

opt-in area. They do not address whether and when an area may opt-out of the program.

As noted in the proposal, EPA believes that it has authority to allow an area to opt out after it has opted in, under reasonable conditions related to a state's air quality planning and the need for reasonable lead time for affected industries. This is a reasonable interpretation of EPA's authority, based on the delegation by Congress of rulemaking authority in sections 211(k)(1) and 301(a). This includes the authority to allow an area to permanently opt out of the reformulated gasoline program. The stay issued in this final rule is a much more limited exercise of this authority—it allows an area to be excluded from the reformulated gasoline program for a limited time period, pending the rulemaking needed to finally act on the opt-out request.

EPA proposed to allow these areas to opt-out, and explained the legal, factual, and policy reasons supporting its proposal. Given the clear possibility that EPA will exclude these areas from the reformulated gasoline program based on their opt-out requests, it would be a serious and needless disruption of the gasoline market and the reformulated gasoline program to now implement the prohibition of section 211(k)(5) and require the regulated parties to market reformulated gasoline for the short period of time needed to act on this proposal. Under these circumstances, temporarily excluding them from the program pending action on the proposal is a limited and proper exercise of EPA's authority to allow an area to opt-out of the program indefinitely.

One commenter representing the petroleum industry strongly supports the stay extension. This commenter believes that it would not be in the public's interest to introduce the reformulated gasoline program on short notice. Considering that EPA has proposed to approve the opt-out requests of New York, Pennsylvania, and Maine, the commenter believes a temporary reformulated gasoline program in these counties for a few months would not be warranted.

IV. Effective Date

Based on the July 1, 1995, expiration of the prior stay, and the disruption that would be caused if the reformulated gasoline program was reinstituted in these areas for a short time, EPA finds there is good cause to make this rule effective upon signature. 5 U.S.C. 553(d). This rule is effective on June 30, 1995.

V. Environmental Impact

The stay is not expected to have any adverse environmental effects. The reformulated gasoline program is currently not applicable to these areas and the stay continues the status quo in these areas during rulemaking.

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 economic impact on a substantial number of small entities. This stay is not expected to result in any additional compliance cost to regulated parties and, in fact, is expected to decrease compliance costs to the industry 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. This rule does not create any new information requirements or contain any new information collection activities.

VIII. Unfunded Mandates Act

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 stay 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.

This Federal action extends a stay on the application of the reformulated gasoline program in certain areas, pending agency rulemaking on the opt-out requests for these areas. The stay imposes no new Federal requirements, and in fact relieves an otherwise applicable requirement. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

IX. 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).

List of Subjects in 40 CFR Part 80

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

Dated: June 30, 1995.

Fred Hansen,

Acting Administrator.

For the reasons set out in the preamble, 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 the introductory text of paragraph (j) to read as follows:

§ 80.70 Covered areas.

* * * * *