

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Sect. 2402	Definitions	5/1/08	11/30/09	[Insert citation of publication].
Sect. 2403	Nitrogen Oxide Emissions	5/1/08	11/30/09	[Insert citation of publication].
Sect. 2404	Sulfur Dioxide	5/1/08	11/30/09	[Insert citation of publication].
Sect. 2405	Nitrogen Oxide Emissions During Ozone Season.	5/1/08	11/30/09	[Insert citation of publication].
Sect. 2406	Permitting	7/1/06	11/30/09	[Insert citation of publication].
Sect. 2407	Monitoring, Reporting, and Recordkeeping	5/1/08	11/30/09	[Insert citation of publication].
Sect. 2408	Trading Program and Banking	7/1/06	11/30/09	[Insert citation of publication].
Sect. 2409	Designated Representative	5/1/08	11/30/09	[Insert citation of publication].
Sect. 2410	Computation of Time	7/1/06	11/30/09	[Insert citation of publication].
Sect. 2411	Opt-In Provisions	7/1/06	11/30/09	[Insert citation of publication].
Sect. 2412	New Unit Growth	5/1/08	11/30/09	[Insert citation of publication].
Sect. 2413	Periodic Review and Reallocations	7/1/06	11/30/09	[Insert citation of publication].

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[FR Doc. E9-28416 Filed 11-27-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2009-0023; FRL-9086-1]

Approval and Promulgation of Implementation Plans; Kentucky; Source-Specific Revision for Avis Rent-A-Car and Budget Rent-A-Car Facilities Located at the Cincinnati/Northern Kentucky International Airport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve source-specific revisions to the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet's (KEEC), Kentucky Division of Air Quality (KDAQ), on February 4, 2009, for the purpose of removing Stage II vapor control requirements at Avis Rent-A-Car and Budget Rent-A-Car facilities located at the Cincinnati/Northern Kentucky International Airport. This revision is being taken pursuant to Section 110 of the Clean Air Act (CAA).

DATES: *Effective Date:* This rule will be effective December 30, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2009-0023. 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 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 <http://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: Deanne Grant, Regulatory Development Section, Air Planning Branch, Air, 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) 562-9291. Ms. Grant can also be reached via electronic mail at grant.deanne@epa.gov. For information relating to the Kentucky SIP, please contact Mr. Zuri Farngalo at (404) 562-9152. Mr. Farngalo can also be reached via electronic mail at farngalo.zuri@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. EPA's Action

EPA is taking final action to approve a source-specific SIP revision, submitted by the Commonwealth of Kentucky, through KDAQ, for the purpose of

removing Stage II vapor control requirements at Avis Rent-A-Car, and Budget Rent-A-Car facilities located at the Cincinnati/Northern Kentucky International Airport. This approval action is based on EPA's analysis that Kentucky's request complies with Section 110 of the CAA.

In a July 27, 2009, rulemaking notice, EPA proposed approval of the aforementioned revision to the Kentucky SIP. The comment period closed on August 26, 2009, and no comments were received. A detailed discussion of Kentucky's submittal and EPA's rationale for approval of the February 4, 2009, Kentucky SIP revision may be found in the proposed rulemaking notice (74 FR 36977). EPA is finalizing the approval as proposed based on the rationale stated in the proposal and in this final action.

II. Background

On January 6, 1992, EPA designated the Cincinnati/Northern Kentucky Area as a "moderate" ozone nonattainment area for the 1-hour ozone standard (56 FR 56694). Therefore, pursuant to the requirements of section 182(b)(3) of the CAA, the Commonwealth of Kentucky, developed Kentucky Administrative Regulations (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 the Commonwealth of Kentucky on January 12, 1998, and approved by EPA into the SIP on December 8, 1998 (63 FR 67589).

On April 6, 1994, EPA promulgated regulations requiring the phase-in of on-board refueling vapor recovery (ORVR) systems on new motor vehicles (59 FR 16262, 40 CFR 86.001 and 40 CFR 86.098). As a result, the CAA no longer requires moderate areas to impose Stage II controls under section 182(b)(3), and allows such areas to seek SIP revisions to remove such requirements from their

SIP, subject to section 110(l) of the Act. Because Kentucky is taking credit for Stage II in its maintenance plan, this action is subject to section 110(l) of the CAA, which states:

Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

On October 29, 1999, KDAQ submitted, for EPA approval, a 1-hour ozone maintenance plan and request for redesignation of the Cincinnati/Northern Kentucky Area to attainment status. 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 Area, KDAQ elected not to remove the program from the SIP at that time. On April 30, 2004, EPA designated the Cincinnati/Northern Kentucky Area, as nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) (69 FR 23857). The Cincinnati/Northern Kentucky Area remains designated as nonattainment for the 1997 8-hour ozone standard, although based on preliminary 2007–2008 data it looks as though the area may attain the standard.

On January 5, 2005, EPA published designations for the 1997 annual and 24-hour PM_{2.5} standard (70 FR 944). The Cincinnati/Northern Kentucky Area was designated as a nonattainment area for the 1997 annual PM_{2.5} standard and remains a nonattainment area for that standard. However, this same area was designated as attainment for the 1997 24-hour PM_{2.5} standard. On September 21, 2006, EPA revised the 24-hour PM_{2.5} standard which in turn initiated the designation process for the revised 24-hour ozone standard. The Commonwealth of Kentucky submitted a letter dated February 10, 2009, which requested that the Cincinnati/Northern Kentucky Area be classified attainment for the revised 24-hour standard based on 2006–2008 data. EPA has yet to publish the final rulemaking with the final designations for the revised 24-hour PM_{2.5} standard but it is anticipated that this area will be designated attainment for the revised daily PM_{2.5} standard based on 2006–2008 data.

