

TABLE 1 TO SUBPART III OF PART 63—OPERATING LIMITS FOR CAPTURE SYSTEMS AND ADD-ON CONTROL DEVICES

For the following device * * *	You must meet the following operating limit * * *	And you must demonstrate continuous compliance with the operating limit by
7. Emission capture system that is not a PTE.	a. The average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.3167(f). This applies only to capture devices that are not part of a PTE that meets the criteria of § 63.3165(a) and that are not capturing emissions from a downdraft spray booth or from a flashoff area or bake oven associated with a downdraft spray booth.	i. Collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.3168(g); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

**Subpart PPPP—[Amended]**

■ 12. Section 63.4481 is amended by revising paragraph (c) introductory text and adding paragraph (c)(17) to read as follows:

**§ 63.4481 Am I subject to this subpart?**

\* \* \* \* \*

(c) This subpart does not apply to surface coating or a coating operation that meets any of the criteria of paragraphs (c)(1) through (17) of this section.

\* \* \* \* \*

(17) Screen printing.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 80**

[EPA-HQ-OAR-2006-0841; FRL-8304-1]

RIN 2060-A034

**Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to Illinois Portion of the St. Louis, Illinois-Missouri Ozone Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** Under section 211(k)(6) of the Clean Air Act, the Administrator of EPA shall require the sale of reformulated gasoline (RFG) 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 Act's prohibition against the sale of conventional gasoline (*i.e.*, gasoline that is not RFG) to the Illinois portion of the St. Louis, Illinois-Missouri moderate ozone nonattainment area. The Agency

will implement this prohibition for refiners and all other persons in the fuel distribution system other than retailers and wholesale purchaser-consumers on June 1, 2007. For retailers and wholesale purchaser-consumers, EPA's final action implements the prohibition on July 1, 2007. As of the compliance date for retailers and wholesale purchaser-consumers, this area will be treated as a covered area for all purposes of the Federal RFG program.

**DATES:** This final rule is effective April 20, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2006-0841. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Kurt Gustafson, Transportation and Regional Programs Division (Mail Code 6406J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-343-9219; fax number: 202-343-2800; e-mail address: [gustafson.kurt@epa.gov](mailto:gustafson.kurt@epa.gov).

**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 Illinois portion of the St. Louis, Illinois-Missouri moderate ozone nonattainment area. For all persons other than retailers and wholesale purchaser-consumers (*i.e.*, refiners, importers, and distributors), this rule establishes the implementation date of the prohibition in Section 211(k)(5) as June 1, 2007. For retailers and wholesale purchaser-consumers, this rule establishes the implementation date of the prohibition in section 211(k)(5) on July 1, 2007. As of the implementation date for retailers and wholesale purchaser-consumers, the Illinois portion of the St. Louis, Illinois-Missouri 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 **Federal Register** Web site or via the docket at the <http://www.regulations.gov> site listed above.

**General Information***Does This Action Apply to Me?*

This action may affect you if you produce, distribute, or sell gasoline for use in the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

Category	NAICS Codes <sup>a</sup>	SIC Codes <sup>b</sup>	Examples of potentially regulated entities
Industry .....	324110	2911	Petroleum Refiners.
Industry .....	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	
Industry .....	484220	4212	Gasoline Carriers.
	484230	4213	

<sup>a</sup> North American Industry Classification System (NAICS).

<sup>b</sup> Standard Industrial Classification (SIC) system code.

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. Opt-In Provision/Process
  - B. EPA Procedures and Illinois Opt-In Request
- II. Final Action
- III. Response to Comments
- IV. Environmental Impact
- V. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
  - C. Paperwork Reduction Act
  - D. Regulatory Flexibility Act
  - E. Unfunded Mandates Reform Act
  - F. Executive Order 13132: Federalism
  - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - H. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
  - I. Executive Order 13211: Actions That Significantly Effect Energy Supply
  - J. National Technology Transfer Advancement Act
  - K. Statutory Authority
  - L. Congressional Review Act

**I. Background**

*A. Opt-In Provision/Process*

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 conventional gasoline (*i.e.*, gasoline that EPA has not certified as reformulated) in certain 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.<sup>1</sup> In addition, under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also included in the RFG program. EPA first published final regulations for the RFG program on February 16, 1994. See 59 FR 7716.

Certain 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. EPA is to publish a

<sup>1</sup> 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.

