Federal Register

Monday,
June 3, 2002

Part IV

Environmental Protection Agency

40 CFR Part 80

Control of Air Pollution From New Motor Vehicles; Amendment to the Tier 2/ Gasoline Sulfur Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–7221–5]

RIN 2060–AI69

Control of Air Pollution From New Motor Vehicles; Amendment to the Tier 2/Gasoline Sulfur Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Due to adverse comments, EPA is removing one amendment included in the direct final rule published in the **Federal Register** on April 13, 2001, related to the Tier 2/Gasoline Sulfur program, hereinafter referred to as the Tier 2 rule (February 10, 2000). EPA published both the direct final rule and a concurrent notice of proposed rulemaking to correct, amend, and revise certain provisions of the Tier 2 rule for purposes of assisting regulated entities with program implementation and compliance. The only amendment removed by today's action is the revision to the provision concerning the definition of ''small refiner'' for those refiners that acquire and/or reactivate a refinery that was shutdown or was non-operational between January 1, 1998, and January 1, 1999. The language regarding this provision contained in the Tier 2 rule is reinstated. EPA plans no further action on the concurrent notice of proposed rulemaking.

EFFECTIVE DATE: July 12, 2001.

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket No. A–97–10 at the following address and are available for review from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW., Washington, DC 20460. You can contact the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Mary Manners, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214–4873, fax (734) 214–4051, e-mail *manners.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 13, 2001, we issued a direct final rule (66 FR 19296) which included 27 amendments to correct, amend, and revise certain provisions of the Tier 2 rule (February 10, 2000, 65 FR 6698) for purposes of assisting regulated entities with program implementation and compliance. In that direct final rule, we stated, ''If EPA receives adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comments. We will address all public comments in a subsequent final rule based on the proposed rule.'' We also issued a notice of proposed rulemaking (66 FR 19311), in which the Agency proposed and solicited public comment on the same 27 amendments. We received adverse comments on one amendment in this rulemaking: the amendment to 40 CFR 80.225(d) (§ 80.225(d)).

As a result of these adverse comments, we are removing the amendment regarding § 80.225(d) from the direct final rule. The language contained in § 80.225(d) of the prior rule, published on February 10, 2000, is reinstated as it existed prior to the April 13, 2001 direct final rule. In addition, as explained below, we are taking no further action regarding the concurrent notice of proposed rulemaking published on April 13, 2001. The other 26 amendments that did not receive adverse comment became effective on July 12, 2001, as provided in the April 13, 2001 direct final rule.

The revision of § 80.225(d) was included in the direct final rule to clarify that the employee/crude oil capacity criteria for small refiner status applies to parties seeking small refiner status under § 80.225(d). See 66 FR 19296. Although we believe these criteria did apply under the small refiner provisions of the Tier 2 rule as published on February 10, 2000 (pre-existing provisions), application of the employee/crude oil capacity criteria to refiners applying for small refiner status under § 80.225(d) was not explicitly expressed in the pre-existing provision of § 80.225(d). As a result, we added language to § 80.225(d) to make this clarification. However, in amending § 80.225(d) to add this clarifying language, we also reworded the pre-existing language of a separate sentence of this paragraph which resulted in an unintended substantive change to the provisions of § 80.225(d). Specifically, the amendment would have unintentionally limited the scope of eligibility for small refiners applying under § 80.225(d) only to refineries that were shutdown or non-operational between January 1, 1998 and January 1, 1999, rather than also to refineries that were acquired after January 1, 1999. The adverse comments we received on the amendment to § 80.225(d) relate only to this unintended substantive change.

As stated above, the pre-existing language in § 80.225(d) regarding the reactivation of refineries that were shutdown or non-operational between January 1, 1998 and January 1, 1999, and refineries that were acquired after January 1, 1999, is the regulatory language we are reinstating at this time. We are removing the revision to § 80.225(d) without providing prior notice and comment because we find good cause within the meaning of 5 U.S.C. 553(b). Notice and comment would be impracticable, as we need to remove this revision quickly because it went into effect July 12, 2001.

Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the day of publication from EPA's **Federal Register** Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web Site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (Either select a desired date or use the Search feature.).

Tier 2/Gasoline Sulfur home page: *http://www.epa.gov/otaq/tr2home.htm.*

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.

I. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

- 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;

• Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

• 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, we have determined that this final rule is not a ''significant regulatory action.''

B. Regulatory Flexibility

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because we find good cause within the meaning of 5 U.S.C. 553(b).

Although this final rule is not subject to the RFA, we nonetheless have assessed the potential of this rule to adversely impact small entities subject to the rule. This rule will have no adverse impact on any small entities subject to the rule. As stated above, today's action removes the amendment to § 80.225(d) concerning the definition of ''small refiner'' for those refiners that acquire and/or reactivate a refinery that was shutdown or was non-operational between January 1, 1998, and January 1, 1999. Specifically, the amendment to § 80.225(d) would have unintentionally limited the scope of eligibility for small refiners applying under § 80.225(d) only to refineries that were shutdown or non-operational between January 1, 1998 and January 1, 1999, rather than also to refineries that were acquired after January 1, 1999. The language regarding this provision that was contained in the Tier 2 rule published on February 10, 2000 (65 FR 6698) is reinstated.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

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, We 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 for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of removing the amendment regarding 40 CFR 80.225(d) from the direct final rule published on April 13, 2001 and reinstating the language contained in 40 CFR 80.225(d) of the prior rule, published on February 10, 2000 (65 FR 6698). Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

2. 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.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This final rule removes one amendment included in the direct final rule published in the **Federal Register** on April 13, 2001, related to the Tier 2/Gasoline Sulfur program and reinstates the language contained in 40 CFR 80.225(d) of the prior rule, published on February 10, 2000 (65 FR 6698). Thus, Executive Order 13175 does not apply to this rule.

3. 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 consults 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 final 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. The requirements of the 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 rule. Although section 6 of Executive Order 13132 does not apply to this rule, we did consult with State and local officials in developing this rule.

E. Executive Order 13211: Energy Effects

This 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.

F. 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 rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule.

G. 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 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 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 rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 12, 2001. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

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

Dated: May 23, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth 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: 42 U.S.C. 7414, 7545, and 7601(a).

2. 40 CFR 80.225(d) is revised to read as follows:

§ 80.225 What is the definition of a small refiner?

* * * * *

(d) Notwithstanding the definition in paragraph (a) of this section, refiners who acquire a refinery after January 1, 1999, or reactivate a refinery that was shutdown or was non-operational between January 1, 1998, and January 1, 1999, may apply for small refiner status in accordance with the provisions of § 80.235.

[FR Doc. 02–13807 Filed 5–31–02; 8:45 am]

BILLING CODE 6560–50–P