

CARB's submittal is titled, "Bay Area Winter Emissions Inventory for Primary PM_{2.5} & PM Precursors: Year 2010."

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2006-0318; FRL-9907-91-OAR]

RIN 2060-AN63

Regulation of Fuel and Fuel Additives: Reformulated Gasoline Requirements for the Atlanta Covered Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final rule, the Environmental Protection Agency (EPA) has determined that the Atlanta metro area is not a federal reformulated gasoline (RFG) covered area and, therefore, that there is no requirement to use RFG in the Atlanta area. Atlanta is the only RFG covered area formerly classified as a severe ozone nonattainment area under the 1-hour ozone National Ambient Air Quality Standard that was redesignated to

attainment for that standard before its revocation, and at a time when it was designated as nonattainment for the 8-hour ozone standard with a classification less than severe. EPA has determined that the statute is ambiguous as to whether RFG is required in this situation. EPA believes that the comprehensive planning conducted by the State through the SIP process, the array of regulatory tools at the State's disposal, and the current limited emissions benefits of RFG in Atlanta as compared to the current state fuel (as explained elsewhere in the document) indicate that it would be appropriate to interpret the relevant statutory language to not require RFG use in Atlanta.

DATES: This final rule is effective March 14, 2014

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2006-0318. All documents in the docket are listed on the 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

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, Office of Transportation and Air Quality, mailcode 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC. 20460; telephone number: 202-343-9219; fax number 202-343-2800; email address: gustafson.kurt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action may affect you if you produce, distribute, or sell gasoline for use in the Atlanta 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 examine carefully these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

| Category | NAICS codes ^a | SIC codes ^b | 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 | |

^aNorth American Industry Classification System (NAICS).

^bStandard Industrial Classification (SIC) system code.

Outline of This Preamble

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I. Background

Based on the Atlanta metropolitan area's failure to achieve the 1-hour ozone standard according to a statutorily-prescribed deadline, the area was reclassified as a severe ozone nonattainment area and required to use RFG. However, as a result of pending legal proceedings, RFG has never been implemented in Atlanta, and Atlanta has not relied on emissions reductions from federal RFG in its EPA-approved ozone SIP. In the interim, the air quality in Atlanta has improved; due in part to various control strategies in place as well as vehicle fleet changes, and EPA has redesignated the area as in

attainment with both the 1-hour and 1997 8-hour ozone standards. Atlanta is currently designated a marginal nonattainment area under the 2008 8-hour ozone standard. Although the Clean Air Act clearly imposes the obligation to use RFG on areas one year after they are reclassified as a severe nonattainment area, it is ambiguous as to when such RFG covered areas may discontinue use of RFG. The State has sought through a petition to EPA and associated litigation to avoid the implementation of the RFG program in Atlanta following classification of the area as a severe nonattainment area under the one-hour ozone standard. The RFG requirement has been stayed pending resolution of the litigation, and during the time that Atlanta was

redesignated to attainment for the one-hour ozone standard. The State has an approved State Implementation Plan (SIP) that has not relied on RFG benefits and a SIP-approved fuel program that achieves all of the nitrogen oxides (NO_x), toxics, and 98.4% of the volatile organic compound (VOC) benefits provided by the RFG program. After considering a number of factors, including the benefits of using RFG rather than the SIP-approved low-RVP "Georgia gas," EPA has interpreted the statutory provisions and concluded that Atlanta is not required to use RFG.

A. The Ozone National Ambient Air Quality Standard and State Implementation Plans

EPA has set National Ambient Air Quality Standards (NAAQS) for six principal pollutants, including ozone. After establishing a NAAQS, EPA, based on recommendations from the States, designates areas as either in attainment with the NAAQS, in nonattainment with the NAAQS, or as unclassifiable. The CAA (or Act) also specifies that ozone nonattainment areas are to be further classified at the time of designation as marginal, moderate, serious, severe or extreme, based on the severity of the air quality in the area. Section 110(a)(2) of the Act requires each State to adopt, and EPA to review and approve, a State Implementation Plan (SIP) that identifies how that State will attain and/or maintain each NAAQS, such as the ozone NAAQS. Specifically, SIPs must identify control measures and strategies that demonstrate how each area will attain and maintain the NAAQS. These plans are developed through a public process, formally adopted by the State, and submitted by the Governor's designee to EPA. The CAA requires EPA to review each plan and any plan revisions in a public process and to approve or disapprove them.

The contents of a typical SIP fall into several categories: (1) State-adopted control measures which consist of rules/regulations, source-specific requirements (e.g., orders and consent decrees) and other control obligations; (2) State-submitted comprehensive air quality plans, such as attainment plans, maintenance plans, and rate of progress plans, demonstrating how these state regulatory and source-specific controls, in conjunction with federal programs, will bring and/or keep air quality in compliance with federal air quality standards; (3) State-submitted "non-regulatory" requirements, such as emission inventories, small business compliance assistance programs; demonstrations of legal authority,

monitoring networks, etc.; and (4) additional requirements promulgated by EPA (in the absence of a commensurate State provision) to satisfy a mandatory section 110 or part D (Clean Air Act) requirement.

B. Reformulated Gasoline

The 1990 amendments to the CAA directed EPA to issue regulations that specify how gasoline can be "reformulated" so as to result in significant reductions in vehicle emissions of ozone-forming and toxic air pollutants relative to a 1990 baseline fuel, and to require the use of such reformulated gasoline in certain "covered areas." In addition, some other areas with ozone levels exceeding the ozone NAAQS may opt-in to the federal RFG program, and several areas have done so.