**Governor's application in the Federal Register.**

*B. EPA Procedures and Illinois Opt-In Request*

EPA received an application July 10, 2006 from the Honorable Rod R. Blagojevich, Governor of the State of Illinois, for the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area to be included in the reformulated gasoline program. The State indicated that the RFG program would provide the area with needed reductions in ozone-forming emissions and air toxics. The Governor requested a January 1, 2007 implementation date. EPA published the Governor's letter in the **Federal Register**, as required by section 211(k)(6). On December 27, 2006 (71 FR 77690) EPA proposed to extend the RFG program to the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area by setting two implementation dates. EPA requested comment on start dates and proposed an effective date of May 1, 2007 for refiners, importers, and distributors and June 1, 2007 for retailers and wholesale purchaser-consumers.

Today EPA is taking final action on that NPRM and establishing effective dates for opt in of the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area to the RFG program. For all persons other than retailers and wholesale purchaser-consumers (*i.e.*, refiners, importers, and distributors), this rule establishes the implementation date of the prohibition in section 211(k)(5) as June 1, 2007. For retailers and wholesale purchaser-consumers, this rule establishes the implementation date of the prohibition in Section 211(k)(5) as July 1, 2007. As of the implementation date for retailers and wholesale purchaser-consumers, the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area will be a covered area for all purposes in the Federal RFG program.

After publication of the NPRM, EPA received a request for a public hearing. EPA published a notice in the **Federal**

**Register** announcing that a public hearing would be held on February 21, 2007, in Chicago, Illinois, and extending the comment period until March 23, 2007 (30 days after the hearing). The transcript of the public hearing has been placed in the docket for this action.

## II. Final Action

The Federal RFG program includes seasonal requirements. Summertime RFG must meet certain VOC control requirements to reduce emissions of VOCs, an ozone precursor. Under the RFG program, there are two compliance dates for VOC-controlled RFG. At the refinery level, and all other points in the distribution system other than the retail level, compliance with RFG VOC-control requirements is required from May 1 to September 15. At the retail level (service stations and wholesale purchaser-consumers), compliance is required from June 1 to September 15. See 40 CFR 80.78 (a)(1)(v). Pipeline requirements and demands for RFG from the supply industry drive refineries to establish their own internal compliance date earlier than May so that they can then assure that terminals are capable of meeting the RFG VOC-control requirements by May 1.

EPA regulations specify that the RFG covered areas of certain states that are in "VOC control Region 1", while those of other states are in "VOC control Region 2." VOC requirements for the RFG sold in these Regions differ somewhat. EPA regulations also provide that RFG in covered areas which are partially in VOC control Region 1 and partially in VOC control Region 2 are included in VOC control Region 1, except in the case of the Philadelphia-Wilmington-Trenton CMSA which shall be included in VOC control Region 2 (see 40 CFR 80.71(c)). Since the St. Louis, Illinois-Missouri ozone nonattainment area is partially in VOC control Region 2 and partially in VOC control Region 1, the Illinois portion of the St. Louis, Illinois-Missouri nonattainment area opting into the program under this action shall be included in VOC control Region 1. This means that RFG in the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area must comply with the emission standards for VOC control for Region 1 which are slightly more stringent than those for Region 2 (see 40 CFR 80.41).

Based on our evaluation of the appropriate lead time and start date(s) and 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 Illinois portion of the St.

Louis, Illinois-Missouri ozone nonattainment area for all persons other than retailers and wholesale purchaser-consumers as of June 1, 2007. 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 Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area on July 1, 2007. As of the implementation date for retailers and wholesale purchaser-consumers, this area will be treated as a covered area for all purposes of the Federal RFG program.

The application of the prohibition of section 211(k)(5) to the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area could take effect no later than July 10, 2007, under section 211(k)(6)(A), which stipulates that the effective program date must be no "later than January 1, 1995 or 1 year after [the Governor's] application is received, whichever is later." The Governor of Illinois's request was dated July 10, 2006.

EPA believes the implementation dates adopted today achieve a reasonable balance between requiring the earliest possible start dates to achieve air quality benefits for the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area and providing adequate lead time for industry to prepare for program implementation. These dates will provide environmental benefits by allowing the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area to achieve VOC reduction benefits for most of the 2007 VOC control season. As in other fuel rules, EPA believes it is appropriate to apply new requirements to refiners and distributors thirty days prior to the date that they are applicable to retailers and wholesale purchasers-consumers. This allows the retailers and wholesale purchasers-consumers time to empty their tanks of the older product they may have purchased immediately before the implementation date for refiners and distributors.

