

complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone for a bridge based pyrotechnics display on the Main Branch of the Chicago River in Chicago, IL. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0196 to read as follows:

#### § 165.T09–0196 Safety Zone; Main Branch of the Chicago River, Chicago, IL.

(a) *Location.* All U.S. navigable waters of the Main Branch of the Chicago River, between the Wells Street Bridge and Dearborn Street Bridge in Chicago, IL.

(b) *Enforcement period.* This rule will be enforced on May 20, 2017 from 7:45 p.m. to 8:15 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the

Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan, or an on-scene representative.

Dated: May 5, 2017.

**A.B. Cocanour,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2017–09633 Filed 5–11–17; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2016–0373; FRL–9961–87–Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Infrastructure Requirements for the 2012 Fine Particulate Standard

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of a state implementation plan (SIP) revision submitted by the State of West Virginia. Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the Clean Air Act (CAA) requires states to submit a plan to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure implementation, maintenance, and enforcement of the NAAQS. These elements are referred to as infrastructure requirements. The State of West Virginia

made a submittal addressing the infrastructure requirements for the 2012 fine particulate matter (PM<sub>2.5</sub>) NAAQS, and EPA is approving portions of this SIP revision in accordance with the requirements of the CAA.

**DATES:** This final rule is effective on June 12, 2017.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2016–0373. 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, e.g., 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 through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Ellen Schmitt, (215) 814–5787, or by email at [schmitt.ellen@epa.gov](mailto:schmitt.ellen@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

On July 16, 1997, the EPA promulgated a new 24-hour and a new annual NAAQS for PM<sub>2.5</sub>. See 62 FR 38652 (July 18, 1997). Subsequently, on December 14, 2012, the EPA revised the level of the health based (primary) annual PM<sub>2.5</sub> standard to 12 micrograms per cubic meter (µg/m<sup>3</sup>). See 78 FR 3086 (January 15, 2013).<sup>1</sup>

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable 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. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and

<sup>1</sup> In EPA’s 2012 PM<sub>2.5</sub> NAAQS revision, EPA left unchanged the existing welfare (secondary) standards for PM<sub>2.5</sub> to address PM related effects such as visibility impairment, ecological effects, damage to materials and climate impacts. This includes a secondary annual standard of 15 µg/m<sup>3</sup> and a 24-hour standard of 35 µg/m<sup>3</sup>.

circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

## II. Summary of SIP Revision

On November 17, 2015, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2012 PM<sub>2.5</sub> NAAQS. On December 23, 2016 (81 FR 94281), EPA published a notice of proposed rulemaking (NPR) proposing approval of portions of the West Virginia November 17, 2015 SIP submittal. In the NPR, EPA proposed approval of the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (relating to prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA.

At this time, EPA is not taking action on the portions of West Virginia's November 17, 2015 SIP submission which addressed section 110(a)(2)(D)(i)(I) of the CAA relating to interstate transport of emissions, nor is the Agency taking action on the portion of the November 17, 2015 SIP submission which addressed section 110(a)(2)(D)(i)(II) relating to visibility protection. EPA intends to take later separate action on these portions of West Virginia's submittal as explained in the NPR and the Technical Support Document (TSD), which accompanied the NPR. The TSD is available in the docket for this rulemaking which is also available online at [www.regulations.gov](http://www.regulations.gov). Finally, West Virginia did not address in its submittal section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) and will be addressed in a separate process if necessary.

The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIPs in general, is explained in the published NPR and the TSD and will not be restated here. The NPR and TSD are available in the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2016-0373.

## III. Public Comments and EPA's Responses

EPA received two anonymous comments on the December 23, 2016 proposed approval of portions of the West Virginia's 2012 PM<sub>2.5</sub> infrastructure SIP.

*Comment 1:* One commenter asked why West Virginia is any different than other states and stated that how particulate matter is measured and "the standard" for particulate matter should be the same for all states. The commenter stated that "[w]hat is safe in one State, should not be different than another."

*Response 1:* EPA thanks the commenter for the submitted statements. To clarify, West Virginia is not treated any differently than any other state in the United States under the CAA's NAAQS. Indeed, the "standard" for particulate matter and how particulate matter is "measured" (*i.e.*, monitored) is the same for all states.

Sections 108 and 109 of the CAA require EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. The NAAQS apply equally throughout all states. Once EPA sets a new or revised NAAQS, EPA must designate areas in every state as either attainment, unclassifiable, or nonattainment pursuant to section 107(d)(1)(B) and states must develop, adopt, and submit to EPA for approval a SIP that contains emissions limitations and other control measures to attain and maintain the relevant NAAQS in accordance with section 110(a).