The term "covered area" is defined in section 211(k)(10)(D) as follows:

[T]he 9 ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during the period 1987 through 1989 shall be "covered areas" for purposes of this subsection. Effective one year after the reclassification of any ozone nonattainment area as a severe ozone nonattainment area under section 181(b) of this title, such severe area shall also be a "covered area" for purposes of this subsection.

The second sentence of section 211(k)(10)(D) identifies areas that become covered areas because they have been reclassified as a severe ozone nonattainment area under CAA section 181(b). These are called "bump-up" areas. Five areas were reclassified to severe for the 1-hour NAAQS: Baton Rouge, Atlanta, Sacramento, San Joaquin Valley, and Sacramento, San Joaquin Valley, and Washington, DC (which was already an opt-in area). They became mandatory RFG covered areas one year after their reclassification as a severe area. The areas that are RFG covered areas based on the bump-up provision were designated as ozone nonattainment areas by operation of law at the time of the 1990 CAA amendments, and their bump-up to severe occurred by operation of law based on EPA's determination under section 181(b) that the areas failed to attain the 1-hour ozone NAAQS by the applicable date. Thus, their reclassification to severe was not based on a determination that their air quality met the severe area ozone design value. Instead, reclassification was based on their failure to meet the applicable attainment date. The bump-up to severe has two effects—a later attainment date is set for the area, and a variety of additional control measures become

mandatory for the area. The federal RFG program becomes a mandatory control measure in an area one year after the area is bumped up to a severe classification.

C. Transition From the 1-Hour Ozone to the 8-Hour Ozone NAAQS

Today's rule follows from previous EPA action in replacing the 1-hour ozone standard with a more protective 8-hour ozone NAAQS. See 69 FR 23951 (April 30, 2004).¹ EPA has issued two rules that clarify the extent to which CAA obligations that existed under the 1-hour ozone standard continue in effect under the 8-hour NAAQS. These rules are the Phase 1 implementation rule, 69 FR 23951 (April 30, 2004), and the Phase 2 implementation rule. See 70 FR 71612 (November 29, 2005).

In the Phase 1 rule, EPA addressed two interrelated key issues regarding the transition from the 1-hour ozone NAAQS to the 8-hour ozone NAAQS. First, it identified the time at which the 1-hour ozone NAAQS would be revoked (i.e., no longer apply). Second, it identified the extent to which certain regulatory requirements related to 1-hour ozone NAAQS attainment status would apply after transition to the 8-hour NAAQS. On the first issue, EPA decided that the 1-hour ozone NAAQS would be revoked in full, including the associated designations and classifications, one year following the effective date of the designations for the 8-hour ozone NAAQS. For most areas, which were designated effective June 15, 2004, that means the 1-hour ozone NAAQS and the related designation and classification no longer applied as of June 15, 2005. On the second issue, the approach, generally referred to as "anti-backsliding," adopted in the Phase 1 rule established that all areas designated nonattainment for the 8-hour ozone NAAQS and designated nonattainment for the 1-hour ozone NAAQS at the time of designation for the 8-hour ozone NAAQS (the "trigger date") remain subject to mandatory control measures that applied by virtue of the area's classification for the 1-hour ozone NAAQS. These control measures are called "applicable requirements," and are primarily the control measures that areas were required to adopt and implement based on the area's 1-hour nonattainment classification. Thus, in the Phase 1 rule, EPA adopted an anti-backsliding approach and established a trigger date for determining which 1-

¹ Subsequent to the publication of the 1997 8-hour ozone NAAQS, EPA revised and established a new 8-hour ozone NAAQS on March 27, 2008 (hereafter referred to as the 2008 8-hour ozone NAAQS). See 73 FR 16436.

hour ozone control “applicable requirements” continued to apply after revocation of the 1-hour ozone NAAQS. RFG is not a SIP “applicable requirement” addressed by the Phase I rule, so the rule did not resolve the extent to which RFG requirements related to 1-hour ozone classifications would apply after the transition to the 8-hour ozone standard.

In the Phase 2 Ozone Implementation Rule, EPA interpreted section 211(k)(10)(D) as requiring that the nine original mandatory RFG covered areas (those identified by reference to their 1980 population and their 1987–1989 ozone design value) remain covered areas, and thus are required to use RFG, at least until they are redesignated to attainment for the 8-hour ozone NAAQS. EPA explained that the statute identifies these areas as covered areas by virtue of historical facts that are not altered by EPA’s transition to the 8-hour ozone standard, and that they will continue to be “ozone nonattainment areas” until they are redesignated to attainment for the 8-hour ozone NAAQS. Thus they will continue to meet the definition of covered area at least until they are redesignated to attainment for the 8-hour ozone NAAQS. *See* 70 FR 71612, 71685 (November 29, 2005).

In the Phase 2 rule EPA also identified two distinct types of areas that had been reclassified or “bumped-up” to severe for the 1-hour ozone standard prior to revocation of that standard: (1) Those that lost their classification as severe ozone nonattainment areas solely as a result of the revocation of the 1-hour ozone NAAQS and classification at a lower classification (e.g., subpart 1, marginal, moderate or serious) under the new 8-hour ozone NAAQS; and (2) those that lost their severe classification through redesignation to attainment for the 1-hour NAAQS prior to revocation of that standard. EPA explained that section 211(k)(10)(D) is ambiguous on the issue of whether and how long a bump-up area continues to be a covered area when it is no longer classified as severe. The text of the provision could be read to set the defining criteria as the occurrence of reclassification to severe, a historical fact that does not change based on subsequent changes in classification. It could also be read as identifying areas that are reclassified to severe, but as leaving unresolved what happens when they are no longer so classified. Given this ambiguity, EPA determined that it had the discretion to determine whether section 211(k)(10)(D) authorizes removal of a bump-up area from the RFG program in the two