EPA has concluded, based on its analysis of available information, that the refining and distribution industry's capacity to supply Federal RFG to the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area 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 East St. Louis ozone nonattainment area.

## III. Response to Comments

Several parties including the State of Illinois, the State of Missouri, BP, and the Illinois Petroleum Council submitted comments supporting the proposed effective dates. Four parties, an association representing the interests of Independent gasoline marketers, and three retail marketing companies, submitted adverse comments on the proposed rulemaking. The adverse comments also addressed issues that were outside the scope of the proposal (e.g., whether or not RFG should even be implemented). EPA is responding to relevant portions of the adverse comments in this section.

First, the commenters 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 additional reformulated gasoline to the Illinois portion of the St. Louis, Illinois-Missouri nonattainment area (the Missouri portion already uses RFG). The commenters indicated that difficulties already exist in obtaining RFG for the Missouri portion of the St. Louis ozone nonattainment area, and that these difficulties would get worse with additional demand for RFG if EPA finalized its proposed opt-in for the Illinois portion of the St. Louis nonattainment area. Some of the commenters surmised that supply in the area benefits from two supply options: supplies of RFG being available on the Missouri side and low RVP fuel being available on the Illinois side, both of which can be supplied to East St. Louis.

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 10, 2007, unless EPA determines that there is insufficient domestic capacity. Factors EPA generally considers in setting effective dates include, but are not limited to, supply logistics, 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 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.

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. Despite the comments received by marketers and retailers, described above, EPA is not making such a determination in this case. EPA has consulted with the Department of Energy (DOE) and with refiners supplying gasoline to the area of concern, 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 Illinois portion of the St. Louis, Illinois-Missouri nonattainment area in the summer of 2007.

EPA notes that no comments were received from refiners or bulk terminal operators concerned about storage capacity or supply. We note in the docket that EPA has spoken with the major suppliers to the area and none have expressed supply concerns. To the contrary, the Illinois Petroleum Council submitted written comment in support of the proposal. The elimination of the need to supply an additional grade of fuel (*i.e.* 7.2 RVP fuel now required in East St. Louis) will not adversely impact supply as it is our understanding from consultation with these refiners that the capacity which is currently used to produce the 7.2 psi blend will be converted to produce additional RFG supplies for the Region.

The commenters also expressed concern that the price differential between reformulated gasoline sold in the Illinois side of the St. Louis covered area and that sold on the Missouri side would impact marketers. They also point to a vehicle owner's ability to refuel in either conventional gas areas or the Missouri RFG area where they may expect a lower price. EPA notes that, in this action, it is simply setting an effective date for the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area, 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 some drivers choosing to refuel in the Missouri portion of the nonattainment area, or a non-covered area, versus the Illinois side, 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. Additional significant delay is not permitted under the Clean Air Act absent a finding of inadequate supply.

As discussed above, EPA has determined that there will not be any RFG supply issues for the opt in area covered by today's rule. In addition, postponing the effective date would likely not affect, in the long-term, any price differential that may exist, and would result in the loss of important and needed emissions reductions for the summer of 2007.

#### IV. Environmental Impact

The Federal RFG program typically results in reductions in ozone-forming emissions and air toxics. Reductions in ozone precursors are environmentally significant because they lead to reductions in ozone formation, 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. Animal 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.

Illinois EPA analyzed the emissions benefits which could be achieved by switching from 7.2 RVP fuel to RFG. Using the U.S. EPA's MOBILE6a model, Illinois projected that year 2010 motor vehicle VOC emissions could be reduced by 5.4 percent and carbon monoxide by 2.2 percent. The use of RFG in the Illinois portion of the St. Louis, Illinois-Missouri nonattainment area would also decrease benzene emissions by 75 tons per year, which equates to a 44 percent reduction from motor vehicles. On a total toxic emissions basis, the use of RFG would reduce emissions of the five primary motor vehicle related air toxics by 63 tons per year in 2010, a total percentage reduction of 23.5 percent.

#### V. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. EPA notes that the economic impacts of the RFG program were assessed in EPA's Regulatory Impact Analysis for the 1994 RFG rules. See 59 FR 7810-7811 (February 16, 1994). In that analysis the

production cost of RFG was estimated to be 4 to 8 cents more per gallon than conventional gasoline. Since conventional gas regulations have evolved since that time to be more like RFG and since the State has a low RVP requirement that also more closely resembles RFG, EPA expects the costs of RFG in the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area to be at the low end or lower than this range. Nonetheless, using the 4 to 8 cent per gallon estimate, the cost of the program to the area would be significantly lower than the trigger for a significant regulatory action.

