register extending the comment period for 30 days after the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0318, by one of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566-1741, Attention Docket ID No. OAR-EPA-HQ-OAR-2006-0318.
- Mail: Air Docket, Docket ID No. EPA-HQ-OAR-2006-0318, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW, Washington, DC, Attention Air Docket ID No. EPA-HQ-OAR-2006-0318, Such deliveries are accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0318. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov, or e-mail. The www.regulations.gov website is an "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If

you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm. For additional instructions on submitting comments, go to Unit I.B. of the **SUPPLEMENTARY INFORMATION** section of this document."

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Kurt Gustafson, Environmental Scientist, Office of Transportation and Air Quality, Transportation and Regional Programs Division, mailcode 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-343-9219; fax number: 202-343-2800; e-mail address: gustafson.kurt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. *Does this Action Apply to Me?*

This action may affect you if you produce, distribute, or sell gasoline for use in the Atlanta area.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the "FOR FURTHER INFORMATION CONTACT" section above.

Category	NAICS Codes[a]	SIC Codes[b]	Examples of Potentially Regulated Entities
Industry	324110	2911	Petroleum Refiners
Industry	422710 422720	5171 5172	Gasoline Marketers and Distributors
Industry	484220 484230	4212 4213	Gasoline Carriers

[a.] North American Industry Classification System (NAICS).

[b.] Standard Industrial Classification (SIC) system code.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information

(subject heading, Federal Register date and page number).

ii. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided by 40 CFR part 2.

Outline of This Preamble

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E. Executive Order 13045: Children's Health

F. Protection Executive Order 13211: Energy Effects

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IV. Statutory Provisions and Legal Authority

I. Background and Regulatory History

Today's proposal follows from previous EPA action in replacing the 1-hour ozone standard with a more protective 8-hour standard. 69 FR 23951 (April 30, 2004). EPA has to date issued two rules that clarify the extent to which Clean Air Act obligations that existed under the 1-hour ozone standard continue in effect under the 8-hour standard. These rules are the Phase 1 implementation rule, 69 FR 23951 (April 30, 2004), and the Phase 2 implementation rule. 70 FR 71612 (November 29, 2005). Although in the Phase 2 rule EPA addressed the requirements for the use of reformulated gasoline (RFG) in most parts of the country as a result

of the transition to the 8-hour standard, EPA indicated that it would address in a separate action what RFG requirements should apply to - a former severe nonattainment area under the 1-hour standard that was redesignated to attainment for the 1-hour standard before it was revoked, but after the area was designated nonattainment for the 8-hour standard.

In the Phase 1 rule, EPA addressed two interrelated key issues regarding the transition from the 1-hour ozone NAAQS to the 8-hour ozone NAAQS. First, at what time the 1-hour NAAQS would be revoked (ie., no longer apply). Second, what protections would remain in place to ensure that, once the 1-hour NAAQS was revoked, air quality would not degrade and that progress toward attainment would continue as areas transition from implementing the 1-hour NAAQS to implementing the 8-hour NAAQS.

On the first issue, EPA decided that the 1-hour NAAQS would be revoked in full, including the associated designations and classifications, one year following the effective date of the designations for the 8-hour NAAQS. For most areas, which were designated effective June 15, 2004, that means the 1-hour NAAQS and the related designation and classification no longer applied as of June 15, 2005.

On the second issue, the anti-backsliding approach adopted in the Phase 1 rule established that all areas designated nonattainment for the 8-hour ozone NAAQS and designated nonattainment for the 1-hour ozone NAAQS at the time of designation for the 8-hour NAAQS remain subject to mandatory control measures that applied by virtue of the area's classification

for the 1-hour NAAQS. These control measures are called “applicable requirements,” and are primarily the control measures that areas were required to adopt and implement based on the area’s 1-hour nonattainment classification.[1] Similarly, EPA concluded that areas designated nonattainment for the 8-hour ozone NAAQS and designated attainment subject to a Section 175A maintenance plan for the 1-hour ozone NAAQS at the time of designation for the 8-hour NAAQS remain subject to the applicable requirements. EPA provided that these areas must retain those control measures as part of the approved SIP, but need not reactivate those measures that the area may have shifted to a contingency measure prior to the time the area was designated for the 8-hour NAAQS.

