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Part IV

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40 CFR Part 80

Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the St. Louis, Missouri Moderate Ozone Nonattainment Area; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6306–1]

Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program To the St. Louis, Missouri Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 211(k)(6) of the Clean Air Act, as amended (Act), the Administrator of EPA must require the sale of reformulated gasoline (RFG) in ozone nonattainment areas upon the application of the governor of the state in which the nonattainment area is located. This final action extends the Act's prohibition against the sale of conventional (i.e., non-reformulated) gasoline in RFG areas to the St. Louis, Missouri moderate ozone nonattainment area. The Agency will implement this prohibition on May 1, 1999, for all persons other than retailers and wholesale purchaser-consumers (i.e., refiners, importers, and distributors). For retailers and wholesale purchaser-consumers, EPA's final action implements the prohibition on June 1, 1999, as requested by Governor Mel Carnahan of the state of Missouri. On June 1, 1999, the St. Louis ozone nonattainment area will be a covered area for all purposes in the federal RFG program.

DATES: This final rule is effective February 25, 1999.

ADDRESSES: Materials relevant to this document have been placed in Docket A–98–38. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket materials.

An identical docket is also located in EPA's Region VII office in Docket A–98–38. The docket is located at 726 Minnesota Avenue, Kansas City, Kansas, 66101. In Region VII contact Wayne G. Leidwanger at (913) 551–7607 or Royan Teter at (913) 551–7609. Documents may be inspected from 9:00 a.m. to noon and from 1:00—4:00 p.m. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Karen Smith at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 564–9674.

SUPPLEMENTARY INFORMATION: Under section 211(k)(6) of the Clean Air Act, as amended (Act), the Administrator of EPA must require the sale of reformulated gasoline in an ozone nonattainment area classified as Marginal, Moderate, Serious, or Severe upon the application of the governor of the state in which the nonattainment area is located. This final action extends the prohibition set forth in section 211(k)(5) against the sale of conventional (i.e., non-reformulated) gasoline to the St. Louis, Missouri moderate ozone nonattainment area. The Agency is finalizing the implementation date of the prohibition described herein to take effect on May 1, 1999 for all persons other than retailers and wholesale purchaser-consumers (*i.e.,* refiners, importers, and distributors). For retailers and wholesale purchaser-consumers, EPA is finalizing the implementation of the prohibition described herein to take effect June 1, 1999 as requested by Governor Mel Carnahan of the state of Missouri. As of the implementation date for retailers and wholesale purchaser-consumers, the St. Louis ozone nonattainment area will be a covered area for all purposes in the federal RFG program.

The final preamble and regulatory language are also available electronically from the EPA internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. A copy of the **Federal Register** version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes these final notices on the secondary Web site listed below.

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Regulated entities: Entities potentially regulated by this action are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

Category/examples regulated entities	U.S. NAICS title	NAIC code
Petroleum Refiners	Petroleum Refiners	324110.
Motor vehicle gasoline distributors	Petroleum Bulk Stations and Terminals	422710.
Motor vehicle gasoline distributors	Petroleum and Petroleum Products Wholesalers	4227, 422720.
Retailers	Gasoline Stations	447, 4471.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The remainder of this final rulemaking is organized in the following sections:

I. Background

A. Clean Air Act Opt-in Provision

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated (''conventional gasoline'') in the nine worst ozone nonattainment areas beginning January 1, 1995. Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline (RFG) program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 through 1989.[1] Under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the RFG program, such as Sacramento, California. EPA first published final regulations for the RFG program on February 16, 1994. *See* 59 FR 7716.

Other ozone nonattainment areas may be included in the program at the request of the Governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a Governor, EPA shall apply the prohibition against selling conventional gasoline in ''any area in the State classified under subpart 2 of Part D of Title I as a Marginal, Moderate, Serious or Severe'' ozone nonattainment area. Subparagraph 211(k)(6)(A) further provides that EPA is to apply the prohibition as of the date the Administrator ''deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later.'' In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is ''insufficient domestic capacity to produce'' RFG. Finally, EPA is to publish a governor's application in the **Federal Register**.

Although section 211(k)(6) provides EPA discretion to establish the effective date for this prohibition to apply to such areas, EPA does not have discretion to deny a Governor's request. Therefore, the scope of EPA's Notice of Proposed Rulemaking (NPRM) was limited to proposing an effective date for St. Louis' opt-in to the RFG program. EPA solicited comments addressing the proposed implementation date and stated in the NPRM that it was not soliciting comments that supported or opposed St. Louis' participating in the RFG program.