different situations when such a bump-up area is no longer classified as severe. EPA decided in the phase 2 rule that those bump-up areas that lost their severe status solely as a result of revocation of the 1-hour ozone NAAQS and classification at a lower classification under the 8-hour ozone standard would remain covered areas at least until they are redesignated to attainment for the 8-hour ozone NAAQS. In making this decision EPA relied on an antibacksliding approach similar to that relied upon in the Phase 1 rule. *See* 69 FR 23857. (April 30, 2004).² However, EPA did not address in the Phase 2 rule whether RFG would continue to be required in bump-up areas that lost their severe status as a result of redesignation to attainment for the 1-hour ozone NAAQS before revocation of the 1-hour ozone NAAQS, and which are classified at a lower classification than severe under the 8-hour ozone NAAQS. Atlanta was the only such area. EPA designated Atlanta as a marginal nonattainment area under the 1997 8-hour ozone standard, 70 FR 34660 (June 15, 2005), and redesignated Atlanta from nonattainment to attainment for the 1-hour ozone NAAQS, prior to revocation of the 1-hour ozone NAAQS. *See* 56 FR 56694 (November 6, 1991). EPA subsequently redesignated Atlanta to attainment for the 1997 8-hour standard. *See* 78 FR 72040 (December 2, 2013). Atlanta is currently designated marginal nonattainment for the 2008 8-hour ozone NAAQS.

D. Legal History of the RFG Requirement in Atlanta

As explained above, 13 counties in the Atlanta 1-hour ozone nonattainment area became an RFG covered area when Atlanta was reclassified as a severe ozone nonattainment area on January 1, 2004. Atlanta was required under the statute to begin using RFG on January 1, 2005. In August 2004, Georgia petitioned EPA to waive the RFG requirement for Atlanta, based on “absurd results” (NO_x impact leading to increased ozone). In September, 2004, EPA denied Georgia’s petition on grounds that expected adverse impacts were related to ethanol in RFG. The State had not requested a waiver of the RFG oxygen content requirement, and

² One of the bump-up areas that EPA determined in the Phase 2 rule should continue to use RFG at least until redesignation to attainment for the 8-hour ozone NAAQS was Baton Rouge. This area was subsequently redesignated to attainment for the 8-hour NAAQS and, for reasons set forth in a determination dated April 23, 2012, EPA issued an interpretive rule specifying that it was no longer required to use RFG.

EPA determined that it lacked authority to waive the entire RFG requirement in this situation. Georgia then filed two lawsuits related to RFG in Atlanta. First, Georgia alleged in U.S. District Court that EPA must conduct a conformity analysis prior to RFG taking effect in Atlanta. The court denied Georgia’s motion for a preliminary injunction, but the State appealed this ruling to the United States Court of Appeals for the 11th Circuit, and the District Court granted the State’s request for a stay of the RFG requirement pending appeal. Second, the State challenged EPA’s denial of its RFG waiver request in the 11th Circuit. While this litigation was ongoing, Atlanta was redesignated to attainment for the 1-hour ozone standard, on June 14, 2005, before that standard was revoked on June 15, 2005. At that time Atlanta was classified as marginal under the new 1997 8-hour ozone standard. All actions in the 11th Circuit Court of Appeals were stayed, at the parties’ request, to allow EPA and the State to consider the impact of the Energy Policy Act of 2005 (revoking the RFG oxygen content requirement but also requiring a broader program for increasing use of renewable fuels throughout the U.S.) and Atlanta’s redesignation to attainment of the 1-hour ozone standard prior to its revocation. The judicial stay of the RFG requirement in Atlanta remains in place during the stay of the litigation. As a result of these proceedings, RFG has never been implemented in Atlanta, and Atlanta has not relied on emissions reductions from federal RFG in its SIP.

E. Proposed Options

In our proposed rulemaking of June 23, 2006 (71 FR 36042), EPA sought comment on two alternative proposals regarding reformulated gasoline requirements for Atlanta. In the time since we published the proposal, a number of factors have transpired which are taken into account in today’s action. When Georgia first sought a waiver of the RFG program, the fuel used to meet the Georgia gas SIP requirements did not contain ethanol, but virtually all RFG was being blended with 10% ethanol. The renewable fuels program initiated by Congress in the 2005 Energy Policy Act, and enhanced in the Energy Independence and Security Act of 2007, requires that transportation fuel contain volumes of renewable fuel, including ethanol, that are defined for each calendar year and increase over time to 36 billion gallons in 2022. As a result of implementing the RFS program, ethanol is now being blended into virtually all gasoline (RFG and conventional) throughout the US, including the

Atlanta market. In addition, EPA also updated the modeling tools to incorporate the most up-to-date emission information into the release of Motor Vehicle Emissions Simulator (MOVES) model. This allowed EPA to run the MOVES model to estimate the difference in emissions between RFG and Georgia gas. More importantly, since the time that the proposal was published, the Atlanta area has been able to achieve attainment with the 1997 8-hour ozone standard without ever having implemented RFG.

