TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

Number	Date	Location	Regulated area
*	*	* * *	* * *
23.	July 1st	Broad Bay, Virginia Beach, VA Safety Zone.	All Waters of the Broad Bay within a 400 yard radius of the fireworks display in approximate position latitude 36°52′08″ N, longitude 076°00′46″ W, located on the shoreline near Cavalier Golf and Yacht Club, Virginia Beach, Virginia.

Dated: June 11, 2012.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2012–16232 Filed 6–28–12; 11:15 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0329; FRL–9683–4]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval of revisions to the Ohio State Implementation Plan (SIP), submitted on March 11, 2011, addressing regional haze for the first implementation period that ends 2018. This action is being taken in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program.

DATES: This final rule is effective on August 1, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0329. 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 (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* 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 Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. Synopsis of Proposed Rule

Ohio submitted a plan to address regional haze on March 11, 2011. This plan was intended to address the requirements in CAA section 169A, and interpreted in EPA's Regional Haze Rule as codified at 40 CFR 51.308. This rule was promulgated on July 1, 1999 (64 FR 35713). Further significant provisions were promulgated on July 6, 2005, providing further guidance on provisions related to best available retrofit technology (BART).

EPA proposed a limited approval of Ohio's submittal on January 25, 2012 (77 FR 3712). The proposal notice described the nature of the regional haze problem and the statutory and regulatory background for EPA's review of Ohio's regional haze plan. The proposal provided a lengthy delineation of the requirements that Ohio intended to meet and that EPA proposed to approve, including requirements for mandating BART, consultation with other states in establishing goals representing reasonable further progress in mitigating anthropogenic visibility impairment, and adoption of limitations as necessary to implement a long term strategy (LTS) for reducing visibility impairment.

Of particular interest were EPA's proposed findings regarding BART. Using modeling performed by the Lake Michigan Air Directors Consortium (LADCO), Ohio identified one non-electric generating unit (non-EGU) source, P.H. Glatfelter facility in Ross County, as having sufficient visibility impact to warrant being subject to a requirement representing BART.

Ohio determined that BART was the use of flue gas desulfurization on the two BART-subject boilers. P.H. Glatfelter then requested limits that would allow an alternative strategy. In response to P.H. Glatfelter's request, Ohio adopted sulfur dioxide (SO_2) limits governing the combined emissions from P.H. Glatfelter's boilers #7 and #8, with limits requiring flue gas desulfurization more stringent than BART on individual boilers. In the notice of proposed rulemaking, EPA proposed to approve Ohio's alternative-to-BART limits for SO_2, and continued operation of particulate matter (PM) and nitrogen oxide (NO_X) controls for P.H. Glatfelter. These limits are enforceable at P.H. Glatfelter in a permit issued by Ohio. EPA proposed that Ohio's new, tighter emission limits for the Glatfelter facility in Ross County satisfies the BART requirements for non-EGUs.

II. Public Comments and EPA's Responses

The publication of EPA's proposed rule on January 25, 2012 (77 FR 3712) initiated a 30-day public comment period that ended on February 24, 2012. During that public comment period we received comments from the United States Forest Service (FS), the United States National Park Service (NPS), the Ohio Utility Group, and Earth Justice (on behalf of conservation organizations representing the National Parks Conservation Association, Natural Resources Defense Council, and the Sierra Club) on the proposed rulemaking on the Ohio regional haze

plan. For convenience, comments from Earthjustice will be labeled hereafter as comments by the ''conservation organizations.'' These comments and EPA's responses are addressed in detail below.

Comment #1: FS and NPS recommended additional review of the BART determination for P.H. Glatfelter. The commenters assert that the alternative BART determination for P.H. Glatfelter, boilers #7 and #8, may not result in equivalent reduction in SO_2 emissions compared to application of BART. NPS commented that the SO_2 emission limit of 24,930 pounds per day (4,550 tons per year), represents only a 77 percent reduction from 2002 emission rates. NPS agrees with Ohio's determination that P.H. Glatfelter's alternative BART approach to include a process capable of 90 percent SO_2 removal was appropriate. However, NPS believes that because P.H. Glatfelter could also choose to operate its boilers at reduced capacity or shut down one boiler, and still meet the emission limit with no additional control of SO_2, this does not meet the intent of the BART regulation. Thus, NPS recommends that in addition to the daily maximum SO_2 emission rate, Ohio also set a 30-day rolling average SO_2 limit that would be equivalent to a continuous 90 percent emissions reduction to reflect the performance capability of the control equipment. The conservation organizations raise similar concerns.