B. EPA Procedures and Missouri Opt-in Request

EPA received an application July 13, 1998 from the Honorable Mel Carnahan, Governor of the State of Missouri, for the St. Louis moderate ozone nonattainment area to be included in the reformulated gasoline program. The Governor requested an implementation date of June 1, 1999. EPA published the Governor's letter in the **Federal Register**, as required by section 211(k)(6). On September 15, 1998 (63 FR 49317) EPA proposed to extend the RFG program to the St. Louis moderate ozone nonattainment area by setting two implementation dates. EPA proposed an effective date of May 1, 1999 for refiners, importers, and distributors and June 1, 1999 for retailers and wholesale purchaser-consumers. Today EPA is taking final action on that NPRM and establishing these effective dates for St. Louis' opt in to the RFG program.

After publication of the NPRM, EPA did not receive a request for a public hearing. Since EPA did not receive a request for a public hearing, the scheduled hearing was canceled and the comment period ended on October 15, 1998.

II. Action

Pursuant to the governor's letter and the provisions of section 211(k)(6), EPA is today adopting regulations that apply the prohibitions of subsection 211(k)(5) to the St. Louis, Missouri moderate ozone nonattainment area as of May 1, 1999, for all persons other than retailers and wholesale purchaser-consumers. This date applies to the refinery level and all other points in the distribution system other than the retail level. For retailers and wholesale purchaser-consumers, EPA is adopting regulations that apply the prohibitions of subsection 211(k)(5) to the St. Louis, Missouri ozone nonattainment area on June 1, 1999. As of the June 1, 1999 implementation date, this area will be treated as a covered area for all purposes of the federal RFG program.

EPA believes the implementation dates adopted today not only respond to the Governor's request, but also achieve a reasonable balance between requiring the earliest possible start date to achieve air quality benefits in St. Louis and providing adequate lead time for industry to prepare for program implementation. These dates are consistent with the State's request that EPA require that RFG be sold in the St. Louis area at the beginning of the high ozone season, which begins June 1. These dates will provide environmental benefits by allowing St. Louis to achieve VOC reduction benefits for the 1999 VOC control season.

EPA has concluded, based on its analysis of available information, including public comments received and discussed below (see III. Response to Comments), that the refining and distribution industry's capacity to supply federal RFG to St. Louis this summer exceeds the estimated demand. EPA has also concluded that the implementation dates adopted today provide adequate lead time to industry to set up storage and sales agreements to ensure supply of RFG to the St. Louis moderate ozone nonattainment area.

III. Response to Comments

Only one party, an association representing the interests of independent gasoline marketers, submitted comments on the proposed rulemaking. The comments addressed three particular concerns. EPA is responding to each of these comments in this section.

A. Comments Regarding Gasoline Supply

First, the commentor stated that EPA ignored the fact that the St. Louis metropolitan statistical area (MSA) extends into Illinois, an area that has its own summertime gasoline control (a Reid Vapor Pressure control of 7.2 psi). The commentor expressed concern that gasoline shortages in the St. Louis area could result from EPA's granting of the opt-in request, due to the need to supply three different gasolines (conventional gasoline, reformulated gasoline and conventional gasoline meeting the IL summertime gasoline standard) to the St. Louis MSA and surrounding counties.

Section 211(k)(6)(A) provides the Administrator broad discretion to establish an appropriate effective date for opt-in areas. The effective date shall be no later than one year after the governor's request to opt in is received, which in this case would be July 13, 1999. Factors EPA generally considers in setting effective dates include, but are not limited to, supply logistics, cost, potential price spikes, the number of current and potential suppliers for that market, whether such suppliers have experience producing RFG or the capability to produce RFG, intent of

[1] Applying these criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee.

suppliers to withdraw from the market, availability of adequate gasoline volumes, and the amount of lead time needed by suppliers and the distribution industry to set up storage and sales agreements to ensure supply. By evaluating these factors, EPA can make a determination as to whether industry's capacity to supply RFG for an opt-in area meets or exceeds the demand.

As the commentor noted, under section 211(k)(6)(B) the Administrator may determine, after consultation with the Secretary of Energy, that there is ''insufficient domestic capacity'' to produce RFG. EPA is not making such a determination in this case. EPA has consulted with the Department of Engergy (DOE) and has concluded that there is adequate domestic capability to produce RFG to meet the current demand nationwide as well as the addition of the St. Louis area in the summer of 1999. The commentor provided no evidence to the contrary and no comments were received from bulk terminal operators concerned about storage capacity or supply.

