

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0794; FRL-9911-24-Region 4]

Approval and Promulgation of Implementation Plans; Kentucky; Stage II Requirements for Hertz Corporation Facility at Cincinnati/Northern Kentucky International Airport in Boone County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a source-specific State Implementation Plan (SIP) revision submitted to EPA by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on January 17, 2014, for the purpose of exempting a Hertz Corporation facility from the Clean Air Act (CAA or Act) Stage II vapor control requirements. The subject Hertz Corporation facility is currently being constructed at the Cincinnati/Northern Kentucky International Airport in Boone County, Kentucky. EPA's approval of this revision to Kentucky's SIP is based on the December 12, 2006, EPA policy memorandum from Stephen D. Page, entitled "*Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated.*" This action is being taken pursuant to the CAA.

DATES: This rule will be effective June 23, 2014.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2013-0794. 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, i.e., Confidential Business Information 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. EPA

requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding this source specific SIP revision, contact Ms. Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Ms. Sheckler's telephone number is (404) 562-9222; email address: sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under the CAA Amendments of 1990, EPA designated and classified three Kentucky Counties (Boone, Campbell and Kenton) and four Ohio Counties (Butler, Clermont, Hamilton and Warren) (collectively referred to as the "Cincinnati/Northern Kentucky Area") as a "moderate" nonattainment area for the 1-hour ozone national ambient air quality standards (NAAQS). See 56 FR 56694, effective January 6, 1992. The designation was based on the Area's 1-hour ozone design value of 0.157 parts per million for the three year period of 1988-1990.

Pursuant to the requirements of section 182(b)(3) of the CAA, KDAQ developed the Kentucky Administrative Regulation (KAR) 401 KAR 59:174 *Stage II controls at gasoline dispensing facilities*, and submitted the rule to EPA for approval as part of Kentucky's ozone SIP. The rule was adopted by Kentucky on January 12, 1998, and approved by EPA into the SIP on December 8, 1998. See 63 FR 675896. Under this regulation, gasoline dispensing facilities with a monthly throughput of 25,000 gallons or more located in a Kentucky County in which the entire County is classified as severe, serious, or moderate nonattainment for ozone are required to install Stage II vapor recovery systems.

On October 29, 1999, KDAQ submitted to EPA an ozone maintenance plan and request for redesignation to attainment for the Kentucky portion of the Cincinnati/Northern Kentucky Area. At that time the Kentucky portion of the Cincinnati/Northern Kentucky Area had three years of attaining data (1996-1998) and Kentucky had implemented all measures then required by the CAA for a moderate 1-hour ozone nonattainment area. The maintenance plan, as required

under section 175A of the CAA, showed that nitrogen oxides and volatile organic compounds (VOC) emissions in the Kentucky portion of the Cincinnati/Northern Kentucky Area would remain below the 1990 "attainment year's" levels. In making these projections, KDAQ factored in the emissions benefit (primarily VOC) of the Kentucky portion of the Cincinnati/Northern Kentucky Area's Stage II program, and did not remove this program from the Kentucky SIP. The redesignation request and maintenance plan were approved by EPA, effective June 19, 2000 (65 FR 37879). Since the Kentucky Stage II program was already in place and had been included in the Commonwealth's October 29, 1999, redesignation request and 1-hour ozone maintenance plan for the Kentucky portion of the Cincinnati/Northern Kentucky Area, KDAQ elected not to remove the program from the SIP at that time.

On April 6, 1994, EPA promulgated regulations requiring the phase-in of onboard refueling vapor recovery (ORVR) systems on new motor vehicles. Under section 202(a)(6) of the CAA, moderate ozone nonattainment areas are not required to implement Stage II vapor recovery programs after promulgation of ORVR standards.

KDAQ submitted a SIP revision on January 17, 2014, to exempt Stage II vapor control requirements for the Hertz Corporation facility located at the Cincinnati/Northern Kentucky International Airport in Boone County. On February 14, 2014, EPA published a proposed rulemaking to approve Kentucky's January 17, 2014, SIP revision related to Stage II requirements at the Hertz Corporation facility. Detailed background for today's final rulemaking can be found in EPA's February 14, 2014, proposed rulemaking. See 79 FR 8923. The comment period for this proposed rulemaking closed on March 17, 2014. EPA did not receive any comments, adverse or otherwise, during the public comment period.

