

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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 a determination of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands. However, because there are tribal lands located in Milwaukee County, we provided the affected tribe with the opportunity to consult with EPA on the attainment determination. The consultation occurred on November 15, 2010. The affected tribe raised no concerns.

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**. These actions are not "major rules" 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 these actions 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. These actions may not be challenged later in proceedings to enforce their requirements. (*See* section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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 YY—Wisconsin

- 2. Section 52.2585 is amended by adding paragraph (y) to read as follows:

##### § 52.2585 Control strategy: Ozone.

\* \* \* \* \*

(y) *Determination of attainment.* EPA has determined, as of March 1, 2011 that the Milwaukee-Racine, WI and Sheboygan, WI areas have attained the 1997 8-hour ozone standard. These determinations suspend the requirements for these areas to submit attainment demonstrations and associated reasonably available control measures (RACM), reasonable further progress plans (RFP), contingency measures, and other State Implementation Plan (SIP) revisions related to attainment of the standard for as long as the areas continue to attain the 1997 8-hour ozone standard. These determinations also stay the requirement for EPA to promulgate attainment demonstration and RFP Federal Implementation Plans (FIPs) for these areas.

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R05-OAR-2006-0976; FRL-9272-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Ohio; Oxides of Nitrogen Budget Trading Program; Technical Amendment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to remove codification of a State Implementation Plan (SIP) approval vacated by the U.S. Court of Appeals for the Sixth Circuit in a decision dated June 5, 2009. This relates to Ohio rule revisions concerning 240 allowances under the Nitrogen Oxides Budget Trading Program added to the SIP by EPA rulemaking dated February 13, 2008. This final rule conforms the codification of the SIP to the decision by the U.S. Court of Appeals for the Sixth Circuit in *Buckeye Power, Inc. v. EPA* (6th Cir., No. 08-3399, June 5, 2009).

**DATES:** This final rule is effective on March 1, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2006-0976. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., 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 either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353-8777 before visiting the Region 5 office.

#### FOR FURTHER INFORMATION CONTACT:

Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, [Maietta.anthony@epa.gov](mailto:Maietta.anthony@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- Background Information
- What action is EPA taking?
- Statutory and Executive Order Reviews

#### I. Background information

On October 11, 2006, the Ohio Environmental Protection Agency sent EPA a letter requesting, among other actions, that EPA approve rule revisions

to withdraw and permanently retire 240 oxides of nitrogen (NO<sub>x</sub>) allowances from the State's 2005 new source allowance set aside under the NO<sub>x</sub> 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).

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## 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).