

and compliance reporting requirements, that means that there will be reduced emissions and greater responsibility on the part of sources. This final action will reduce adverse impacts by improving air quality in Indian country. In addition, we seek to establish a flexible preconstruction permitting program for minor sources in Indian country that is comparable to similar programs in neighboring states in order to create a more level regulatory playing field for owners and operators within and outside of Indian country. This final action will reduce an existing disparity by filling the regulatory gap.

#### K. Congressional Review Act (CRA)

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

#### List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practices and procedures, Air pollution control, Indians, Indians-law, Indians-tribal government, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 16, 2016.

**Gina McCarthy**,  
Administrator.

[FR Doc. 2016-23178 Filed 10-13-16; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2016-0312; FRL-9954-08-Region 4]

#### Air Plan Approval; KY; Removal of Stage II Gasoline Vapor Recovery Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving changes to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environmental Cabinet, on May 3, 2016. This SIP revision removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and allows for the decommissioning of existing Stage II equipment in Boone, Campbell and Kenton Counties in Kentucky

(hereinafter referred to as the "Northern Kentucky Area" or "Area"). EPA determined that Kentucky's May 3, 2016, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule will be effective November 14, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2016-0312. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information may not be 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](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation 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 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Ms. Sheckler's telephone number is (404) 562-9222. She can also be reached via electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On February 3, 1998, the Commonwealth of Kentucky submitted a SIP revision to address the Stage II requirements<sup>1</sup> for the Northern Kentucky Area.<sup>2</sup> EPA approved that SIP

<sup>1</sup> Stage II is a system designed to capture displaced vapors that emerge from inside a vehicle's fuel tank, when gasoline is dispensed into the tank. There are two basic types of Stage II systems, the balance type and the vacuum assist type.

<sup>2</sup> On November 6, 1991, EPA designated and classified Boone, Campbell and Kenton Counties in Kentucky as part of the seven-county area in and around the Cincinnati-Hamilton, OH-KY, area as a moderate nonattainment area for the 1-hour ozone

revision, containing Kentucky regulation 401 KAR 59:174—*Stage II controls at gasoline dispensing facilities*, in a notice published on February 8, 1999 (63 FR 67586). On May 3, 2016, the Commonwealth of Kentucky submitted a SIP revision to EPA seeking modifications of the Stage II requirements in the Northern Kentucky Area. Specifically, it sought the removal of the Stage II requirements in Kentucky regulation 401 KAR 59:174—*Stage II Controls at gasoline dispensing facilities*. EPA published a proposed rulemaking on August 17, 2016, to approve that SIP revision. The details of Kentucky's submittal and the rationale for EPA's action are explained in the proposed rulemaking. See 81 FR 54780. The comment period for this proposed rulemaking closed on September 16, 2016. EPA did not receive any comments, adverse or otherwise, during the public comment period.

#### II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Kentucky regulation 401 KAR 59:174—*Stage II Controls at gasoline dispensing facilities*, effective May 3, 2016, which removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>3</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information)

NAAQS. See 56 FR 56694. The "moderate" classification triggered various statutory requirements for the Area, including the requirement pursuant to section 182(b)(3) of the CAA to require all owners and operators of gasoline dispensing systems to install and operate Stage II. EPA redesignated the Northern Kentucky portion of the Area to attainment for the 1-hour ozone NAAQS, effective July 31, 2002. See 67 FR 49600.

<sup>3</sup> 62 FR 27968 (May 22, 1997).

**III. Final Action**

EPA is taking final action to approve the May 3, 2016, revision to Kentucky Air Regulation 401 KAR 59:174, submitted by the Commonwealth of Kentucky. This action removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities and allows for the decommissioning of existing Stage II equipment. EPA has determined that Kentucky's May 3, 2016, SIP revision related to the State's Stage II rules is consistent with the CAA and EPA's regulations and guidance related to removal of Stage II requirements from the SIP and that these changes will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA, and therefore satisfy section 110(l).

**IV. 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. See 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) and 13563 (76 FR 3821, January 21, 2011);
- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 December 13, 2016. 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: October 3, 2016.

