

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

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

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

V. Environmental Impact

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

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

VI. Economic Impact

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

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

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

Unfunded Mandates

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

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

VIII. Statutory Authority

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

List of Subjects in 40 CFR Part 80

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