At the time of the proposed rule, Atlanta was classified as marginal nonattainment for the 1997 8-hour NAAQS. On December 2, 2013 EPA reclassified Atlanta to attainment for the 1997 8-hour standard. However, Atlanta is currently classified as marginal nonattainment under the 2008 8-hour standard. Thus, the issue for resolution in today's rule is the same as at the time of proposal—the extent to which an area formerly classified as a severe nonattainment area under the 1-hour standard must continue to be an RFG covered area if it was reclassified to attainment before the 1-hour standard was revoked and is classified as less than severe under the 8-hour ozone NAAQS. Under the first option for which EPA sought comment, Atlanta would be required to use federal reformulated gasoline (RFG) at least until it is redesignated to attainment for the 8-hour ozone NAAQS. The anti-backsliding trigger date would be the same as that in the Phase 1 implementation rule—the effective date of the 1997 8-hour ozone NAAQS designations. On that date Atlanta was classified as a severe area for the 1-hour ozone NAAQS, and the requirement to use RFG was mandatory, starting January 1, 2005, based on that classification. The subsequent redesignation to attainment of the 1-hr ozone NAAQS would not change the continuing obligation to use RFG after the trigger date. Under the second option, which EPA is finalizing today, the State could request the removal of RFG, and EPA would grant such a request, upon a demonstration that removal would not result in loss of any RFG-related emission reductions relied upon in the State's Implementation Plan for ozone. The trigger date for Atlanta under this second option would be the date of revocation of the 1-hour ozone NAAQS. The use of this trigger date would mean that if RFG was a mandatory obligation on that date, then the obligation would continue after revocation of the 1-hour NAAQS. If RFG was not a mandatory obligation on that

date then it would not continue after the date of revocation. Hence the primary issue under this option would be whether RFG should be considered a mandatory obligation as of the trigger date. As noted above, section 211(k)(10)(D) of the Act is ambiguous on whether the obligation to use RFG would continue to apply as of this trigger date, since the prior redesignation to attainment for the 1-hour ozone NAAQS means the area was no longer classified as a severe area as of that date. The issue is not whether a requirement that applied on the trigger date should continue to apply after revocation, but whether this specific federal requirement would or would not apply on the trigger date. These options are described in more detail in Section III of this preamble.

II. Evaluation of the Emissions Benefits Provided by RFG

The CAA, as amended in 1990, mandated certain requirements for the reformulated gasoline program. The Act specified that during 1995 through 1999 (Phase I RFG), for volatile organic compounds (VOC) and toxics, RFG must comply with the more stringent of either a set of formulas or an emission reductions performance standard, measured on a mass basis, equal to 15 percent reduction from baseline emissions. Baseline emissions were the emissions of 1990 model year vehicles operated on a specified baseline gasoline. The Act also mandated compositional specifications for RFG which included a 2.0 weight percent oxygen minimum and a 1.0 volume percent benzene maximum. For the year 2000 and beyond (Phase II RFG), the Act specified that RFG must comply with the more stringent of a set of formulas or VOC and toxic pollutant performance standards providing for a 25 percent reduction from baseline emissions. EPA adopted the RFG requirements in 40 CFR 80.40 through 80.70. The original Phase II emission reductions required specified percentage reductions of RFG relative to the 1990 statutory baseline, as noted below:³

³ 59 FR 7716 (February 16, 1994). The percentage reductions reflect a comparison of emissions performance of a vehicle with 1990's type emission control technology using RFG and emissions performance of the same vehicles using 1990 average conventional gasoline. EPA subsequently amended the regulations to require somewhat less stringent summertime VOC requirements in the Chicago and Milwaukee ozone nonattainment areas. 66 FR 37156 (July 17, 2001).

COMPLEX MODEL EMISSION PERFORMANCE REDUCTION⁴

| Summertime VOC | Region 1 | Region 2 |
|-----------------------------------|--------------------|-------------------|
| Per gallon | 27.5 | 25.9 |
| Averaging | 29.0 | 27.4 |
| Minimum | 25.0 | 23.4 |
| NO_x⁵ | | |
| Per gallon | 5.5 | 5.5 |
| Averaging | 6.8 | 6.8 |
| Minimum | 3.0 | 3.0 |
| Toxics | | |
| Per gallon | 20 | 20 |
| Averaging | 21.5 | 21.5 |
| Benzene⁶ | | |
| Per gallon | 1.0 | 1.0 |
| Averaging | .95/1.3 per g max. | .95/1.3 per g max |

A. Subsequent Regulatory Changes

1. Changes to Gasoline

Since the RFG standards were implemented, there have been a number of important changes to gasoline controls. Perhaps the most significant of these was implementation of the Tier 2 gasoline sulfur standards. 65 FR 6698 (Feb. 10, 2000). In addition, in 2007 EPA adopted the Mobile Source Air Toxics (MSAT) rule. Beginning in 2011, the MSAT rule required refiners to meet a benzene content standard on all their gasoline, both reformulated and conventional, nationwide. 72 FR 8431 (February 26, 2007). In this rule EPA also removed the NO_x performance requirements from the RFG program regulations. 72 FR 8498 (February 26, 2007); 40 CFR 80.41(e)(2). Finally, in the Energy Policy Act of 2005 Congress modified the requirements for RFG by removing the requirement that it contain oxygenate and replaced it with a mandate that gasoline nationwide contain increasing volumes of renewable fuels. The result of all these actions is that now the requirements for federal RFG and conventional gasoline (CG) with respect to NO_x, toxics

⁴ The complex model reductions refer to VOC control Regions 1 and 2. The geographic scope of these regions is defined in 40 CFR 80.71. For the most part, Region 1 refers to the south and west and Region 2 refers to the upper midwest and northeast.

⁵ A NO_x performance standard was not required for RFG under CAA section 211(k); however, EPA added this requirement under the general authority provided by section 211(c), as part of the RFG program.

⁶ The benzene standards are in terms of a volume percent of the fuel, not a percent emissions reduction.

emissions performance and renewable fuel content are essentially the same.