Response #1: EPA believes that Ohio has used an adequate representation of emissions for the baseline period. EPA believes further that Ohio's alternative BART limit for SO_2 is slightly more stringent than what BART would achieve. Therefore, EPA believes that Ohio's limit is sufficiently stringent to satisfy requirements for BART for this source. EPA believes that the alternative BART limit, expressed as a daily emission limit, mandates control that is slightly more stringent than BART. Consequently, EPA does not believe that the daily limit needs to be supplemented with a 30-day limit.

Comment #2: The Ohio Utility Group recommends that EPA should fully approve the State of Ohio's Regional Haze SIP revision submitted on March 11, 2011, for the following reasons: (1) The SIP revision is consistent with the regional haze rule, (2) the Clean Air Interstate Rule (CAIR) is in place, and (3) Ohio will continue to reduce emissions under CAIR. Additionally, EPA should approve Ohio's Regional Haze SIP as a result of the U.S. District Court's decision on December 30, 2011, to 'stay' the Cross-State Air Pollution Rule (CSAPR). Since the court's decision states that EPA should continue administering CAIR pending resolution of the appeal, EPA should approve Ohio's regional haze SIP as submitted and rescind its partial disapproval, or let Ohio revise its SIP later when EPA finalizes action on other (rules) such as CSAPR.

Conversely, the conservation organizations comment that EPA must disapprove Ohio's Haze SIP because the state plan improperly relies on CAIR instead of requiring BART limits for coal-fired power plants. Specifically, the conservation organizations comment, ''Because of the deficiencies identified in CAIR by the court and the impact of the Transport Rule on CAIR, it is inappropriate to fully approve states with LTS's that rely upon the emissions reductions predicted to result from CAIR to meet BART requirement for EGU's or to meet the reasonable progress goals (RPGs) in the states' regional haze SIPs.'' The conservation organizations comment that this shortcoming cannot be corrected through reliance on CSAPR.

Response #2: On December 30, 2011, EPA proposed to find that the trading programs of CSAPR can substitute for source-specific BART for EGUs in the states covered by CSAPR requirements (including Ohio) (76 FR 82219). The preamble to that action details EPA's position on the relationship between state SIPs that have relied on CAIR, CSAPR, and the CSAPR stay. EPA is responding to similar comments in the context of that rulemaking.

Comment #3: The conservation organizations assert that Ohio's regional haze plan does not ensure that Ohio will do its part to reduce visibility impacts to Class I areas in other states. The conservation organizations find that Ohio's plan does not provide reasonable progress and note that Ohio's plan fails to satisfy the ''Mid-Atlantic/Northeast Visibility Union (MANE–VU) Ask.[1]'' The conservation organizations list a number of controls sought by MANE–VU (''the MANE–VU ask''), including 90 percent control of SO_2 from each of 167 stacks in 19 states, 28 percent control of non-EGU SO_2 emissions, and consideration of other measures. The conservation organizations acknowledge Ohio's response to these requests but find Ohio's response inadequate, for example finding that the power plant controls cited by Ohio do not necessarily reduce emissions by 90 percent, and finding that the plant shutdowns cited by Ohio are not legally binding.

Response #3: As noted in the proposed rulemaking for this action, specifically in section IV. C—Reasonable Progress Goals, Class I states must set RPGs that achieve reasonable progress toward achieving natural visibility conditions. However, Ohio does not have any Class I areas, so it does not need to set RPGs. In accordance with 40 CFR 51.308(d)(i), Ohio did consult with affected Class I states through the Midwest Regional Planning Organization (MRPO) to ensure that it achieves its fair share of the overall emission reductions necessary to achieve the RPGs of Class I areas that it affects. Minutes from these calls can be found on MRPO's Web site at *http://www.ladco.org/report/rpo/consultation/index.php.* [See section 11 of Ohio's plan.] EPA believes that Ohio has conducted a suitable analysis of the measures that might be considered reasonable and has included an appropriate set of measures in its long term strategy for addressing reasonable progress requirements.