In the June 2003 proposal for implementation of the 8-hour NAAQS, EPA defined the “applicable requirements” as those 1-hour control measures that applied in an area as of the effective date of the 8-hour designation for the area (for most areas, June 15, 2004). 68 FR 32821 (June 2, 2003). The draft regulatory text, issued in August 2003, relied instead on those control

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[1] In the proposed Implementation rule, EPA identified federal RFG as an applicable requirement. *(See proposed definition of "applicable requirement" in draft regulatory text, availability of which was announced at 68 FR 46536, August 6, 2003.)* In the final rule, however, EPA did not include RFG in the list of applicable requirements. EPA instead clarified that RFG is required under a Federal program, and thus differs significantly from the programs on the final list of applicable requirements, which are developed and adopted by States for inclusion in the state implementation plan (SIP). EPA recognized that various issues exist regarding the scope and applicability of the RFG program during and after implementation of the 8-hour ozone NAAQS that need further clarification. EPA stated that we were still considering how to treat RFG and that we would address these issues in an action separate from the Phase 1 rule. Thus, EPA did not include RFG in the list of applicable requirements in the Phase 1 Rule, and EPA made no decision at that time concerning RFG treatment in the transition to the 8-hour NAAQS.

measures in place on the date of revocation of the 1-hour NAAQS (for most areas, June 15, 2005). In the final rule, EPA defined applicable requirements as those control measures in place as of the date of signature of the Phase 1 rule, (ie., April 15, 2004). EPA thereafter issued a final rule changing this date to the effective date of the 8-hour designations - for most areas this would be June 15, 2004. 70 FR 71612 (November 29, 2005). Thus, in the Phase 1 rule, EPA adopted an anti-backsliding approach and established a trigger date for determining which 1-hour control requirements continued to apply in an area after revocation of the 1-hour NAAQS. Redesignation to attainment of the 1-hour NAAQS after this trigger date but prior to the revocation of the 1-hour NAAQS would not change which obligations remain applicable requirements.

In the Phase 2 Implementation Rule, EPA specified that the nine original mandatory RFG covered areas, as well as mandatory "bump up" areas (described in the "Background" section below) that would no longer be classified as severe based solely on the revocation of the 1-hour NAAQS, would remain covered areas at least until they are redesignated to attainment for the 8-hour NAAQS. EPA relied on an anti-backsliding approach similar to that relied upon in the Phase 1 rule. 69 FR 23857. (April 30, 2004). However, EPA did not address in that Phase 2 final rule whether RFG would continue to be required in bump-up areas that are designated nonattainment for the 8-hour NAAQS, but are no longer classified as severe based on a redesignation to attainment for the 1-hour NAAQS before revocation of the 1-hour NAAQS. EPA designated Atlanta as a marginal nonattainment area under the 8-hour ozone standard, 70 FR 34660 (June 15, 2005), and redesignated Atlanta from nonattainment to attainment for the 1-

hour NAAQS, prior to revocation of the 1-hour NAAQS. 56 FR 56694 (November 6, 1991). Atlanta is the only covered area that falls within the scope of this proposal.

II What action is EPA taking?

In this proposal, EPA addresses the issue of whether an area originally designated as a severe ozone nonattainment area under the 1-hour standard as a result of failure to meet attainment deadlines, and which was then redesignated to attainment for the 1-hour standard prior to revocation of that standard, should remain an RFG covered area because it is designated as an ozone nonattainment area (marginal) for the 8-hour NAAQS. This involves interpretation of section 211(k)(10)(D) and consideration of the appropriate anti-backsliding approach under these circumstances.

Under section 211(k)(5), RFG is required in any "covered area." The term "covered area" is defined in Section 211(k)(10)(D) as:

> [t]he 9 ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during the period 1987 through 1989 shall be "covered areas" for purposes of this subsection. Effective one year after the reclassification of any ozone nonattainment area as a severe ozone nonattainment area under section 181(b) of this title, such severe area shall also be a "covered area" for purposes of this subsection.