Based on the Energy Information Administration's (EIA) preliminary calculations (Docket A–98–38, II–D–02) using survey data and demand estimates, there are adequate RFG supplies for the areas currently considering opting in to the program. An estimated 63 thousand barrels per day of gasoline are required in St. Louis which could be covered by industry's current capacity to supply roughly an extra 300 thousand barrels per day of RFG in the eastern half of the U.S.

EIA's information also demonstrates that St. Louis has the capacity to store about 25 days supply of gasoline and distillate, well within the industry standard of between 20 and 29 days supply of gasoline and distillate. The area has a 3,200 thousand-barrel storage capacity.

The Missouri Department of Natural Resources convened a fuels summit in June 1998 to discuss various fuels options. EPA notes that no comments regarding supply concerns were made during the fuels summit held in St. Louis June 15–16, 1998. The final report issued by the facilitator of the fuels summit described the stakeholders' conclusions that RFG offered the benefit of continuity and stability, that the product is already in production, and that surplus capacity is available (see Docket A–98–38, II–D–03).

The commentor expressed concern that the price differential between gasoline meeting Illinois' summertime RVP standard and RFG would lead to marketers providing different gasolines to meet each requirement. EPA data from the 1998 RFG compliance surveys indicates that RFG sold in the southern region of the country, on average, meets the 7.2 p.s.i standard that applies in East St. Louis. In any event, EPA believes that refiners can produce a single fuel which will meet both the low RVP requirements of the East St. Louis area and the fuel specifications of the RFG program. In addition, EPA notes that, in this action, it is simply setting an effective date for the St. Louis opt in, and does not have the discretion under Section 211(k)(6) to deny the governor's request to opt in. Therefore, even if a price differential would result in marketers' choosing to provide different gasolines to the Missouri portion of the St. Louis metropolitan area than to the Illinois portion, that result would not provide a basis for EPA's denial of the governor's request. Moreover, EPA is setting the effective date for the opt in close to one year from receipt of the governor's request. Postponing the effective date for two months (i.e., to approximately one year from receipt of the request) would likely not affect any price differential that may exist, and would result in the loss of important and needed emissions reductions for the summer of 1999.

B. Comments on State Oxygen Content Standard

The commentor's second issue of concern is Missouri's interest in modifying or adopting a state regulation to increase the oxygenate content in RFG during the winter months for the five Missouri counties which have opted into the program. The commentor states that permitting Missouri to establish a 2.7% oxygenate requirement would essentially mandate the use of ethanol during the winter months. The commentor argues that this action would violate the Clean Air Act Amendments and also violates EPA's own stated policy regarding federal preemption and neutrality in oxygenate use.

Missouri's adoption of state fuel controls in addition to its opt-in to RFG is not relevant to establishing the effective date of the RFG program in St. Louis, which is the action being taken today. The agency does not have discretion under the Act to second guess the state's policy choice and deny the opt-in. Moreover, EPA has no authority to approve or disapprove a state fuel regulation if the state does not seek approval for the regulation through a section 211(c)(4)(C) waiver or ask that the regulation be approved into their state implementation plan. Therefore, the issue of whether the state decides to independently pursue an oxygenate requirement on top of the RFG program is not an issue in this rulemaking.

C. Comments on Regulatory Flexibility Analysis

Finally, the commentor questions EPA's decision not to prepare a regulatory flexibility analysis in connection with this rulemaking. The commentor argues that if RFG is introduced in the Missouri counties of the St. Louis MSA without an examination of the potential supply impact on surrounding ozone nonattainment areas and attainment counties, many small businesses, including independent gasoline marketers, will be adversely affected and gasoline prices will rise.

As noted in Section VI. B of this final rule, EPA has determined that its establishment of the effective date of May 1, 1999, for the St. Louis RFG opt in does not have a significant economic impact on a substantial number of small businesses. In promulgating the RFG and anti-dumping regulations, the Agency analyzed the impact of the regulations on small businesses. The Agency concluded that the regulations would not significantly affect small entities, such as gasoline blenders, terminal operators or service stations. *See* 59 FR 7810–7811 (February 16, 1994). Moreover, all businesses, large and small, maintain the option to produce conventional gasoline to be sold in areas not covered by the RFG program. In addition, EPA does not have discretion to deny the governor's opt in request, but simply to set an effective date as described in Section 211(k)(6). Therefore, the impact relevant for this action is the impact, if any, on small entities of setting the effective date of May 1, 1999, not the impact of the State's decision to opt into the RFG program.