Regarding MANE–VU's ''ask,'' the letters sent in 2007 from MANE–VU invited Ohio to participate in future consultation meetings where emissions from the state are reasonably anticipated to contribute to visibility impairment in Class I areas outside the state. The states' letters cite to the report entitled, Contributions to Regional Haze in the Northeast and Mid-Atlantic United States, NESCAUM, August 2006, *http://www.nescaum.org/documents/contributions-to-regional-haze-in-the-northeast-and-mid-atlantic—united-states/.*

A consultation summary was provided by MANE–VU on August 6, 2007. In October 2007, Ohio responded noting that a number of the stacks from the 14 sources located in Ohio and listed by the MANE–VU in the ''ask'' had already installed or were planning to install scrubbers, which Ohio EPA deemed to be sufficient progress towards MANE–VU's request. Section 10.2 of Ohio's plan discusses MANE–VU's request in greater detail and describes control measures implemented that provide for further reduction in emission from Ohio sources identified compared to the 2002 emissions used by MANE–VU. Based on more recent modeling for MANE–VU (*http://www.nescaum.org/topics/regional-haze/regional-haze-documents*), for projecting visibility in 2018 (''2018 Visibility Projections,'' May

[1] MANE–VU's document entitled ''Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas—Methodology for Source Selection, Evaluation of Control Options, and Four Factor Analysis, July 2007'' requests states outside of the MANE–VU area to examine controls for specific types of sources (i.e., ''MANE–VU Ask'').

13, 2018), MANE–VU found the ''uniform rate is achieved and exceeded at all MANE–VU Class I sites.''

EPA's primary criterion for judging the adequacy of Ohio's long-term strategy for addressing reasonable progress requirements is based more on the collective set of measures rather than on individual mandates at individual facilities. Ohio's plan includes substantial reductions at a broader set of facilities than the 14 facilities noted by the commenters. The shutdown of facilities may be considered to be a compliance strategy for meeting the CSAPR requirement for emission reductions, and EPA finds these reductions may plausibly be considered an outcome of CAIR requirements notwithstanding the absence of a legal mandate for the plants not to operate. Irrespective of whether any individual plant achieves 90 percent reduction, and irrespective of whether plants listed by MANE–VU remain uncontrolled and other plants are controlled instead, EPA believes that the set of reductions in Ohio's plan suffice to provide its share of reductions toward satisfying reasonable progress goals.

Comment #4: The conservation organizations objected to Ohio's exclusion of EGUs from being subject to source-specific BART requirements.

Response #4: The commenters are referring to action taken in a separate rulemaking, proposed on December 30, 2011, at 76 FR 82219. [See description of action in Response #2] EPA directs the commenters to that action for EPA's determination regarding state SIPs that have relied on CAIR.

Comment #5: The conservation organizations found minimal detail in the permit for the P.H. Glatfelter facility. In their opinion, ''EPA should reserve final approval of the permit * * * until the Agency has had the opportunity to review and provide feedback on the compliance plan submitted by the company.''

Response #5: EPA is under a consent decree obligation to act on the permit for the P.H. Glatfelter facility by May 30, 2012. EPA believes that it has sufficient information to warrant approving the permit now. EPA believes that Ohio has made an appropriate determination of the control measures that represent BART at this facility. Ohio has established a limit on SO_2 emissions from P.H. Glatfelter facility that allows the company flexibility in how it complies with the limit but still mandates slightly greater emission reduction than would be achieved with direct application of BART. EPA believes further that this permit satisfies the BART requirement without need for EPA review of the details of the approach by which P.H. Glatfelter meets this limit.

Comment #6: The conservation organizations believe that Glatfelter ''significantly overestimated the per ton cost of SO_2 controls by amortizing the capital cost of the controls over only 10 years at a rate of 15 percent.''

Response #6: EPA agrees that amortizing the capital cost of controls over 10 years and using a 15 percent interest rate yields a substantially overstated estimate of the annualized capital costs. However, the conservation organizations do not assert that correction of the cost estimate would change the appropriate BART determination for this facility. In fact, Ohio selected the most stringent control option as BART. The overstatement of costs did not result in elimination of any control options or selection of a less stringent control option. Therefore, EPA believes that Ohio has mandated an appropriate BART requirement for this facility notwithstanding the company's overestimate of the cost of control.

Comment #7: The conservation organizations question the methodology upon which Ohio relied to exempt sources from BART and request that EPA review this methodology.

Response #7: EPA reexamined Ohio's methodology, as requested, and reaffirms its conclusion that Ohio's analysis reflects an acceptable methodology that does not wrongly exclude any sources that should have been subject to BART.