Pursuant to sections 108 and 109 of the CAA, EPA has promulgated NAAQS for two sizes of particulate matter: PM<sub>10</sub> and PM<sub>2.5</sub>.<sup>2</sup> Because this action concerns the 2012 PM<sub>2.5</sub> NAAQS, EPA's response addresses the relevant NAAQS. On December 14, 2012, EPA revised the health based (primary) annual PM<sub>2.5</sub> NAAQS to 12 µg/m<sup>3</sup>, and this standard applies equally throughout all states. *See* 78 FR 3086 (January 15, 2013). Two years later, on December 14, 2014, EPA designated all areas in West Virginia as "unclassifiable/attainment" for the primary 2012 PM<sub>2.5</sub> NAAQS. *See* 80 FR 2206, 2278–2279 (January 15, 2015).<sup>3</sup> Finally, on November 17, 2015, West Virginia submitted a SIP revision to EPA to address the requirements of

<sup>2</sup> Coarse particulate matter (PM<sub>10</sub>) are generally 10 micrometers and smaller, while fine particulate matter (or PM<sub>2.5</sub>) consist of fine inhalable particles, with diameters that are generally 2.5 micrometers and smaller.

<sup>3</sup> The rule explains that "EPA is designating areas as nonattainment, unclassifiable, or unclassifiable/attainment."

section 110(a)(2) of the CAA for the 2012 PM<sub>2.5</sub> NAAQS and identified West Virginia's measures to attain and maintain that NAAQS.

Regarding measurement of particulate matter, state and, where applicable, local and/or tribal, agencies (referred to herein as "monitoring agencies") are responsible for providing an air quality surveillance system in order to, among other goals, assess the extent of pollution, provide information on air quality trends, and support the implementation of air quality goals or standards (*i.e.*, the NAAQS). Monitoring agencies are required to submit to EPA an annual monitoring network plan which provides for the documentation of the establishment and maintenance of their air quality surveillance system.<sup>4</sup> These annual monitoring network plans require that ambient particulate matter data are collected through an approved network of specified ambient monitoring stations. Data from the approved monitoring stations are used to compare an area's air pollution levels against the NAAQS to make sure air quality is protective of public health and the environment. Monitoring agencies provide all ambient air quality data, including those related to PM<sub>2.5</sub>, to EPA through the Agency's Air Quality Management System (AQS).

As discussed in the TSD for this action, WVDEP has the authority under state law "to develop ways and means for the regulation and control of pollution of the air of the state" and "conduct such studies and research relating to air pollution and its control and abatement." EPA-R03-OAR-2016-0373-0006, p. 10. WVDEP currently operates and maintains an established network of ambient air monitors in West Virginia for the purpose of assessing compliance with the 2012 PM<sub>2.5</sub> NAAQS, and submits to EPA for approval, on an annual basis, a monitoring network plan, which describes how West Virginia is complying with monitoring requirements and explains any changes to the monitoring network. *Id.*; *see also* EPA-R03-OAR-2016-0373-0007 (Approval letter regarding WVDEP's 2015 annual monitoring network plan).

In summary, the NAAQS apply to all states in the country, all states monitor (or measure) particulate matter in accordance with CAA statutory and regulatory requirements, and West Virginia is not treated any differently for such purposes.

<sup>4</sup> Each monitoring agency must submit to EPA for approval an annual monitoring network plan that is in accordance with the monitoring requirements contained in 40 CFR parts 50, 53, and 58.

*Comment 2:* The commenter stated that “[A]ir quality is important for our environment and our health. Infrastructure improvements can provide jobs as well.”

*Response 2:* EPA thanks the commenter for the support for air quality and health. The commenter’s statement regarding “infrastructure improvements” likely reflects the commenter’s concern for improvements to bridges and roads which are more traditionally understood as “infrastructure” in the United States. Thus, EPA believes the comment related to “infrastructure improvements” is likely unrelated to EPA’s approval of West Virginia’s “infrastructure” SIP submittal which addresses requirements in CAA section 110(a)(2) to provide the necessary structural requirements such as emission limitations and monitoring requirements for attaining and maintaining the 2012 PM<sub>2.5</sub> NAAQS in West Virginia. EPA described in detail in the NPR and in the TSD, which accompanied the NPR, how West Virginia’s SIP provides the basic structural requirements. As the comment is not germane to EPA’s rulemaking, no further response is provided.

