



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2018-0114; FRL-9988-86-OAR]

RIN 2060-AU32

Regulation of Fuels and Fuel Additives: Removal of the Reformulated Gasoline Program from the Northern Kentucky Portion of the Cincinnati-Hamilton Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action, EPA is amending its reformulated gasoline regulations to reflect that Boone, Campbell, and Kenton counties in Kentucky (the Northern Kentucky Area), which are part of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana ozone area, are no longer federal reformulated gasoline (RFG) covered areas as of July 1, 2018. As described in a separate document published on May 16, 2018, pursuant to EPA's regulations, EPA approved an April 18, 2017 petition from the state of Kentucky to opt-out of the federal RFG program and removed the requirement to sell federal RFG in the Northern Kentucky Area as of July 1, 2018. This effective date applies to retailers, wholesale purchaser-consumers, refiners, importers, and distributors. This rulemaking merely conforms the list of RFG covered areas in the regulations to reflect the effective date of the opt-out for the Northern Kentucky Area.

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: (202) 343-9256; e-mail address: dickinson.david@epa.gov or Rudy Kapichak, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: 734-214-4574; email address: kapichak.rudolph@epa.gov.

SUPPLEMENTARY INFORMATION:

The contents of this preamble are listed in the following outline:

- I. General Information
- II. Background
- III. Action
- IV. Public Participation
- V. Statutory and Executive Order Reviews
- VI. Legal Authority and Statutory Provisions

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this final action are fuel producers and distributors who do business in the Northern Kentucky Area.

Examples of Potentially Regulated Entities	NAICS ¹ Codes
Petroleum refineries	324110 424710
Gasoline Marketers and Distributors	424720
Gasoline Retail Stations	447110

¹ North American Industry Classification System.

Gasoline Transporters	484220
	484230

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities of which EPA is aware that potentially could be affected by this final action. Other types of entities not listed on the table could also be affected. To determine whether your organization could be affected by this final action, you should carefully examine the regulations in 40 CFR part 80, subpart D – Reformulated Gasoline. If you have questions regarding the applicability of this action to a particular entity, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. How Can I Get Copies of This Document and Other Related Information?

EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2018-0114. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information (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 electronically through www.regulations.gov.

II. Background

A. RFG Opt-Out Procedures

The reformulated gasoline (RFG) opt-out regulations (40 CFR 80.72—Procedures for opting out of the covered areas) provide the process and criteria for a reasonable transition out of the federal RFG program if a state decides to opt-out.² These opt-out regulations provide that the governor of the state must submit a petition to the Administrator requesting to opt-out of the federal RFG program. The petition must include specific information on how, if at all, the state has relied on RFG in a proposed or approved state implementation plan (SIP) or plan revision and, if RFG is relied upon, how the SIP will be revised to reflect the state’s opt-out from RFG. The opt-out regulations also provide that EPA will notify the state in writing of the Agency’s action on the petition and the date the opt-out becomes effective (i.e., the date RFG is no longer required in the affected area) when the petition is approved. The opt-out regulations also provide that EPA will publish a Federal Register document announcing the approval of any opt-out petition and the effective date of such opt-out. If a SIP revision is required, the effective date of EPA’s approval of the opt-out can be no less than 90 days from the effective date of EPA’s approval of the revision to the SIP that removes RFG as a control measure. *See* 40 CFR 80.72(c)(7).

B. Kentucky Opt-In and Opt-Out of RFG for the Northern Kentucky Area

In 1995, Kentucky voluntarily opted Boone, Campbell, and Kenton Counties (the Northern Kentucky Area), into the federal RFG program. Kentucky also opted its portion of the Louisville ozone area (Jefferson County and parts of Bullitt and Oldham Counties) into the federal RFG program; however, this action does not affect the use of RFG in the Kentucky

² Pursuant to authority under CAA sections 211(c) and (k) and 301(a), EPA promulgated regulations at 40 CFR 80.72 to provide criteria and general procedures for states to opt-out of the RFG program where the state had previously voluntarily opted into the program. The regulations were initially adopted on July 8, 1996 (61 FR 35673) (the RFG “Opt-out Rule”); and were revised on October 20, 1997 (62 FR 54552).

portion of the Louisville ozone area. A current listing of the RFG covered areas and a summary of RFG requirements can be found at 40 CFR 80.70 and on EPA's website at:

<https://www.epa.gov/gasoline-standards/reformulated-gasoline>.