Comment #8: The conservation organizations assert that the proposed actions are illegal and invalid, as the CAA does not provide EPA with authority to issue ''limited approvals'' or ''limited disapprovals.'' The conservation organizations contend that section 110(k) of CAA only allows EPA to fully approve, partially approve and partially disapprove, conditionally approve, or fully disapprove a SIP.

Response #8: EPA disagrees with the conservation organizations assertions. Although section 110(k) of the CAA may not expressly provide authority for limited approvals, the plain language of section 301(a) does provide ''gap-filling'' authority authorizing the Agency to ''prescribe such regulations as are necessary to carry out'' EPA's CAA functions. EPA may rely on section 301(a) in conjunction with the Agency's SIP approval authority in section 110(k)(3) to issue limited approvals where it has determined that a submittal strengthens a given state SIP and that the provisions meeting the applicable requirements of CAA are not separable from the provisions that do not meet CAA's requirements. EPA's limited approval of Ohio's SIP revision addressing regional haze is appropriate because it addresses regional haze rule requirements and approvable provisions are not separable from the provisions that do not meet CAA's requirements.

As explained in the September 7, 1992, EPA Memorandum from John Calcagni, ''through a limited approval, EPA [will] concurrently, or within a reasonable period of time thereafter, disapprove the rule * * * for not meeting all of the applicable requirements of the Act. * * * [T]he limited disapproval is a rulemaking action, and it is subject to notice and comment.'' In a separate action, published December 30, 2011 (76 FR 82219), EPA did in fact propose a limited disapproval of the Ohio regional haze SIP for the SIPs reliance on CAIR.

III. What action is EPA taking?

EPA is finalizing a limited approval of Ohio's regional haze plan. EPA is approving Ohio's plan for BART for non-EGUs, mostly notably approving limits satisfying BART requirements for P.H. Glatfelter. EPA also concludes that Ohio's submission provides an approvable analysis of the emission reductions needed to satisfy reasonable progress and other regional haze planning requirements, and Ohio's submission meets other regional haze planning requirements such as identification of affected Class I areas and provision of a monitoring plan. Therefore, EPA is finalizing limited approval of Ohio's regional haze plan as strengthening the SIP and helping address regional haze for the first implementation period by helping remedy any existing anthropogenic and prevent future impairment of visibility at Class I areas.

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 CAA 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 August 31, 2012. 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 29, 2012.

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

■ 2. Section 52.1870 is amended by adding paragraph (c)(155) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(155) On March 11, 2011, the Ohio Environmental Protection Agency submitted Ohio's regional haze plan addressing the first implementation period of the regional haze rule requirements. This plan includes a long-term strategy with emission limits for mandating emission reductions equivalent to the reductions from implement best available retrofit technology and with emission reductions to provide Ohio's contribution toward achievement of reasonable progress goals at Class I areas affected by Ohio. The plan specifically satisfies BART requirements for non-EGUs, most notably by providing new, tighter emission limits for the P.H. Glatfelter facility in Ross County, Ohio. The plan establishes a combined daily sulfur dioxide emission limit of 24,930 pounds per day for boiler #7 and #8. The plan also includes permit number P0103673 that will impose these emission limitations on P.H. Glatfelter Company.

(i) Incorporation by reference.

(A) Permit-to-Install Number P0103673, issued to P.H. Glatfelter Company—Chillicothe Facility by the Ohio Environmental Protection Agency, signed by Scott J. Nally and effective on March 7, 2011.

[FR Doc. 2012–16033 Filed 6–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0236; FRL–9690–9]

Withdrawal of Direct Final Rule Revising the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On June 1, 2012 (77 FR 32398), EPA published a direct final approval of a revision to the California State Implementation Plan (SIP). This revision concerned South Coast Air Quality Management District (SCAQMD) Rule 1156, Further Reductions of Particulate Emissions from Cement Manufacturing Facilities. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by July 2, 2012, EPA would publish a timely withdrawal in the **Federal Register**. EPA received a timely adverse comment. Consequently, with this revision we are withdrawing the direct final approval of SCAQMD Rule 1156. EPA will either address the comment in a subsequent final action based on the parallel proposal also published on June 1, 2012 (77 FR 32398), or repropose an alternative action. As stated in the parallel proposal, EPA will not institute a second comment period on a subsequent final action.

DATES: The addition of 40 CFR 52.220 (c)(362)(i)(B)(*2*) published at 77 FR 32398 on June 1, 2012 is withdrawn as of July 2, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0236 for this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the