On February 4, 2009, Kentucky submitted a SIP revision for the purpose

of removing Stage II vapor control requirements at Avis Rent-A-Car, and Budget Rent-A-Car facilities at the Cincinnati/Northern Kentucky International Airport. This source-specific revision to the Kentucky SIP is approvable pursuant to Section 110 of the CAA and EPA guidance. The Commonwealth of Kentucky has confirmed that not less than 95 percent of vehicles at Avis Rent-A-Car and Budget Rent-A-Car facilities located at the Cincinnati/Northern Kentucky International Airport are equipped with ORVR. Kentucky has adequately demonstrated that ORVR has supplanted Stage II requirements at Avis Rent-A-Car and Budget Rent-A-Car facilities. The proposed rule provides additional information regarding Kentucky's analysis.

III. Final Action

EPA is taking final action to approve the February 4, 2009, SIP revision request from Kentucky for the purpose of removing Stage II vapor control requirements at Avis Rent-A-Car and Budget Rent-A-Car facilities. This source-specific SIP revision is consistent with Section 110 of the CAA.

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. 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 January 29, 2010. 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, Volatile organic compounds, Ozone, Sulfur oxides, Nitrogen dioxide.

Dated: November 16, 2009.

J. Scott Jordon,

Acting Regional Administrator, Region 4.

■ 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 S—Kentucky

■ 2. Section 52.920(d), is amended by adding a new entry at the end of the table for “Source-Specific SIP Revision for Avis Budget Car Rental Group,” to read as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
*	*	*	*	*
Source-Specific SIP Revision for Avis Budget Car Rental Group.	N/A	8/9/07	11/30/09 [Insert citation of publication].	Removal of stage II requirements

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[FR Doc. E9–28421 Filed 11–27–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Parts 440, 447, and 457**

[CMS–2232–F3; CMS–2244–F4]

RIN 0938–AP72 and 0938–AP73

Medicaid Program: State Flexibility for Medicaid Benefit Packages and Premiums and Cost Sharing

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule temporarily delays the effective date of the November 25, 2008 final rule entitled, “Medicaid Program; Premiums and Cost Sharing” and the December 3, 2008 final rule entitled, “Medicaid Program; State Flexibility for Medicaid Benefit Packages” until July 1, 2010.

DATES: *Effective Date:* This action is effective December 31, 2009. The effective date of the rule amending 42 CFR part 440 published in the December 3, 2008 **Federal Register** (73 FR 73694) is delayed until July 1, 2010. The effective date of the rule amending 42 CFR parts 447 and 457 published in the November 25, 2008 **Federal Register** (73 FR 71828) is delayed until July 1, 2010.

FOR FURTHER INFORMATION CONTACT:

Frances Crystal, (410) 786–1195, for State Flexibility for Medicaid Benefit Packages.
Christine Gerhardt, (410) 786–0693, for Premiums and Cost Sharing.

SUPPLEMENTARY INFORMATION:**I. Background****A. State Flexibility for Medicaid Benefit Packages**

On December 3, 2008, we published a final rule in the **Federal Register** (73 FR 73694) entitled “Medicaid Program; State Flexibility for Medicaid Benefit Packages.” The December 3, 2008 final rule implements provisions of section 6044 of the Deficit Reduction Act (DRA) of 2005, (Pub. L. 109–171), enacted on February 8, 2006, which amends the Social Security Act (the Act) by adding a new section 1937 related to the coverage of medical assistance under approved State plans. Section 1937 provides States increased flexibility under an approved State plan to provide covered medical assistance through enrollment of certain Medicaid recipients in benchmark or benchmark-equivalent benefit packages. The final rule set forth the requirements and limitations for this flexibility, after consideration of public comments on the February 22, 2008 proposed rule.

Subsequent to the publication of the December 3, 2008 final rule, we published an interim final rule with comment period in the **Federal Register** on February 2, 2009 (74 FR 5808) to temporarily delay for 60 days the effective date of the December 3, 2008 final rule entitled, “Medicaid Program; State Flexibility for Medicaid Benefit Packages.” The interim final rule also reopened the comment period on the

policies set out in the December 3, 2008 final rule. We received 9 public comments in response to the February 2, 2009 interim final rule.

On February 4, 2009, the Children’s Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (Pub. L. 111–3) was enacted. Certain provisions of CHIPRA affect current regulations regarding State Flexibility for Medicaid Benefit Packages, including the December 3, 2008 final rule. Specifically, section 611(a)(1)(C) and section 611(a)(3) of CHIPRA amend section 1937 of the Act, to require that States provide the full range of the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) coverage benefit to children under the age of 21, rather than those under 19 as specified in the DRA of 2005, who are enrolled in benchmark or benchmark-equivalent plans. EPSDT services may be provided through a benchmark or benchmark-equivalent plan or as an additional benefit supplementing coverage under the benchmark or benchmark-equivalent plan. Section 611(a)(1)(A)(i) of CHIPRA amends section 1937 of the Act by changing the language “Notwithstanding any other provision of this title * * *” to read “Notwithstanding section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and any other provision of this title which would be directly contrary to the authority * * *” One effect of this change is to clarify that the requirement, under 42 CFR 431.53 and section 1902(a)(4) of the Act, to assure transportation for Medicaid beneficiaries in order for them to have access to covered State plan services, is applicable to States electing to provide