The association commenting on this rulemaking challenged EPA's assertion in the NPRM that it is not necessary to prepare an additional regulatory flexibility analysis in connection with this rule. The association, which represents small independent gasoline marketers (retail outlets), argued that these small entities would experience a significant negative economic impact as a result of this proposed rule. They went on to say that if the EPA does not perform a more in-depth analysis of the gasoline supply consequences of the Missouri opt-in petition to assure that available supplies of all three St. Louis area fuels will be adequate, then the economic impact on a substantial number of small entities will be enormous.

In response to this comment with respect to EPA's responsibility under the Regulatory Flexibility Act, it is important to first outline the requirements to refiners, bulk terminal operators and small retailers under the RFG program.

Refiners carry the greatest level of burden when an area chooses to opt into the RFG program. Refiners must carry out a program of independent sample collection and analysis to establish the gasoline parameters reported to EPA. The independent lab must collect every sample. However, the refiner can have the lab test 100% of the samples or 10% of the samples and test the remainder themselves.

Refiners are also required to meet regulations for segregating RFG from conventional gasoline and other blendstocks which may require some additional tankage. Product transfer documents must accompany RFG batches to assure its compliance with EPA regulations. It is important to note that no refiners commented on this rulemaking. In fact, during the fuel summit the RFG option was highlighted for its ease of implementation (*See* Air Docket, A–98–39, II–D–03).

Bulk terminals have some oversight regulations including the maintenance of product transfer documents for up to five years. Bulk terminals are also responsible for segregation of RFG from conventional gasoline and other blendstocks. Bulk terminals are required to follow EPA regulations for the transition from winter time to summer time gasoline. As the presumptive liability is the same for refiners, terminal owners and retailers, some bulk terminals may choose to conduct their own quality assurance testing. No bulk terminal operators or owners commented on this final rule.

It remains EPA's position that compliance with the requirements of the RFG rule creates only minimal burdens for gasoline retailers. Retailers have no reporting requirements, although they are required to maintain product transfer documents for five years. Maintaining product transfer documents is a customary business practice as the same documents are maintained for relevant tax purposes. Unlike other parties, retailers have no quality assurance testing requirements. Among other things, retailers are required to ensure a smooth transition between winter time and summer time gasoline, however this requirement is also necessary under the requirements of EPA's volatility regulations so no modification to current practices is necessary. Retailers are also prohibited from commingling RFG containing Methyl Tertiary Butyl Ether (MTBE) with RFG containing ethanol. Retailers must also assure that conventional gasoline (CG) is not sold in an opt-in area. This can be achieved by carefully monitoring product transfer documents and refusing any gasoline which is labeled as conventional gasoline.

For the St. Louis area in particular, the Agency does not agree with the commentor's arguments regarding supply concerns and their effect on small entities. As described in Section III.A. of this notice, EPA has concluded that there will be sufficient supplies of RFG to meet the demand in St. Louis. Our most recent analysis indicates that the St. Louis area maintains a capacity to store 4.63 million barrels of product at five companies operating bulk terminal facilities in the St. Louis area.[2] Since the commentor's concern about small entity impacts is based on concerns about adequate supplies, EPA's conclusion that adequate supply does exist supports the Agency's finding that setting the effective date of May 1, 1999, for the St. Louis opt in does not have a significant impact on a substantial number of small entities. A complete analysis of the effect of the RFG/anti-dumping regulations on small businesses is contained in the Regulatory Flexibility Analysis which was prepared for the RFG and anti-dumping rulemaking, and can be found in the docket for that rulemaking (Docket No. A–92–12).

IV. Environmental Impact

The federal RFG program provides reductions in ozone-forming VOC emissions, air toxics, and starting in 2000, oxides of nitrogen (NO_X). Reductions in VOCs and NO_X are environmentally significant because they lead to reductions in ozone formation and in secondary formation of particulate matter, with the associated improvements in human health and welfare. Exposure to ground-level ozone (or smog) can cause respiratory problems, chest pain, and coughing and may worsen bronchitis, emphysema, and asthma. Studies suggest that long-term exposure (months to years) to ozone can damage lung tissue and may lead to chronic respiratory illness. Reductions in emissions of toxic air pollutants are environmentally important because they carry significant benefits for human health and welfare primarily by reducing the number of cancer cases each year.