2. Changes to Vehicle Standards

Since Congress mandated the RFG program through the 1990 CAA Amendments, there have also been a number of important changes to vehicle emission standards. In 1993, EPA promulgated the enhanced evaporative emission standards which reduced the impact of changes in fuel volatility, or RVP, on evaporative emissions (i.e. VOCs including toxics). *See* 58 FR 16002 (March 24, 1993). This was followed in 2000 with Tier 2 vehicle standards which not only further reduced evaporative emissions, but also reduced exhaust emissions by an order of magnitude. *See* 65 FR 6698 (February 10, 2000). The result is that the percent reduction standards for RFG based on the response of 1990 technology vehicles to fuel changes compared to 1990 gasoline are not relevant to today's fleet of vehicles or those in the future. Furthermore, while fuels may still have a significant percentage impact on vehicle emissions in the future, the magnitude of the impact is much smaller than at the time the CAA was amended in 1990. As a result, the magnitude of the emissions reductions associated with the use of RFG is much smaller now than in the past.

B. Summertime VOC Performance of RFG

Several regulatory requirements directly or indirectly limit the RVP level in reformulated and conventional gasoline supplied during late spring and summer, when ozone is of most concern. In 1989, EPA promulgated regulations that set maximum limits for the RVP of gasoline sold during the summer ozone control season—June 1st to September 15th. These regulations were referred to as Phase I of a two-phase nationwide program, which was designed to reduce the volatility of commercial gasoline during the summer ozone control season. *See* 54 FR 11868 (March 22, 1989). In 1990, EPA promulgated more stringent volatility controls under Phase II of the program. *See* 55 FR 23658 (June 11, 1990). These requirements established maximum RVP standards of 9.0 psi or 7.8 psi, depending on the State, and the month.

The 1990 amendments of the CAA mandated certain requirements for both summertime fuel volatility and the reformulated gasoline program. The amendments established a new provision, section 211(h), addressing gasoline volatility. Section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale,

dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the ozone control season. It further requires EPA to establish more stringent RVP standards in nonattainment areas if we find such standards “necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.” Section 211(h) prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that we may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment. In 1991, EPA modified the Phase II volatility regulations to be consistent with section 211(h) of the CAA. *See* 56 FR 64704 (December 12, 1991).

The 1990 amendments also established requirements that RFG achieve increased control of emissions of VOC during the summertime ozone season. For the year 2000 and beyond, EPA established summertime VOC performance standards as specified in the Table in Section II.B above. In addition to the two Federal fuel programs that regulate summertime VOC emissions under sections 211(h) and 211(k), the CAA also provides a limited mechanism under section 211(c) for States to establish more stringent fuel standards. EPA has approved several State low volatility gasoline programs under this authority.

Although the volatility regulations at 40 CFR 80.27 applies to RFG as well as CG, the RFG regulations effectively require RVP levels below those required under the section 211(h) RVP regulations. Under the RFG regulations, refiners and importers must designate RFG produced or imported for use during the summertime VOC control period as VOC-controlled, and all other RFG as non-VOC-controlled. The RVP in the VOC-controlled RFG supplied since 1998 is effectively controlled through the VOC emissions performance standards. While other gasoline parameters also affect VOC emission performance (as determined by the Complex Model that is used in the RFG program), RVP reduction from the statutory baseline is by far the primary means to achieve the VOC reduction standards, particularly with the more recent gasoline sulfur and oxygenate changes to gasoline. Hence, the VOC performance standards effectively limit RVP in RFG. As a result, the RFG

emissions performance standards not only constrain average RVP levels below those permitted by the more general volatility regulations, but generally constrain maximum RVP levels as well.

III. Quantifying the Difference in VOC Benefits Between RFG and Conventional Gas

EPA conducted emissions modeling using the MOtor Vehicle Emission Simulator (MOVES)⁷ to estimate the difference in VOC emissions from RFG relative to the typical CG that it would replace in Atlanta. EPA's fuel property database was used to develop a CG fuel formulation to represent GA gasoline.⁸ In this modeling the VOC emissions estimates represent the 2013 ozone season and EPA used national level default runs with inputs focused on fuel property changes.

From this MOVES modeling approach, EPA determined that RFG would achieve a 1.58 percent greater reduction in VOC emissions performance during the summer ozone season (June 1 to September 15) compared to the Georgia SIP fuel program, i.e. Georgia gas.⁹

IV. Proposed Options To Address Whether Atlanta Remains a Federal RFG Covered Area

As mentioned above, EPA sought comment on two options for the Atlanta covered area via the proposed rulemaking. Under the first option, the Area would be required to use RFG at least until it is redesignated to attainment for the 8-hour ozone NAAQS. The anti-backsliding trigger date would be the same as that in the Phase 1 implementation rule—the effective date of the 1997 8-hour ozone NAAQS designations. On that date Atlanta was classified as a severe area for the 1-hour ozone NAAQS, and the requirement to use RFG was mandatory, starting January 1, 2005, based on that classification. The subsequent redesignation to attainment of the 1-hr

⁷ This emission model developed by the Office of Transportation and Air Quality estimates emissions for mobile sources covering a broad range of pollutants and allows multiple scale analysis. MOVES is used to estimate emissions from cars, trucks and motorcycles. MOVES2010b is the latest version of MOVES and incorporates new features and a number of performance improvements compared to previous versions.

⁸ Since actual in-use fuel varies in its constituents within allowable regulatory tolerances there is no one correct formulation even for Georgia gasoline. EPA's database of fuel properties was therefore the best available source of fuel constituencies to represent typical Georgia CG.

⁹ There is no VOC performance requirement for RFG outside of the summer ozone season; for those time periods RFG and CG would be expected to have similar VOC performance.

ozone NAAQS would not change the continuing obligation to use RFG after the trigger date. This option would emphasize that the area is still an ozone nonattainment area notwithstanding its redesignation to attainment of the 1-hour ozone NAAQS.¹⁰ Under the first option, EPA would exercise its discretion to require continued use of RFG in Atlanta, based on the area's continued status as an ozone nonattainment area under the 8-hour ozone NAAQS. Atlanta would remain an RFG covered area at least until it is redesignated to attainment for the 8-hour ozone NAAQS. This approach is consistent with the approach adopted in the Phase 2 implementation final rule for other areas that were bumped-up to severe but were not redesignated to attainment for the 1-hour ozone NAAQS prior to revocation of that standard. See 70 FR 71612 (November 29, 2005).

Under the second option, the trigger date for Atlanta would be the date of revocation of the 1-hour ozone NAAQS. The use of this trigger date would mean that if RFG was a mandatory obligation on that date, then the obligation would continue after revocation of the 1-hour NAAQS. If RFG was not a mandatory obligation on that date then it would not continue after the date of revocation. Hence the primary issue under this option would be whether RFG should be considered a mandatory obligation as of the trigger date. As noted above, section 211(k)(10)(D) of the Act is ambiguous on whether the obligation to use RFG would continue to apply as of this trigger date, since the prior redesignation to attainment for the 1-hour ozone NAAQS means the area was no longer classified as a severe area as of that date. The issue is not whether a requirement that applied on the trigger date should continue to apply after revocation, but whether this specific federal requirement would or would not apply on the trigger date. To the extent this issue could be seen as overlapping with the more general issue of having an antibacksliding approach, EPA believes that both the statutory language and the indicia of Congressional intent on how to resolve this issue under section

211(k)(10)(D) are ambiguous. Under this second option, EPA would exercise its discretion and resolve the ambiguity by allowing the RFG requirement to no longer apply for the Atlanta area, based on the removal of the severe classification upon redesignation to attainment for the 1-hour ozone NAAQS. EPA would condition, this, however, on the State requesting such removal of RFG and demonstrating that removal would not result in a loss of emissions reductions relied upon in the SIP. This second option would place somewhat more emphasis on flexibility for the State in determining whether this Federal ozone related control measure should apply in the area, for the following reasons. The only area to which this proposal would apply is Atlanta, which is currently implementing a state low sulfur, low RVP fuel control measure that has been approved into its SIP.¹¹ The removal of Atlanta as an RFG covered area would simplify the tasks confronting the fuel refining and distribution system, an additional fuel that meets both the state fuel requirements and the Federal RFG requirements would not need to be produced and distributed. This would directionally reduce the burden on a fuel infrastructure system that has been tasked to meet several new Federal fuel requirements adopted over the last few years. In addition, this option acknowledges the significant progress Atlanta has made in reducing ozone levels and attaining the 1-hour ozone NAAQS, and the fact that Atlanta's significant progress in reducing ozone levels has occurred without the use of RFG. Because the option requires a demonstration that dropping the RFG requirement will not lead to a loss in emissions reductions relied upon in the SIP, this option should not adversely affect Atlanta's SIP planning for future attainment of the 8-hour standard.

EPA believes it has discretion in choosing the appropriate trigger date for purposes of anti-backsliding. The use of the date of revocation of the 1-hour ozone NAAQS as the trigger date under this option would not raise the SIP planning concerns that led to rejection

of this as an appropriate trigger date for the Phase 1 rule. EPA rejected the date of revocation as a trigger date for the Phase 1 rule because it would interfere with SIP planning, especially for areas required to submit SIP plans by the date of revocation. See 70 FR 5596 (February 3, 2005) Here, the date of revocation has already passed. In addition, Atlanta has demonstrated attainment of the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS without relying on the use of RFG and there are no indications that the second option would interfere with Atlanta's SIP planning for attainment of the 2008 8-hour ozone NAAQS.

V. Public Comment Summary

EPA received five sets of comments in response to the NPRM. Four of those comments urged adoption of the second option which would remove the RFG requirement with assurance of no loss of emission reductions relied upon in the SIP. The comments reflected that this option would assure no loss of emission benefits relied upon in the SIP and would avoid a new "boutique" blend of fuel from being distributed in the Atlanta market where 13 core counties would be RFG required areas, but where fuel in 32 additional surrounding counties would meet differing SIP fuel requirements.

The Renewable Fuels Association (RFA) submitted comments that identified an alternate approach, and absent that, supported adoption of Option 1. RFA's main comments are summarized and EPA's response provided separately, below:

Comment: An additional and preferable alternative would be for EPA to certify Georgia gas as RFG.

Response: The regulatory specifications for the two fuels are different: Georgia gas has an RVP cap to control VOC emissions whereas RFG must meet a VOC performance requirement. In addition, as demonstrated through the MOVES modeling described above, use of RFG would result in slightly lower VOC emissions than Georgia gas. The characteristics of RFG are specified in laws and regulations. EPA cannot determine that a fuel that does not meet those characteristics can be certified as RFG. Therefore, it is not a viable option to simply certify Georgia gas as RFG.¹²

Comment: The distinction between Atlanta and the other bump up areas EPA addressed in the phase II rule, for which EPA has required RFG use at least until redesignation to attainment

¹⁰ At the time of the proposed rule, Atlanta was classified as marginal nonattainment for the 1997 8-hour NAAQS. On December 2, 2013 EPA reclassified Atlanta to attainment for the 1997 8-hour standard. However, Atlanta is currently classified as marginal nonattainment under the 2008 8-hour standard. Thus, the issue for resolution in today's rule is the same as at the time of proposal—the extent to which an area formerly classified as a severe nonattainment area under the 1-hour standard must continue to be an RFG covered area if it was reclassified to attainment before the 1-hour standard was revoked and is classified as less than severe under the 8-hour ozone NAAQS.