**Heather McTeer Toney,**  
Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION 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) Table 1 is amended under Chapter 59 by revising the entry for "401 KAR 59:174" to read of follows:

**§ 52.920 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA APPROVED KENTUCKY REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Chapter 59 New Source Standards</b>				
*	*	*	*	*
401 KAR 59:174 .....	Stage II controls at gasoline dispensing facilities.	5/3/2016	[Insert citation of publication].	
*	*	*	*	*

\* \* \* \* \*

[FR Doc. 2016-24779 Filed 10-13-16; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R04-OAR-2015-0362; FRL-9954-09-Region 4]

**Air Plan Approval; NC Infrastructure Requirements for the 2010 1-hour NO<sub>2</sub> NAAQS**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve the State Implementation Plan (SIP) submission, submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality, Division of Air Quality (NCDAQ) on August 23, 2013, to demonstrate that the State meets certain infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour nitrogen dioxide (NO<sub>2</sub>) national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. NCDAQ certified that the North Carolina SIP contains provisions that ensure the 2010 1-hour NO<sub>2</sub> NAAQS is implemented, enforced, and maintained in North Carolina. EPA has determined that North Carolina's infrastructure SIP submission, provided to EPA on August 23, 2013, satisfies certain required infrastructure elements for the 2010 1-hour NO<sub>2</sub> NAAQS.

**DATES:** This rule is effective November 14, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2015-0362. All documents in the docket are listed on the [www.regulations.gov](http://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](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section,

Air Planning and Implementation 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 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8726. Mr. Richard Wong can also be reached via electronic mail at [wong.richard@epa.gov](mailto:wong.richard@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background and Overview**

On January 22, 2010 (published at 75 FR 6474, February 9, 2010), EPA promulgated a new 1-hour primary NAAQS for NO<sub>2</sub> at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 NO<sub>2</sub> NAAQS to EPA no later than January 22, 2013.

In a proposed rulemaking published on July 20, 2016 (81 FR 47115), EPA proposed to approve North Carolina's 2010 1-hour NO<sub>2</sub> NAAQS infrastructure SIP submission submitted on August 23, 2013, with the exception of the elements related to state boards of section 110(a)(2)(E)(ii), the PSD permitting requirements for major sources of sections 110(a)(2)(C), and (J), and the interstate requirements of 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4). On November 13, 2015, EPA approved North Carolina's August 23, 2013, infrastructure SIP submission regarding the state boards requirements of sections 110(a)(2)(E)(ii). See 80 FR 67645. On May 10, 2016 (81 FR 28797),

EPA proposed to approve in part and disapprove in part, North Carolina's December 4, 2015, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i) and (J) for the 2012 Annual PM<sub>2.5</sub> NAAQS. Today EPA is not taking final action pertaining to sections 110(a)(2)(C), prong 3 of D(i) and (J) for North Carolina for the 2010 1-hour NO<sub>2</sub> NAAQS but instead will consider final action of these elements in a separate rulemaking. Additionally, on June 3, 2016, EPA finalized a rule related to the prong 4 element of North Carolina's August 23, 2013, SIP submission for the 2010 1-hour NO<sub>2</sub> NAAQS. See 81 FR 35634. With respect to the interstate transport requirements of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), North Carolina provided a separate submission and EPA is considering action related to these provisions through a separate rulemaking. The details of North Carolina's submission and the rationale for EPA's actions for this final rulemaking are explained in the July 20, 2016, proposed rulemaking. Comments on the proposed rulemaking were due on or before August 19, 2016. EPA received no adverse comments on the proposed action.

**II. Final Action**

With the exception of the elements related to state boards of section 110(a)(2)(E)(ii), the PSD permitting requirements for major sources of sections 110(a)(2)(C), and (J), and the interstate requirements of 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), EPA is taking final action to approve North Carolina's infrastructure SIP submission for the 2010 1-hour NO<sub>2</sub> NAAQS submitted on August 23, 2013. EPA is taking final action to approve North Carolina's infrastructure SIP submission for the 2010 1-hour NO<sub>2</sub> NAAQS because the submission is 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. See 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: