

to withdraw and permanently retire 240 oxides of nitrogen (NO_x) allowances from the State's 2005 new source allowance set aside under the NO_x Budget Trading Program. On February 13, 2008 (73 FR 8197), EPA approved the State's rule revisions, in Ohio Administrative Code (OAC) rule 3745-14-05, into the Ohio state implementation plan (SIP). EPA was subsequently sued on our action, and on June 5, 2009, the U.S. Court of Appeals for the Sixth Circuit vacated our February 13, 2008 rulemaking. As a result, we are amending the codification of the SIP in the Code of Federal Regulations to reflect the court's decision. Because our prior rulemaking was vacated by the U.S. Court of Appeals for the Sixth Circuit, our action today is merely a ministerial action to reflect the court's decision, which imposes no requirements or costs. Therefore, under 5 U.S.C. 553(b)(3)(B), notice and public comment is unnecessary. For similar reasons, EPA has good cause to waive the 30 day delayed effective date under 5 U.S.C. 553(d)(3). This rule is effective upon publication in the **Federal Register**.

II. What action is EPA taking?

EPA is revising the codification of the Ohio SIP by removing a reference to revisions to OAC 3745-14-05 that were previously incorporated into the Ohio SIP at 40 CFR 52.1870(c)(142). EPA had incorporated these revisions to OAC 3745-14-05 into Ohio's SIP in rulemaking dated February 13, 2008 (73 FR 8197), but the U.S. Court of Appeals for the Sixth Circuit subsequently vacated this action. Therefore, in this action, we are removing and reserving the pertinent paragraph from the Code of Federal Regulations. Reserving this paragraph is a technical change to the codification of the SIP. This action does not alter any other Ohio SIP rulemaking actions, and Ohio is not obligated to take any further action as a result of this action.

III. Statutory and Executive Order Reviews

This action merely revises the Code of Federal Regulations to reflect the effect of a federal court order and it does not impose any requirements. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2011.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Oxides of Nitrogen Budget Trading Program.

Dated: February 14, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

§ 52.1870 [Amended]

- 2. Section 52.1870 is amended by removing and reserving paragraph (c)(142).

[FR Doc. 2011-4373 Filed 2-28-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2010-0168; FRL-9271-5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Missouri State Implementation Plan (SIP) submitted April 10, 2009. The revision includes two new rules which implement restrictions on the idling of heavy duty diesel vehicles in the Kansas City Metropolitan Area and in the St. Louis Ozone Nonattainment Area. EPA is approving this revision because the standards and requirements set by the rules will strengthen the Missouri SIP. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This direct final rule will be effective May 2, 2011, without further notice, unless EPA receives adverse comment by March 31, 2011. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2010-0168, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* bhesania.amy@epa.gov.

3. *Mail or Hand Delivery:* Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2010-0168. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT:

Amy Bhesania at (913) 551-7147 or by e-mail at bhesania.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document "we," "us," or "our" refer to EPA.

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I. What revisions Is EPA approving?

On April 10, 2009, Missouri submitted to EPA for approval into the SIP two new rules, 10 CSR 10-2.385 *Control of Heavy Duty Diesel Vehicle Idling Emissions* for the Kansas City Ozone Maintenance Area and 10 CSR 10-5.385 *Control of Heavy Duty Diesel Vehicle Idling Emissions* for the St. Louis Ozone Nonattainment Area. These new rules limit the amount of time a heavy duty diesel vehicle will be permitted to idle while parked or while waiting to load or unload.

These rules apply to owners or operators of commercial, public and institutional heavy duty diesel vehicles (those having a gross vehicle weight rating (GVWR) of greater than 10,000 pounds) that are designed to operate on public streets and highways, whether or not the vehicles are operated on public roadways. These regulations set a time limit of five consecutive minutes idling time (*i.e.*, when a vehicle's engine is on, but it is not in gear) in any sixty minute period. On November 29, 2010, Missouri requested to withdraw subsection (3)(A) of both rules from the April 2009 request. Subsection (3)(A) states that owners or operators of passenger load/unload locations shall not cause or allow vehicles covered by this rule to idle for more than five minutes in any sixty minute period.

Missouri found that there was a discrepancy between subsection (3)(A) and section (1). Section (1), Applicability, does not mention that the rules apply to owners or operators of passenger load/unload locations. Missouri did not intend for passenger load/unload locations to be subject to this rule and thus requested to withdraw subsection (3)(A) to clarify. As a result, EPA is not taking action to approve subsection (3)(A).

The regulations do specify exemptions to the idling limit for certain vehicle types and situations. These exemptions include: road traffic conditions; safety or emergency uses; police, fire, ambulance, public safety and other law enforcement vehicles; service and repair needs; state or Federal inspections; mechanical work; armored vehicles; bus idling for passenger comfort (no greater than fifteen minutes in any sixty minute period); vehicles idling for purposes of using sleeper berth compartments; mechanical difficulties; agricultural operations incidentally operated or moved upon public roads; vehicles using auxiliary equipment powered by the engine; and freight load/unload locations (no greater than thirty minutes in any sixty minute period).

Persons violating this rule may be assessed penalties under state law in accordance with the penalty provisions under sections 643.010-643, RSMo. Enforcement of this regulation will follow Missouri's *Guidance for Enforcing the Idle Rules* supplied to EPA as clarification on June 4, 2010. Therefore, EPA has determined that the rule meets applicable criteria for enforceability of SIP requirements.