Missouri's modeling estimates that once federal RFG is required to be sold in St. Louis, VOC emissions will be cut by an additional 5.53 tons/day over the VOC reductions from its current low volatility (RVP) gasoline requirement of 7.0 psi. In addition, all vehicles will have improved emissions and the area will also get reductions in toxic emissions.

V. Administrative Designation and Regulatory Analysis

A. Executive Order 12866

Under Executive Order 12866,[3] 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 of 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 this Executive Order.[4]

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.

B. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. EPA has also determined that this rule would not have a significant economic impact on a substantial number of small entities.

In promulgating the RFG and the related anti-dumping regulations, the Agency analyzed the impact of the regulations on small businesses. The Agency concluded that the regulations could have some economic effect on a substantial number of small refiners, but that the regulations would not significantly affect other small entities, such as gasoline blenders, terminal operators, service stations and ethanol blenders. *See* 59 FR 7810–7811 (February 16, 1994). A complete

[2] The Petroleum Terminal Encyclopedia, 1997, published by Oil Price Information Service

[3] *See* 58 FR 51735 (October 4, 1993).

[4] *Id.* at section 3(f)(1)–(4).

analysis of the effect of the RFG/anti-dumping regulations on small businesses is contained in the Regulatory Flexibility Analysis which was prepared for the RFG and anti-dumping rulemaking, and can be found in the docket for that rulemaking (Docket No. A–92–12).

Today's rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the St. Louis ozone nonattainment area, and gasoline distributors and retail stations in those areas. EPA has determined that, because of their location, the vast majority of small refiners would be unaffected by the RFG requirements. Most small refiners are located in the mountain states or in California, which has its own RFG program, therefore, the vast majority of small refiners are unaffected by the federal RFG requirements finalized today.

Other small entities, such as gasoline distributors and retail stations located in St. Louis, which will become a covered area as a result of today's action, will be subject to the same requirements as those small entities which are located in current RFG covered areas. The St. Louis area is currently served by five companies operating bulk terminal facilities in the St. Louis area. EPA has not evaluated whether any of these companies would be considered small under the RFA. Nonetheless, given the minimal regulatory burdens and the small number of bulk terminal companies potentially subject to these RFG requirements, EPA believes today's action will not result in a significant impact on a substantial number of small bulk terminals. As for gasoline retailers, as stated earlier, EPA's position remains that the RFG rule creates only minimal burdens. The EPA believes that even in the aggregate (i.e., considering all impacts on all of the types of business potentially subject to regulation by today's action), approval of the St. Louis opt-in request will not result in a significant impact on a substantial number of small entities. Based on the foregoing information, EPA certifies that this final rule does not have a significant adverse impact on a substantial number of small entities.

C. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's final rule does not create a mandate for any tribal governments. The rule does not impose any enforceable duties on these entities. Today's rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the St. Louis ozone nonattainment area, and gasoline distributors and retail stations in those areas. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), P.L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that today's rule does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

F. Paperwork Reduction Act

This action does not add any new requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements that apply to the RFG/anti-dumping program, and has assigned OMB control number 2060–0277 (EPA ICR NO. 1591.10).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any

previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

G. Children's Health Protection

This rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62FR19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. This action will reduce Nox and VOC emissions which are precursors to ozone. This action will benefit children.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so 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) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Statutory Authority

The Statutory authority for the final action today is granted to EPA by sections 211(c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7545 (c) and (k) and 7601.

J. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to extend the federal RFG program to the St. Louis ozone nonattainment area must be filed in the United States Court of Appeals for the appropriate circuit by [date of Administrator's signature + 60 days]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review my be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

K. Submission to Congress

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

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

Dated: February 25, 1999.

Carol M. Browner,

Administrator.

40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 is revised to read as follows:

Authority: Secs. 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 adding paragraph (n) to read as follows:

§ 80.70 Covered areas.

* * * * *

(n) The prohibitions of section 211(k)(5) of the act will apply to all persons other than retailers and wholesale purchaser-consumers on May 1, 1999. The prohibitions of section 211(k)(5) of the act will apply to retailers and wholesale purchaser-consumers on June 1, 1999. As of the effective date for retailers and wholesale purchaser-consumers, the St. Louis, Missouri ozone nonattainment area is a covered area. The geographical extent of the covered area listed in this paragraph shall be the nonattainment boundaries for the St. Louis ozone nonattainment area as specified in 40 CFR 81.326.

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