On April 18, 2017, Kentucky submitted a petition to the EPA Administrator requesting to opt-out from the federal RFG program for the Northern Kentucky Area.³ In order to fulfill the requirements of the RFG opt-out regulations and to support its initial request, on September 13, 2017, Kentucky submitted a revision to its maintenance plan for the Northern Kentucky Area to remove the emissions reductions associated with the use of RFG in this area and to demonstrate that the RFG opt-out would not interfere with the area's ability to attain or maintain the 2008 ozone National Ambient Air Quality Standard (NAAQS) and any other NAAQS as required by Clean Air Act (CAA) section 110(l). (See 40 CFR 80.72(b)). EPA published a proposed approval of the SIP revision on February 14, 2018 (83 FR 6496) and a final approval of the SIP revision on April 2, 2018 (83 FR 13872). The final approval of the maintenance plan revision was effective upon publication, on April 2, 2018.

By letter dated April 30, 2018, EPA informed Kentucky of the grant of its petition as required by the RFG Opt-Out Rule. EPA also indicated that the effective date of the RFG opt-out for the Northern Kentucky Area would be July 1, 2018, which is 90 days after the effective date of EPA's approval of the maintenance plan revision and CAA section 110(l) analysis, as required by 40 CFR 80.72(c)(7). On May 16, 2018, EPA published the Federal Register document required by the RFG Opt-Out Rule that informed the public of the July 1, 2018

³ The Secretary of Kentucky's Energy and Environment Cabinet submitted the opt-out petition on behalf of the Commonwealth of Kentucky. A copy of the opt-out petition is included in the docket.

effective date and indicated that EPA would publish a final rule later to remove the Northern Kentucky Area from the list of RFG covered areas in 40 CFR 80.70 after the effective date of the opt-out (83 FR 22595). The July 1, 2018 opt-out effective date is the date for the removal of the prohibition on the sale of conventional gasoline in the Northern Kentucky Area and applies to retailers, wholesale purchasers-consumers, refiners, importers, and distributors of gasoline.

III. Action

In this rule, EPA is amending 40 CFR 80.70(j) to reflect that the Northern Kentucky Area (Boone, Campbell, and Kenton counties) is no longer a federal RFG covered area. This final rule merely conforms the applicable regulations with EPA's prior approval of the Kentucky petition.

IV. Public Participation

EPA is issuing this final action without prior notice and comment. The rulemaking procedures provided in CAA section 307(d) do not apply when the Agency for good cause finds that notice-and-comment procedures are impracticable, unnecessary, or contrary to the public interest pursuant to section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B). This is a ministerial action that amends 40 CFR 80.70 to reflect the prior EPA approval of Kentucky's opt-out petition, which was based on criteria in EPA regulations for opting out of the federal RFG program. In the RFG opt-out regulations, EPA established a petition process that would address, on a case-by-case basis, future individual state requests to opt-out of the RFG program. The regulations established clear and objective criteria for EPA to apply that include criteria for when a state's petition is complete and the appropriate transition time for opt-out of

the RFG program. Further, at the time of promulgation of those regulations, EPA had explained that the application of these regulatory criteria on a case-by-case basis to individual opt-out requests would not require notice-and-comment rulemaking, either under CAA section 307(d) or the Administrative Procedure Act.

Here, and as explained in the approval action, EPA is simply revising the list of RFG covered areas in 40 CFR 80.70 to conform with EPA's prior approval of Kentucky's request, which was effective on July 1, 2018 (83 FR 22595). That approval was a separate action, which was based on criteria in EPA's regulations for opting out of the federal RFG program and is not the subject of this rule. For these reasons, EPA finds that notice-and-comment procedures under CAA section 307(d)(1) are unnecessary.

This final rule is effective immediately upon publication. Section 553(d)(1) of the Administrative Procedure Act, 5 U.S.C. 553(d)(1), provides that final rules shall not become effective until 30 days after publication in the Federal Register "except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Comm'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency finalizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the affect is not adverse. EPA has determined that the finalized rule does not change any regulatory obligations and merely revises the list of covered areas in 40 CFR 80.70 to reflect EPA's prior action on May 16, 2018 which relieved a

restriction (the requirement of the federal RFG program) in the Northern Kentucky Area. For these reasons, this rule will be effective immediately upon publication.

V. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. This final rule and EPA's earlier approval of Kentucky's request to opt the three counties in the Northern Kentucky Area out of the federal RFG program provide meaningful burden reduction because it removes the requirements of the federal RFG program for gasoline sold in the Northern Kentucky Area and, as a result, fuel suppliers will no longer be required to sell gasoline that meets the federal RFG standards. Removing the federal RFG requirements will also be beneficial because this action can improve the fungibility of gasoline sold in the State of Kentucky by allowing gasoline sold in the Northern Kentucky Area to be identical to fuel sold in most of Kentucky.

C. Paperwork Reduction Act (PRA)

This action does not impose any information collection burden under the PRA, because it does not contain any information collection activities.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The small entities subject to the requirements of this action are refiners, importers or blenders of gasoline that choose to produce or import gasoline that meets the federal RFG program requirements for sale in the Northern Kentucky Area, and gasoline distributors and retail stations in the Northern Kentucky Area. EPA previously approved Kentucky's request to opt the three counties in the Northern Kentucky Area out of the federal RFG program remove the federal RFG requirements for gasoline sold in the Northern Kentucky Area as of July 1, 2018. This action merely amends the regulation at 40 CFR 80.70 to reflect the Northern Kentucky Area is no longer a covered area. This action does not impose any requirements or create impacts on small entities beyond those, if any, already required by or resulting from the CAA section 211(k) federal RFG program. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This final rule does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. EPA previously approved Kentucky's request to opt the three counties in the

Northern Kentucky Area out of the federal RFG program removed a requirement for the sale of federal RFG in the area as provided for in CAA section 211(k) and EPA's regulations at 40 CFR 80.72. This action merely amends the regulation at 40 CFR 80.70 to reflect the Northern Kentucky Area is no longer a covered area.

F. 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.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. EPA's earlier approval of Kentucky's request to opt the three counties in the Northern Kentucky Area out of the federal RFG program affected only those refiners, importers or blenders of gasoline that chose to produce or import gasoline that met federal RFG program requirements for sale in the Northern Kentucky Area and gasoline distributors and retail stations in the Area. This action merely amends the regulation at 40 CFR 80.70 to reflect the Northern Kentucky Area is no longer a covered area. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. EPA has no reason to believe that this action will disproportionately affect children since Kentucky has provided evidence that opt-out from the federal RFG gasoline program will not interfere with its attainment of the ozone NAAQS, or any other applicable CAA requirement. By separate action, EPA has approved Kentucky’s non-interference demonstration regarding its maintenance plan for the 2008 ozone NAAQS, and that Kentucky’s opt-out from the federal RFG gasoline program in the Northern Kentucky Area will not interfere with any other NAAQS or CAA requirement.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on

minority, low-income or indigenous populations because it does not affect the applicable ozone NAAQS which establish the level of protection provided to human health or the environment. EPA previously approved Kentucky's request to opt the three counties in the Northern Kentucky Area out of the federal RFG program removes the federal RFG gasoline program requirements for the Northern Kentucky Area. EPA has concluded that the federal RFG opt-out will not cause a measurable increase in ozone concentrations that would result in a violation of any ozone NAAQS including the 2008 ozone NAAQS and the more stringent 2015 ozone NAAQS. Therefore, disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result. The results of this evaluation are contained in EPA's proposed and final rules for Kentucky's non-interference demonstration. A copy of Kentucky's April 12, 2017 letter requesting that EPA relax the gasoline RVP standard, and Kentucky's September 13, 2017 letter that included additional technical analysis demonstrating that the opt-out from the federal RFG program would not interfere with continued maintenance of the 2008 ozone NAAQS in the Northern Kentucky Area, or with any other applicable CAA requirement, has been placed in the public docket for this action. This action merely amends the regulation at 40 CFR 80.70 to reflect the Northern Kentucky Area is no longer a covered area.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

VI. Legal Authority and Statutory Provisions

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

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: December 21, 2018.

Andrew R. Wheeler,
Acting Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 80 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, 7521, 7542, 7545, and 7601(a).

2. Section 80.70 is amended by revising paragraph (j)(3) to read as follows:

§80.70 Covered areas.

* * * * *

(j) * * *

(3) Jefferson County, Kentucky;

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[FR Doc. 2019-01320 Filed: 2/6/2019 8:45 am; Publication Date: 2/7/2019]