The second sentence of section 211(k)(10)(D) identifies areas that become covered areas because they have been reclassified as a severe area under CAA section 181(b). These are called "bump-up" areas. Five areas were reclassified to severe for the 1-hour NAAQS - Baton Rouge, Atlanta, Sacramento, San Joaquin Valley, and Washington, DC- (which was already an opt-in area). They became mandatory RFG covered areas one year after their reclassification as a severe area.

The areas that are RFG covered areas based on the bump-up provision were designated as ozone nonattainment areas by operation of law at the time of the 1990 CAA amendments, and their bump-up to severe occurred by operation of law based on EPA's determination under section 181(b) that the areas failed to attain the 1-hour NAAQS by the applicable attainment date. Thus, their reclassification to severe was not based on a determination that their air quality met the severe area ozone design value. Instead, reclassification was based on their failure to meet the applicable attainment date. The bump-up to severe has two effects - a later attainment date is set for the area, and a variety of additional control measures become mandatory for the area. The federal RFG program becomes a mandatory control measure in an area one year after the area is bumped up to a severe classification.

EPA believes that section 211(k)(10)(D) is ambiguous on the issue of whether a bump-up area continues to be a covered area when it is no longer classified as severe. The text of the provision could be read to set the defining criteria as the occurrence of reclassification to severe, a historical fact that does not change based on subsequent changes in classification. It could also

be read as identifying areas that are reclassified to severe, but as leaving unresolved what happens when they are no longer so classified. Given this ambiguity, EPA has discretion to determine whether bump-up areas should remain subject to the RFG program once they are no longer classified as severe and, if they may exit the program, to set appropriate criteria for doing so.

EPA has already exercised its discretion under 211(k)(10)(D) with respect to bump-up covered areas that are no longer classified as severe based solely on revocation of the 1-hour NAAQS, and has specified that they must continue to use RFG after revocation of the 1-hour NAAQS at least until they are redesignated to attainment for the 8-hour NAAQS. 70 FR 71612 (November 29, 2005). This applies to all bump-up RFG areas other than Atlanta. For those areas, any of the reasonable choices for a trigger date (e.g., date of issuance of 8-hour designations, effective date of 8-hour designations, or date of 1-hour NAAQS revocation) would all lead to continued use of RFG. On each of those dates, the areas were designated as severe 1-hour ozone nonattainment areas and RFG was a mandatory federal requirement. Use of any of these trigger dates would mean that subsequent removal of the severe classification based on revocation of the 1-hr NAAQS would not change the obligation to use RFG. For further discussion of this approach, see 70 FR 71612 (November 29, 2005).

Atlanta is unique among the bump-up areas in that it was redesignated to attainment for the 1-hour NAAQS prior to that standard's revocation. It has been designated nonattainment and classified as marginal for the 8-hour NAAQS. For Atlanta, the choice of a reasonable trigger

date could make a difference in whether the requirement to use RFG would continue after revocation of the 1-hr NAAQS.

EPA invites comment on the factors it should consider in exercising its discretion with respect to specifying RFG requirements for Atlanta. In interpreting section 211(k)(10)(D) and determining the kind of antibacksliding approach, including trigger date, that is appropriate regarding the requirement to use federal RFG in Atlanta, EPA believes that it is appropriate to focus it's consideration on : (1) current 8-hour ozone designation, (2) the likely effect on ozone NAAQS attainment, and (3) the likely effect on the fuel infrastructure. EPA also believes it is appropriate to focus it's consideration on how these factors apply in Atlanta , as this proposed rule would determine the appropriate federal RFG requirements for this one specific ozone nonattainment area, as compared to a general rule that is broadly applicable to many areas and many different types of control measures.

EPA is inviting comment on two options for this covered area. Under the first option, the area would be required to use RFG at least until it is redesignated to attainment for the 8-hour NAAQS. The anti-backsliding trigger date would be the same as that in the Phase 1 implementation rule - the effective date of the 8-hour NAAQS designations. On that date Atlanta was a severe area, and the requirement to use RFG was mandatory, starting January 1, 2005, based on the area's 1-hour nonattainment classification. The subsequent redesignation to attainment of the 1-hr NAAQS would not change the continuing obligation to use RFG after revocation of the 1-hr NAAQS.