¹¹ In an effort to limit the number of different types of state fuels required around the country and thus, increase fungibility of fuels, the Energy Policy Act of 2005 (EPAct), included a "boutique fuels" provision. The provision requires EPA to publish a list of the "total number of fuels" approved into SIPs as of September 1, 2004, and, importantly, limits EPA's future fuel approvals for a state to a fuel that is already in use in their Petroleum Administration for Defense District. The Georgia State fuel program was included on the list that EPA published for approval, 71 FR 32532, (June 6, 2006), and thus the Georgia fuel would not be limited by the EPAct boutique fuel listing provisions.

¹² Clean Air Act section 211(k) and in 40 CFR 80.40 through 80.70.

for the 8-hour standard, amounts to “form over substance” since Atlanta is in non-attainment for the 8-hour standard like those other bump up areas.

Response: The redesignation of Atlanta to attainment for the 1-hour ozone standard was a significant event and is relevant to considering Atlanta different than the other bump-up areas which had not been redesignated to attainment for the 1-hour ozone standard prior to its revocation. Atlanta’s legal status is different than that of other bump-up areas since it is the only area that was redesignated to attainment of the 1-hour NAAQS before that standard was revoked. As discussed above, the statute is ambiguous with respect to RFG requirements after an area is no longer classified as a severe area, based on redesignation to attainment for the 1-hour standard. Thus, Atlanta’s attainment status under the 1-hour standard before that standard was revoked is not a matter of “form” only, but an important issue with respect to statutory construction. In the proposal EPA explained that Atlanta’s unique circumstances supported consideration of a different approach for Atlanta than that adopted in the Phase 2 rule for the bump-up areas that lost their classification of severe based solely on the revocation of the 1-hour standard. See 71 FR at 36045–46. EPA continues to believe these differences are substantive and support the interpretation adopted in this final rule.

Comment: Analysis of other provisions of the CAA (211(h) and (m)), and EPA’s own statements in its 9/29/1998 rule (which was struck down in a judicial challenge) expanding eligibility to opt-in to RFG to former nonattainment areas, demonstrate that the statute is not ambiguous in the context of Atlanta, and that EPA has no discretion to remove the RFG requirement.

Response: EPA disagrees with this comment. Both CAA Sections 221(h) and (m) include provisions addressing their applicability to nonattainment areas that are redesignated to attainment of the relevant NAAQS. In contrast, 211(k) includes no such provisions. There is no reason to assume, as the commenter does, that this necessarily means that RFG covered areas must continue to use RFG indefinitely, regardless of air quality improvements. It simply means that Congress has not addressed the issue of RFG requirements when an RFG covered area is redesignated to attainment for the ozone NAAQS. With respect to EPA’s statements in the preamble to the 1998 rule that sought to expand RFG opt-in

opportunities, EPA attempted to resolve ambiguity it perceived in the statute in favor of expanded opt-in eligibility due to the considerable emissions benefits of RFG at that time. This rule was later invalidated in a judicial challenge. Today EPA is interpreting different ambiguous language in a much different context, where there are very limited benefits to RFG use as compared to Georgia gas, and where the State has been redesignated to attainment of the 1-hour ozone NAAQS prior to its revocation, and redesignated to attainment of the 1997 8-hour ozone NAAQS, without ever using RFG to reach these milestones. Therefore, EPA does not agree that its statements in the preamble to the 1998 rule necessitate a continued RFG requirement in Atlanta.

Comment: EPA failed to consider the toxic pollutant emissions benefits of RFG.

Response: Since the comments were received, EPA has adopted and implemented the Mobile Source Air Toxics Rule (MSAT2). As a result of this rule, conventional gasoline must meet the same toxics requirements as RFG. Accordingly, although EPA agrees with the commenter that it is appropriate to consider toxic pollutant emissions of RFG as compared to Georgia gas in finalizing this rule; this consideration does not weigh in favor of requiring Atlanta to use RFG.

Comment: EPA’s discussion of infrastructure concerns ignored investments made by some companies to provide RFG to Atlanta.

Response: In late 2005, Congress passed the Energy Policy Act which directed EPA to remove the oxygenate requirement in RFG and to establish a renewable fuels standard program to require increasing use of renewable fuels such as ethanol in motor vehicle gasoline. The statute was considerably amended in 2007 to require that even larger volumes of renewable fuel be used, with volumes increasing annually to 36 billion gallons in 2022. The investments referenced by the commenters related principally to the production, distribution, and blending of ethanol. In light of the statutory changes noted above, such infrastructure changes have likely been used to provide renewable fuel for satisfying the new renewable fuel standard requirements. This same infrastructure will therefore continue to be needed regardless of whether RFG is required in Atlanta. Moreover, requiring three fuel blends (conventional gasoline, Georgia gas, and RFG) to be distributed in the region would likely present distribution, tankage, and fuel fungibility challenges and constraints.

This factor therefore weighs against requiring continued use of RFG in Atlanta.

In soliciting comment on the proposal, we suggested consideration of three criteria: (1) Current 8-hour ozone designation, (2) the likely effect on ozone NAAQS attainment, and (3) the likely effect on the fuel infrastructure. We have considered these same factors in finalizing this rule, and have also considered the fact that in light of recent regulatory improvements to conventional gasoline requirements, there is no toxic pollutant emissions benefit to using RFG as compared to Georgia gas. Emissions impacts associated with this decision are described in detail in Section II of this preamble. The fact that Georgia has not relied on RFG for purposes of its approved ozone SIP means that removing the RFG requirement will have no impact on ozone NAAQS attainment. EPA further believes that removing the requirement for RFG in Atlanta will remove significant potential hurdles in fuel fungibility. Were RFG to be required in the 13 counties that were bumped up to severe under the 1-hour ozone standard, the Georgia gas program would continue to require Georgia gas be supplied to the remaining 32 counties covered by that requirement (45 county area). Therefore, by removing the RFG requirement, EPA removes the potential that three distinct fuels (CG, RFG, and GA gas) would be produced for the region. Removing regulatory impediments that may result in a fractured market enhances the fungibility of fuel and protects consumers in times of fuel supply shortages. For the reasons discussed herein, EPA believes it is appropriate to adopt the second option discussed in the proposal.

