

certified engines. EPA believes that this action is similar in many ways to programs EPA has implemented and continues to consider, under which EPA offers flexibility in its regulations, etc., in site-specific situations to encourage companies, communities, and other project sponsors to develop "cleaner, cheaper and smarter" alternatives to the current system. See 62 FR 19872 (April 23, 1997), for example.

It is not clear that this approach would be appropriate in other circumstances, given the different historical and environmental contexts and different types of engines used. Moreover, there is the potential that a broader use of this approach could possibly lead to exploitation of mobile source certification as a way to avoid stationary source controls, or might otherwise disrupt the proper functioning of the federal, state and local programs to control stationary source emissions. Given the potentially significant reductions that this program will facilitate, the general lack of reductions previously required under the existing regulatory approach, the voluntary nature of this approach, available funding and the limited scope of this approach, EPA believes that this rule is appropriate and justified.

What Are the Statutory Provisions Underlying This Rule Change?

The Clean Air Act's statutory provisions are relatively ambiguous regarding the specific boundaries between nonroad engines and stationary internal combustion engines. Section 216(10) states that a nonroad engine is "an internal combustion engine * * * that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 111 or section 202." Section 111(a)(3) states that "stationary source means any building, structure, facility or installation which emits or may emit any air pollutant. Nothing in Title II of this Act relating to nonroad engines shall be construed to apply to stationary internal combustion engines."

EPA's prior rulemaking that clarified the delineation between nonroad and stationary engine focused on the use and application of the engine, and did so on an engine by engine basis. This targeted revision also focuses on the application and use of engines, but in a broader manner. Under this approach, EPA looks at the engine family as a group, not engine by engine. Where the engine family contains engines that are, under the previous definition, nonroad engines, EPA will allow other specific engines that are essentially identical to

be considered nonroad engines. We believe this approach is reasonable in these circumstances for the reasons delineated above.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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. 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.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities, in particular because this rule change does not mandate that farms replace any existing engine.

D. 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 revising certain provisions of the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

E. 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