

greater than the 2.7 wt% maximum oxygen content allowed for VOC-controlled reformulated gasoline under the final rule; the difference of 0.5 wt% is consistent with raising the valid maximum oxygen content under the Simple and Complex Models from 3.5 wt% to 4.0 wt%.

As discussed earlier, the Agency is today proposing that the maximum oxygen content for VOC-controlled reformulated gasoline be the maximum allowed under the section 211(f) "substantially similar" provision and waiver provisions. (Currently, ethanol may be blended up to 10 volume percent and MTBE up to 15 volume percent.) EPA is proposing that the maximum oxygen content for non-VOC-controlled reformulated gasoline also be the maximum allowed under the section 211(f) "substantially similar" provision and waiver provisions rather than be capped at a specific oxygen content as in the final rule.³ This would allow reformulated gasoline to contain ethanol up to the current legal maximum 10 volume percent and MTBE up to the current legal maximum 15 volume percent, without concern for the density of the non-oxygenated gasoline. Additionally, allowing the maximum oxygenate volumes (and thus maximum oxygen contents) specified in 211(f) would make this provision (40 CFR 80.41(g)(1)) consistent with the upper end of the valid range for oxygen in both the Simple and Complex models. As stated in the July 20, 1994 rulemaking, increasing the maximum oxygen value will have no adverse environmental impact.

In those cases where a state has requested the lower maximum oxygen content for its RFG, the Agency proposes that the oxygen maximum standard value be increased from the current 2.7 wt% to the maximum allowed under section 211(f), but not to exceed 3.2 wt% when ethanol is used. As mentioned above, 3.2 wt% oxygen is equivalent to about 7.7 vol% ethanol and is the highest maximum increase in oxygen content over 2.7 wt% that might be encountered due to variations in the base gasoline density. In practice, the Agency does not expect ethanol-containing blends certified under these provisions to contain more than 7.7 vol% ethanol, as there are tax credit and other deterrents to going higher than 7.7 vol% but lower than 10 vol% (which would exceed 3.2 wt% oxygen).

³This provision would only apply under the RFG simple model. Under the complex model, there would be no oxygen cap in the regulations. The maximum oxygen content allowed under § 211(f) would, of course, continue to apply to complex model RFG as well as all other gasoline.

Comments are requested on this aspect of today's proposal.

IX. Public Participation

EPA desires full public participation in arriving at its final decisions and solicits comments on all aspects of this proposal. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the EPA Air Docket, Docket A-95-29 (See ADDRESSES). See the DATES section for the deadline for submission of comments.

Any proprietary information being submitted for the Agency's consideration should be markedly distinguished from other submittal information and clearly labeled "Confidential Business Information." Proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that it is not inadvertently placed in the docket. Information thus labeled and directed shall be covered by a claim of confidentiality and will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

X. Compliance with the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to examine the effects of their regulations and to identify any significant adverse impacts of those regulations on a substantial number of small entities. 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. In fact, today's proposals are designed to remove overly burdensome regulations and make it easier for refiners to use ethanol in reformulated gasoline, and thus to ensure market access for ethanol in reformulated gasoline.

XI. Administrative Designation

Pursuant to Executive Order 12866 (58 FR 51735 (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 entitlement, 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, it has been determined that this notice of proposed rulemaking is not a "significant regulatory action".

XII. 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.

XIII. 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 expenditure by State, local, and tribal governments, in the aggregate; or by 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 proposed 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 action has the net effect of reducing burden of the reformulated gasoline program on regulated entities, as well as the States. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.