VI. What action is EPA taking?

In this action, EPA has determined that an area reclassified as a severe ozone nonattainment area under the 1-hour ozone standard as a result of failure to meet attainment deadlines, and which was then redesignated to attainment for the 1-hour ozone standard prior to revocation of that standard (i.e. Atlanta), is not required to remain an RFG covered area, even if it is currently designated as an ozone nonattainment area (marginal) for the 8-hour ozone NAAQS. Our determination is based upon an interpretation of section 211(k)(10)(D), consideration of the appropriate anti-backsliding approach under the circumstances in question, and the public comments we have received.

Given the ambiguity in section 211(k)(10)(D) on the issue of whether and how long a bump-up area continues to be a covered area when it is no longer classified as severe, EPA has exercised discretion in this action to determine appropriate requirements for the Atlanta area. Atlanta is unique among the bump-up areas in that it was redesignated to attainment for the 1-hour ozone NAAQS prior to that standard's revocation. At the time, Atlanta was also designated nonattainment and classified as marginal for the 1997 8-hour NAAQS. For Atlanta, the choice of a reasonable trigger date makes a difference in whether the requirement to use RFG continues after revocation of the 1-hour ozone NAAQS.

In the Phase 2 rule, EPA recognized that section 211(k)(10)(D) of the CAA is ambiguous with respect to whether and how long a bump-up area continues to be an RFG covered area when it is no longer classified as severe. Given this ambiguity, EPA stated that it has discretion to determine whether section 211(k)(10)(D) authorizes removal of a bump-up area from the RFG program when it is no longer classified as severe, and to set appropriate criteria for such removal. See 70 FR at 71686. EPA believes that the comprehensive planning conducted by states through the SIP process, the array of regulatory tools at the states' disposal, and based on its unique circumstances, the limited emissions benefits currently attributable to RFG in the Atlanta area indicate that it would be appropriate to no longer require that the Atlanta bump-up area be an RFG covered area. Providing the State the discretion whether to include federal RFG as part of the required control measures relied upon for ozone attainment and maintenance recognizes the central role played by the States in developing SIPs, including developing the maintenance plan, and the array of tools available to States to achieve attainment and maintenance.

Therefore, EPA is interpreting the definition of covered area in section 211(k)(10)(D) for an area formerly classified as a severe ozone nonattainment area under the 1-hour ozone NAAQS that was redesignated to attainment for that standard before its revocation, and which is currently designated as nonattainment for the 8-hour ozone standard with a classification less than severe, as allowing removal of RFG upon request by the State and demonstration that removal would not result in loss of any RFG-related emission reductions relied upon in the State's Implementation Plan.

VII. Application of This Interpretation to the Atlanta Area

Atlanta meets the criteria specified in today's rule for removal as an RFG covered area, including the State having requested such removal and the State not having relied on emission from federal RFG in its approved SIP. Therefore, the effect of today's action is that Atlanta is no longer a federal RFG covered area and there is no present requirement to use federal RFG in the Atlanta area. Today's action does not limit Atlanta's opportunity to opt-in to the federal RFG program in the future if the requirements are met for an opt-in. Moreover, if the Atlanta area was ever to be reclassified as a severe nonattainment area under the 8-hour ozone NAAQS, the nonattainment area would become an RFG covered area as a result.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

As of November 14, 2013, the Office of Management and Budget (OMB), determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action removes an existing requirement not yet implemented. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the final RFG/antidumping rulemaking (see 59 FR 7716, February 16, 1994) and under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* has assigned OMB control number 2060-0277 (EPA ICR No. 1591.25). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. 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 (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.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities, as the option finalized herein removes a regulatory requirement not yet implemented.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action removes an existing regulatory requirement not yet implemented.

E. Executive Order 13132 (Federalism)

This action 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. This action removes an existing requirement not yet implemented. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, the State of Georgia submitted comments to the proposal and supported the option being finalized today.

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have

substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This final rule does not create a mandate for any tribal government nor would the rule impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629, February 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 does not affect the level of protection provided to human health or the environment. For the option finalized in this rule to be implemented, the State must demonstrate that removal of the RFG requirement would not result in loss of emission reductions relied upon in the ozone state implementation plan and it has done so. Moreover, since RFG has never actually been implemented in Atlanta, this action will not result in an actual change in emissions.

K. Statutory Authority

The Statutory authority for the action finalized today is granted to EPA by sections 211(k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7545(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 upon publication in the **Federal Register**.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Diesel fuel, Energy, Forest and forest products, Fuel additives, Gasoline, Imports, Labeling,

Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: March 7, 2014.

Gina McCarthy,
Administrator.

Accordingly, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

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

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

§ 80.70 Covered areas.

* * * * *

(m) * * *

(2) An area identified as a covered area pursuant to this paragraph (m), based on its classification as a severe non-attainment area under the 1-hour ozone NAAQS, but which is redesignated to attainment for the 1-hour ozone NAAQS, may be removed as a covered area at the request of a State providing that the State does not rely on RFG in any State Implementation Plan.

[FR Doc. 2014–05697 Filed 3–13–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 131017871–4175–02]

RIN 0648–BD72

List of Fisheries for 2014

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2014, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2014 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each