##### B. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

##### C. Paperwork Reduction Act

This action does not impose any new information collection burden. Refiners are currently subject to the information collection requirements for Federal reformulated gasoline and conventional gasoline. Today's rule adds an additional ozone nonattainment area as a Federal RFG covered area; the rule does not change the information collection requirements already associated with Federal RFG. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (see 59 FR 7716, February 16, 1994), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number

number 2060-0277 (EPA ICR No. 1951.21). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

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 in 40 CFR are listed in 40 CFR part 9.

#### *D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In promulgating the RFG and the related anti-dumping regulations for conventional gasoline, the Agency

analyzed the impact of the regulations on small businesses. The Agency concluded that the regulations may possibly have some economic effect on a substantial number of small refiners, but that the regulations may 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). As stated in the preamble to the final RFG/anti-dumping rule, exempting small refiners from the RFG regulations would result in the failure of meeting CAA standards. 59 FR 7810. However, since most small refiners are located in the mountain states or in California, which has its own RFG program, the vast majority of small refiners are unaffected by the Federal RFG requirements (although all refiners of conventional gasoline are subject to the anti-dumping requirements). Moreover, all businesses, large and small, maintain the option to produce conventional gasoline to be sold in areas not obligated by the Act to receive RFG or those areas which have not chosen to opt into the RFG program. 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. The docket number is: EPA Air Docket A-92-12.

Today's action will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the Illinois-Missouri ozone nonattainment area, and gasoline distributors and retail stations in those areas. As discussed above, EPA determined that, because of their location, the vast majority of small refiners would be unaffected by the RFG requirements. For the same reason, most small refiners will be unaffected by today's action. Other small entities, such as gasoline distributors and retail stations located in the area that 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 Agency did not find the RFG regulations to significantly affect these entities. Based on this, EPA certifies that this final rule will not have a significant adverse impact on a substantial number of small entities.

#### *E. 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, EPA 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 in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA 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 EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Although EPA does not believe that UMRA imposes requirements for this rulemaking, EPA notes that the environmental and economic impacts of the RFG program were assessed in EPA's Regulatory Impact Analysis for the 1994 RFG rules.

EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule would only impose requirements on certain refiners and other entities in the gasoline distribution system, and not small governments. The requirements of the rule will be enforced by the Federal

government at the national level. Thus, a small government agency plan did not need to be developed under section 203 of the Unfunded Mandates Reform Act.

#### F. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA 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."

This 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 rule would only impose requirements on certain refiners and other entities in the gasoline distribution system, and not on States. The requirements of the rule will be enforced by the Federal government at the national level. Thus, Executive Order 13132 does not apply to this rule.

#### G. 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 9, 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 direct final rule does not have tribal implications, as specified in Executive Order 13175. Today's direct final rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the East St. Louis ozone nonattainment area, and gasoline distributors and retail stations in those areas. Thus, Executive Order 13175 does not apply to this rule.

#### H. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

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 EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must 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 the Agency.

This final rule is not subject to the EO because it is not economically significant as defined in EO 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

#### I. Executive Order 13211: Actions That Significantly Effect Energy Supply

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.

#### J. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note), directs EPA 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 NTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### K. Statutory Authority

The Statutory authority for the action finalized 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.

#### L. 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. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective April 20, 2007.

#### List of Subjects in 40 CFR Part 80

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

Dated: April 18, 2007.

**Stephen L. Johnson**,  
Administrator.

■ 40 CFR part 80 is amended as follows:

#### PART 80—[AMENDED]

■ 1. The authority citation for part 80 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7545, 7542, and 7601(a).

■ 2. Section 80.70 is amended by adding paragraph (k)(2) to read as follows:

#### § 80.70 Covered areas.

\* \* \* \* \*

(k) \* \* \*

(2) The Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area is a covered area beginning on July 1, 2007. The prohibitions of section 211(k)(5) of the Clean Air Act apply to all persons other than retailers and wholesale purchaser-consumers in the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area beginning on June 1, 2007. The prohibitions of section 211(k)(5) of the Clean Air Act apply to retailers and wholesale purchaser-consumers in the Illinois portion of the St. Louis, Illinois-Missouri ozone nonattainment area beginning July 1, 2007.

\* \* \* \* \*

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