

to this, the first being whether states should be allowed to opt out at all, the second being what conditions, if any, should be placed on opting out. With respect to the former, a right to opt out is consistent with the Act's recognition that states have the primary responsibility to develop a mix of appropriate control strategies needed to reach attainment with the NAAQS. While various mandatory control strategies were established under the Clean Air Act, the Act still evidences a clear commitment to allowing states the flexibility to determine the appropriate mix of other measures needed to meet their air pollution goals. Section 211(k)'s opt-in provision reflects this deference to state choice, providing that opt-in will occur upon application by the governor. The only discretion EPA retains regarding opt-in is in setting or extending the effective date. Allowing states the right to opt-out is a logical extension of these considerations of deference to state decision making.

Given such deference, it follows that opting out should be accomplished through application of the governor. It also follows that the conditions on opting out should be geared towards achieving a reasonable transition out of the reformulated gasoline program, as compared to requiring a state to justify its decision. EPA has identified two principal areas of concern in this regard. The first involves coordination of air quality planning. For example, reformulated gasoline in opt-in areas has been relied upon by several states in their State Implementation Plan submissions or in their redesignation requests. The second involves appropriate lead time for industry to transition out of the program.

In a separate notice, to be published soon, EPA will be proposing to revise its RFG regulations to remove the affected counties from the program.

III. Temporary Stay Removing the Nine New York Counties, the Twenty-Eight Counties in Pennsylvania, and Two Counties in Maine From the List of Areas Covered by the Reformulated Gasoline Requirements as of January 1, 1995

Clean Air Act section 307(d)(1) requires EPA to follow specified rulemaking procedures in promulgating regulations under section 211(h). Section 307(d) provides, however, that notice and comment rulemaking requirements "shall not apply in the case of any rule or circumstance referred to in subparagraph (A) or (B) of subsection 553(b) of title 5 of the United States Code [i.e. sections 553(b) (A) and (B) of the APA]." Under APA section

553(b)(B), notice and comment are not required "when the agency for good cause finds (and incorporate the finding and a brief statement of reasons thereof in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

EPA is issuing this temporary stay as a final rule without prior notice and comment. This expedited rulemaking procedure is based on the need to act quickly to avoid unnecessary disruption at the inception of the reformulated gasoline program, stemming from recent decisions by various states to opt out of this program. The different circumstances for the various covered areas involved are discussed below.

The final regulations establishing the reformulated gasoline program were issued on December 15, 1993, requiring upstream parties to have reformulated gasoline in the covered areas as of December 1, 1994, and to have reformulated gasoline at all retail outlets in those areas as of January 1, 1995. In late November and December, EPA received requests from Pennsylvania, New York and Maine to opt out various areas in these states. EPA responded to the initial requests from New York and Pennsylvania by letter dated December 12, 1994, indicating EPA's belief that the Act authorizes states to opt out of the reformulated gasoline program, and EPA's intention to grant the request considering the lack of adverse air quality impacts,³ the lack of reliance on reformulated gasoline in the states' SIPs, and the logistical problems associated with providing reformulated gasoline, at least with respect to Jefferson County. EPA announced that it would commence rulemaking to revise its regulations to effectuate the opt out, and effective January 1, 1995 would not enforce the reformulated gasoline requirements in the respective counties. EPA, of course, retains its authority to take appropriate action to address any non-compliance that may have occurred prior to January 1, 1995.

EPA has since learned that its December 12 announcement has led to confusion and disruption in the market place regarding the transition back to conventional gasoline. There is also uncertainty regarding potential liability under EPA's citizen suit provisions. The existence of confusion within the regulated community has led to unfortunate disruptions in the market place. EPA neither intended nor

³The affected areas have not had ozone exceedances for three years. Several of the areas have requests pending before the agency for redesignation to attainment status. The other areas are expected to submit such requests.

expected this result. Instead, EPA's December 12 announcement was an attempt to provide certainty and stability, while at the same time recognizing the value in allowing states to expeditiously opt out of the reformulated gasoline program under appropriate circumstances.

With respect to the Albany-Buffalo area in New York and the affected towns in Maine, EPA did not make a prior announcement of its intention regarding the opt-out of these areas. However, expedited issuance of a temporary stay is also needed for those areas to avoid a patchwork of staggered times for opt out, occurring at the inception of this major program. Such variability would only increase the logistical and other problems facing the regulated community, and disrupt their planning to produce and market reformulated gasoline over the next several months.

This important and complicated program is just starting, and it is necessary that all parties involved have the certainty and stability needed for successful implementation. EPA believes that these circumstances warrant a temporary stay of the reformulated gasoline requirements in these areas effective from January 1, 1995 until July 1, 1995. That will provide adequate time to conduct notice and comment rulemaking and take final action on these opt-out requests.

Given all of the above circumstances, EPA's belief that it is fully authorized to allow the affected areas to opt out, the temporary nature of this stay, and the ability of all parties to comment on the notice of proposed rulemaking to allow the opt out of these areas, EPA believes there is good cause under 5 U.S.C. 553(b) and CAA §307(d)(1) to issue this final rule without prior notice and comment. For the same reasons, EPA finds there is good cause under 5 U.S.C. 553(d) for the expedited effective date of this final rule.

V. Effective Date

This temporary stay is effective as of January 1, 1995.

VI. Environmental Impact

The temporary stay is not expected to have any adverse environmental effects. The 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.

VII. Economic Impact

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this temporary stay will not have a