This option would emphasize that the area is still an ozone nonattainment area notwithstanding its redesignation to attainment of the 1-hour NAAQS. Under the first option, EPA would exercise its discretion to require continued use of RFG in Atlanta, based on the area's continued status as an ozone nonattainment area under the 8-hour NAAQS. Atlanta would remain an RFG covered area at least until it is redesignated to attainment for the 8-hour NAAQS, along with the other bump-up areas addressed in the related RFG final rule. 70 FR 71612 (November 29, 2005). For further discussion of this approach, see 70 FR 71612 (November 29, 2005).

Under the second option, the trigger date for Atlanta would be the date of revocation of the 1-hour NAAQS. The use of this trigger date would mean that if RFG was a mandatory obligation on that date, then the obligation would continue after revocation of the 1-hour NAAQS. If RFG was not a mandatory obligation on that date then it would not continue after the date of revocation. Hence the primary issue under this option would be whether RFG should be considered a mandatory obligation as of the trigger date.

As noted above, section 211(k)(10)(D) and the Act are ambiguous on whether the obligation to use RFG would continue to apply as of this trigger date, since the prior redesignation to attainment for the 1-hour NAAQS means the area was no longer classified as a severe area as of that date. The issue is not whether a requirement that applied on the trigger date should continue to apply after revocation, but whether this specific federal requirement would or would not apply on the trigger date. To the extent this issue could be seen as

overlapping with the more general issue of having an anti-backsliding approach, EPA believes the indicia of Congressional intent on how to resolve this issue under section 211(k)(10)(D) are ambiguous.

Under this second option, EPA would exercise its discretion and resolve the ambiguity by allowing the RFG requirement to stop for the Atlanta area, based on the removal of the severe classification upon redesignation to attainment for the 1-hour NAAQS. EPA would condition, this however, on the State requesting such removal of RFG and demonstrating that removal would not result in a loss of emissions reductions relied upon in the ozone state implementation plan ("SIP").

This second option would place somewhat more emphasis on flexibility for the State in determining whether this federal ozone related control measure should apply in the area, for the following reasons. The only area to which this proposal would apply is Atlanta, which is currently implementing a state low sulfur, low RVP fuel control measure that has been approved into its SIP[2]. The removal of Atlanta as an RFG covered area would simplify the tasks confronting the fuel refining and distribution system, as new fuel that meets both the state fuel

[2]In an effort to limit the number of different types of state fuels required around the country and thus, increase fungibility of fuels, the Energy Policy Act of 2005 (EPAct), included a "boutique fuels" provision. The provision requires EPA to publish a list of the "total number of fuels" approved into SIPs as of September 1, 2004, and, importantly, limits EPA's future fuel approvals for a state to a fuel that is already in use in their Petroleum for Administration Defense District. The Georgia State fuel program was included on the list that EPA published for approval, 71 FR 32532, (June 6, 2006), and thus the Georgia fuel would not be limited by the EPAct boutique fuel listing provisions.

requirements and the federal RFG requirements would not need to be produced and distributed.[3] This would directionally reduce the burden on a fuel infrastructure system that has been tasked to meet several new federal fuel requirements adopted over the last few years. In addition, this option acknowledges the significant progress Atlanta has made in reducing ozone levels and attaining the 1-hour NAAQS, and the fact that Atlanta's significant progress in reducing ozone levels has occurred without the use of RFG. Because the option requires a demonstration that dropping the RFG requirement will not lead to a loss in emissions reductions relied upon in the SIP, this option should not adversely effect Atlanta's SIP planning for future attainment of the 8-hour standard.[4]

EPA believes it has discretion in choosing the appropriate trigger date for purposes of anti-backsliding. The use of the date of revocation of the 1-hr NAAQS as the trigger date under this option would not raise the SIP planning concerns that led to rejection of this as an appropriate trigger date for the Phase 1 rule. EPA rejected the date of revocation as a trigger date for the Phase 1 rule because it would interfere with SIP planning, especially for areas required to submit SIP plans by the date of revocation. 70 FR 5596 (February 3, 2005) Here,

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[3] Although the deadline has passed for Atlanta to have begun using RFG as a result of its redesignation to severe nonattainment for the 1-hour standard on September 26, 2003, 68 FR 55469 (September 26, 2003), that requirement has been stayed pending appeal of a district court decision affirming the RFG requirement in *State of Georgia v. Leavit,* No. 04-2778-CC (N.D. Ga., Atlanta Div.).