#### IV. Final Action

EPA is approving portions of the West Virginia’s SIP revision regarding the infrastructure program elements specified in section 110(a)(2)(A), (B), (C), (D)(i)(II) (relating to prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2012 PM<sub>2.5</sub> NAAQS. EPA will conduct separate rulemaking action on the portions of West Virginia’s November 17, 2015 SIP submission addressing section 110(a)(2)(D)(i)(I) of the CAA relating to interstate transport of emissions and addressing section 110(a)(2)(D)(i)(II) relating to visibility protection. This rulemaking action does not include any action addressing section 110(a)(2)(I) of the CAA for the 2012 PM<sub>2.5</sub> NAAQS which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process, if necessary.

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

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 Orders 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, 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.

##### B. Submission to Congress and the Comptroller General

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).

##### C. Petitions for Judicial Review

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 11, 2017. 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 which approves portions of the West Virginia SIP submittal to address the CAA section 110(a)(2) infrastructure requirements for the 2012 PM<sub>2.5</sub> NAAQS, may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

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

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 12, 2017.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

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 XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding the entry “Section 110(a)(2) Infrastructure Requirements for the 2012 PM<sub>2.5</sub> NAAQS” at the end of the table to read as follows:

§ 52.2520 Identification of plan. (e) \* \* \*

\* \* \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* Section 110(a)(2) Infra-structure Requirements for the 2012 PM <sub>2.5</sub> NAAQS.	* Statewide .....	* 11/17/15	* 5/12/17, [insert <b>Federal Register</b> citation].	* This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2016-0116; FRL-9961-44-Region 4]

**Air Plan Approval; Georgia: Heavy Duty Diesel Requirements**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving changes to a State Implementation Plan (SIP) revision submitted by the State of Georgia on January 25, 2016, for the purpose of removing the requirements for heavy duty diesel engines (HDDE), which bar the sale/lease or import in the State of Georgia of any new HDDE that were not certified by the California Air Resources Board (CARB) to meet the emission standards of the California HDDE rules. The removal of this rule will prevent regulatory confusion and make it clear that the more stringent EPA emission standards for HDDE are applicable. EPA is approving this SIP revision because the State has demonstrated that it is consistent with the Clean Air Act (CAA or Act).

**DATES:** This direct final rule is effective July 11, 2017 without further notice, unless EPA receives adverse comment by June 12, 2017. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2016-0116 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Kelly Sheckler, 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. The telephone number is (404) 562-9222. Ms. Sheckler can also be reached via electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The federal Clean Air Act (CAA) establishes the framework for controlling mobile-source emissions in the United States. During the development of the CAA in 1967, Congress recognized that the imposition of many different state standards could result in inefficiencies in vehicle markets. Therefore, state-established emissions standards were preempted by federal emissions standards in what is now section 209 of the CAA. A special exemption to this federal preemption was made in section 209 for California because of the state's special air quality problems and pioneering efforts in the control of air pollutants. This exemption, still in existence, gives the State of California the authority to set

on-road vehicle standards that differ from the federal standards as long as they are as protective in the aggregate as federal standards. Later amendments to section 209 granted California the authority to set emissions standards and regulations for some nonroad engines, and section 177 was added to allow other states to adopt California standards. See CAA section 209(b), 42 U.S.C. 7543(b). Section 177 of the CAA allows other states to adopt standards and test procedures identical to California's. However, regardless of whether a manufacturer receives CARB approval, all new motor vehicles and engines must still receive certification from EPA before the vehicle is introduced into commerce. If a state adopts CARB standards in lieu of the federal standards and then later removes the requirement for the CARB standards, the Federal CAA vehicle standards will apply in that state.

In 1994, the CARB approved a plan that called for emission standards for highway heavy-duty diesel vehicles beginning in 2004. In June of 1995, CARB, EPA, and the manufacturers of heavy-duty vehicle engines signed a statement of principles (SOP) calling for the harmonization of CARB and EPA heavy-duty vehicle regulations.

In 1998, the federal government and seven HDDE manufacturers entered into consent decrees as a result of enforcement actions that were brought against the manufacturers because a majority of the diesel engine manufacturers had programmed their engines to defeat federal test procedures (FTP) through the use of a "defeat device." As a part of the consent decree, the majority of the settling manufacturers agreed to produce by October 1, 2002, engines that would meet supplemental test procedures including the Not-To-Exceed (NTE) test and the EURO III European Stationary Cycle (ESC) test. These requirements were to be met for a period of two years.

Recognizing the effectiveness of the supplemental tests, EPA published a notice of proposed rulemaking on October 29, 1999, see 64 FR 58472,