II. Why is EPA approving Missouri's SIP revision?

The rule 10 CSR 10-2.385 *Control of Heavy Duty Diesel Vehicle Idling Emissions* for the Kansas City Ozone Maintenance Area was included as a contingency measure in the *Kansas City Maintenance Area 8-hour Maintenance Plan for the Control of Ozone*. The contingency measure provision in the plan required the state to implement the idle reduction regulations upon violation of the 1997 8-hour ozone standard. This plan was approved by EPA and effective on October 9, 2007. A violation of the standard occurred during the 2007 ozone season thus triggering the adoption of the rule. The 10 CSR 10-5.385 *Control of Heavy Duty Diesel Vehicle Idling Emissions* for the St. Louis Ozone Nonattainment Area was adopted by the state to be consistent with the Kansas City Maintenance Area provisions and was

not required to be adopted as part of an existing SIP measure or contingency requirement.

These rules will result in reduced emissions of pollutants that contribute to ozone and fine particulate matter. Specifically, these rules lead to elimination of such pollutants resulting from unnecessary extended idling of heavy-duty diesel vehicles. The pollutants reduced by these regulations are volatile organic compounds, nitrogen oxides, carbon monoxide, and fine particulate matter. The approval of this rule will strengthen the Missouri SIP and assist the state in meeting and maintaining compliance with air quality standards, including the standard for ground level ozone.

Missouri's rule is generally consistent with EPA's "Model State Idling Law" (EPA420-S-06-001, April 2006). This model rule was developed with input from the states and industry to address idling issues in a consistent and understandable manner from state to state, to aid in compliance.

III. Have the requirements for approval of a SIP revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is EPA taking?

EPA is taking final action to approve the request to amend the Missouri SIP to include Missouri rules 10 CSR 10-2.385 *Control of Heavy Duty Diesel Vehicle Idling Emissions* for the Kansas City Ozone Maintenance Area and 10 CSR 10-5.385 *Control of Heavy Duty Diesel Vehicle Idling Emissions* for the St. Louis Ozone Nonattainment Area. The State regulations became effective February 28, 2009.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comments on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission

that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Motor carriers, Motor vehicles, Motor vehicle pollution, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Transportation, Volatile organic compounds.

Dated: February 16, 2011.

Karl Brooks,
Regional Administrator, Region 7.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

- 2. In § 52.1320 the table in paragraph (c) is amended by adding new entries in

numerical order for 10–2.385 under Chapter 2 and 10–5.385 under Chapter 5 to read as follows:

§ 52.1320 Identification of Plan.

* * * * *
(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
10–2.385	Control of Heavy Duty Diesel Vehicle Idling Emissions.	02/28/09	03/01/11 [insert FR page number where the document begins].	Subsection (3)(A) is not SIP approved.
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
10–5.385	Control of Heavy Duty Diesel Vehicle Idling Emissions.	02/28/09	03/01/11 [insert FR page number where the document begins].	Subsection (3)(A) is not SIP approved.

* * * * *
[FR Doc. 2011–4368 Filed 2–28–11; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0003; MO 92210–0–0009–B4]

RIN 1018–AW55

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Carex lutea* (Golden Sedge)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the *Carex lutea* (golden sedge) under the Endangered Species Act of 1973, as amended. In total, approximately 202 acres (82 hectares) in 8 units located in Onslow and Pender Counties, North Carolina fall within the boundaries of the critical habitat designation.

DATES: This final rule becomes effective on March 31, 2011.

ADDRESSES: This final rule and the associated final economic analysis are available on the Internet at <http://www.regulations.gov>. Comments and materials received, as well as supporting

documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Raleigh Fish and Wildlife Office, 551–F Pylon Drive, Raleigh, NC 27636; telephone 919–856–4520; facsimile 919–856–4556.

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Fish and Wildlife Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss in this final rule only those topics directly relevant to the development and designation of critical habitat for *Carex lutea* under the Act (16 U.S.C. 1531 *et seq.*). For more information on the taxonomy, biology, and ecology of *Carex lutea*, refer to the final listing rule published in the **Federal Register** on January 23, 2002 (67 FR 3120). Information on the associated draft economic analysis (DEA) for the proposed rule to designate critical habitat was published in the **Federal Register** on August 3, 2010 (75 FR 45592).

Species Description, Life History, Distribution, Ecology and Habitat

Carex lutea is a perennial member of the sedge family (Cyperaceae). Fertile culms (stems) may reach 39 in (1 m) or more in height. The yellowish green

leaves are grass-like, with those of the culm mostly basal and up to 11 in (28 cm) in length, while those of the vegetative shoots reach a length of 25.6 in (65 cm).

The species is endemic to Onslow and Pender Counties in the Black River section of the Coastal Plain Province of North Carolina. The North Carolina Natural Heritage Program (NCNHP) recognizes eight populations made up of 17 distinct locations or element occurrences. All of the locations occur within a 16- by 5-mile (26- by 8-kilometer) area, extending southwest from the community of Maple Hill.

Carex lutea generally occurs on fine sandy loam, loamy fine sands, and fine sands with a pH of 5.5 to 7.2, and with a mean of 6.7. These soils are moist to saturated to periodically inundated. *Carex lutea* occurs in the Pine Savanna (Very Wet Clay Variant) natural community type (Schafale 1994, p. 136). Community structure is characterized by an open to sparse canopy dominated by pond pine (*Pinus serotina*), and usually with some longleaf pine (*P. palustris*) and pond cypress (*Taxodium ascendens*).

Carex lutea is threatened by fire suppression; habitat alteration such as land conversion for residential, commercial, or industrial development; mining; drainage for silviculture and agriculture; highway expansion; and herbicide use along utility and highway rights-of-way.