[4] If EPA selected this option for purposes of the final rule, and compliance with the conditions could be determined as of that date, then EPA could proceed to adopt a final rule that reflected these circumstances.

the date of revocation has already passed. In addition, Atlanta has demonstrated attainment of the 1-hour NAAQS without relying on the use of RFG and there are no indications that the second option would interfere with Atlanta's SIP planning for attainment of the 8-hour NAAQS.

III. Administrative Requirements

A. *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, 58 Federal Register 51,735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has

submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. *Paperwork Reduction Act*

This proposed rule would not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Office of Management and Budget has approved the information collection requirements contained in the final RFG/antidumping rulemaking (see 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060-0277 (EPA ICR No. 1951.08). If EPA finalizes the option that would require continued use of RFG in Atlanta, the rule would merely continue a pre-existing legal requirement, and would impose no new information collection requirements. If EPA finalizes the option of removing the RFG requirement for Atlanta, there would be a reduction in information collection requirements.

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, 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.

C. *Regulatory Flexibility Act*

The *Regulatory Flexibility Act* (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on the definition of a small entity as outlined above, EPA has identified approximately 26 small entities that could potentially be impacted by this proposal. If EPA finalizes the option that would require continued use of RFG in Atlanta, the rule would merely

continue a pre-existing legal requirement, and would impose no new costs. If EPA finalizes the option of removing the RFG requirement for Atlanta, this option would lead to a reduction in costs.

After considering the economic impacts of today's proposed rule on small entities, I hereby certify, that this action will not have a significant economic impact on a substantial number of small entities insofar as the proposed rule, when promulgated, will either continue an existing statutory requirement or will provide relief from the requirement. This proposed rule will not impose any additional requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. *Intergovernmental Relations*

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory

alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

If finalized, this proposal would contain no new enforceable duty that may result in expenditures to entities of concern under UMRA of $100 million or more in one year. If EPA finalizes the option that would require continued use of RFG in Atlanta, the rule would merely continue a pre-existing legal requirement, and would impose no new costs. If EPA finalizes the option of removing the RFG requirement for Atlanta, this option would lead to a reduction in costs, and would not trigger UMRA requirements. Although EPA does not believe that UMRA imposes requirements for this rulemaking, EPA notes that the environmental and economic impacts of the RFG program were assessed in EPA's Regulatory Impact Analysis for the 1994 RFG rules.

2. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consult with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of

government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. One of the proposed otions would only impose requirements on certain refiners and other entities in the gasoline distribution system, and not on States. The requirements of the proposed rule will be enforced by the federal government at the national level. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposed rule.

3. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes,

or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed rule does not create a mandate for any tribal government. The rule would not impose any enforceable duties on these entities. Rather, the rule would affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the nonattainment areas addressed in the proposed rule, and the gasoline distributors and retail stations in those areas. Thus, Executive Order 13175 does not apply to this proposed rule.

E. *Executive Order 13045: Children's Health Protection*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that 1) is determined to be "economically significant" as defined under Executive Order 12866, and 2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5-501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and

reasonably feasible alternatives considered by us.

This proposed rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this proposed rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

F. *Executive Order 13211: Energy Effects*

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

G. *National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104-113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

III. Statutory Provisions and Legal Authority

Statutory authority for the fuel controls in today's proposed rule comes from CAA section 211(k) (42 U.S.C. 7545(k)), directing EPA to issue regulations regarding the use of reformulated gasoline, and section 211(c) of the CAA (42 U.S.C. 7545(c)), which allows us to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated:

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Stephen L. Johnson, Administrator.