II. Final Action

EPA is taking final action to approve the aforementioned source-specific SIP revision request from Kentucky. VOC emissions from vehicles at the Cincinnati/Northern Kentucky International Airport Hertz Corporation facility are controlled by ORVR, therefore, EPA has concluded that removal of Stage II requirements at this facility would not result in an increase of VOC emissions, and thus would not contribute to ozone formation. The Commonwealth has requested removal of this requirement for this facility and

EPA has determined that Kentucky has fully satisfied the requirements of section 110(l) of the CAA. Therefore, EPA is taking final action to approve this source-specific SIP revision, as being consistent with section 110 of the CAA.

III. 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 CAA. 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 CAA; 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 July 21, 2014. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 9, 2014.

Heather McTeer Toney,
Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF PLANS

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

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

Subpart S—Kentucky

- 2. Section 52.920(c) is amended, under Table 1, by revising the entry for "401 KAR 59:174" to read as follows:

§ 52.920 Identification of plan.

* * * * *
(c) * * *

TABLE 1—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/Subject	State effective date	EPA Approval date	Explanation
*	*	*	*	*
Chapter 59 New Source Standards				
401 KAR 59:174	Stage II controls at gas-oline dispensing facilities.	01/17/14	05/22/2014 [Insert citation of publication].	Exemption from Stage II vapor control requirements for rental fleet vehicle refueling at the Cincinnati/Northern Kentucky International Airport Enterprise Holdings, Inc., facility and Hertz Corporation facility.
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 [FR Doc. 2014-11781 Filed 5-21-14; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2014-0380; FRL-9911-25-Region 6]

Finding of Failure To Submit a Prevention of Significant Deterioration State Implementation Plan Revision for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}); Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finding that the State of Arkansas has not made a necessary Prevention of Significant Deterioration (PSD) State Implementation Plan (SIP) submission to address the PSD permitting of PM_{2.5} emissions, as required by the Clean Air Act (CAA). Specifically, the EPA is determining that Arkansas has not submitted a SIP revision to address the PM_{2.5} PSD increments and implementing regulations as promulgated by EPA on October 20, 2010. The deadline for the State to make the required submittal was July 20, 2012. The CAA requires EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding PSD SIP elements by no later than 24 months after the effective date of this finding. EPA is making this finding in accordance with section 110 and part C of the CAA.

DATES: The effective date of this rule is May 22, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, Air permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedures Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is

involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions to meet the requirement. No additional fact gathering is necessary. Thus, notice and public procedure are unnecessary. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the CAA for making such determinations. EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994). The EPA finds that these constitute good cause under 5 U.S.C. 553(b)(B).

EPA has also determined that today's Finding of Failure to Submit for Arkansas is effective immediately upon publication because this final action falls under the good cause exemption in 5 U.S.C. 553(d)(3) of the APA. The expedited effective date for this action is authorized under 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The EPA has determined that there is good cause for making this rule effective upon publication because the PSD SIP element is already overdue and the state has been made aware of applicable provisions of the CAA relating to overdue SIP revisions. The State of Arkansas failed to submit a required PSD SIP revision by the mandated deadline of July 20, 2012. We have previously alerted Arkansas through meetings that it has failed to make the submittal by the deadline. Also on May 9, 2014, we sent a letter to Arkansas, explaining that we were planning to take the action we are finalizing today. Consequently, the State has been on notice that today's action was pending. The State and general public are aware of applicable provisions of the CAA that relate to failure to submit a required implementation plan. In addition, this action only starts a 24-month "clock" wherein the EPA must promulgate a Federal Implementation Plan. Furthermore, the purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to prepare before the final rule takes effect. Whereas here, the

affected parties, such as the State of Arkansas and sources within the State, do not need time to adjust and prepare before the Finding of Failure to Submit takes effect. After numerous discussions with the Arkansas Department of Environmental Quality to resolve outstanding issues, the EPA has determined that moving as expeditiously as practicable on this finding is in the best interest of the implementation of the required PSD permitting program. The EPA finds that the above reasons support an effective date prior to thirty days after the date of publication and constitute good cause under 5 U.S.C. 553(d)(3).

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

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I. Background and Overview

A. Overview of the PM NAAQS Requirements

The EPA initially established National Ambient Air Quality Standards (NAAQS) for particulate matter (PM) under section 109 of the CAA in 1971. Since then, the EPA has made a number of changes to these standards to reflect