

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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

- 2. Amend 33 CFR 165.921 by staying paragraphs (d)–(h) from midnight January 15, 2011 to midnight January 15, 2013.

Dated: January 7, 2011.

**Michael N. Parks,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 2011-852 Filed 1-14-11; 8:45 am]

BILLING CODE 9110-04-P

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

##### 33 CFR Part 165

[Docket No. USCG-2010-1138]

#### Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Enforcement of Regulation.

**SUMMARY:** The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 daily from 7 a.m. through 11 a.m. and from 1 p.m. to 5 p.m. on January 18–22, 2011; January 24–26, 2011; January 31, 2011; February 1–5, 2011; February 7–12, 2011; and on February 14–19, 2011. This enforcement action will also occur from 7 a.m. on January 27, 2011 through 7 a.m. on January 29, 2011. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the U.S. Army Corps of Engineers' operational and safety testing of the dispersal barrier IIB, which helps control the spread of

aquatic nuisance species that have the potential of devastating the waters of the Great Lakes.

During the enforcement period, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

**DATES:** The regulations in 33 CFR 165.T09.0166 will be enforced from 7 a.m. on January 18, 2011 through 5 p.m. on February 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216-902-6045, e-mail address *Timothy.M.Cummins@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR § 165.T09–0166, on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 daily from 7 a.m. to 11 a.m. and from 1 p.m. to 5 p.m. on January 18–22, 2011; January 24–26, 2011; January 31, 2011; February 1–5, 2011; February 7–12, 2011; and on February 14–19, 2011. This enforcement action will also occur from 7 a.m. on January 27, 2011 until 7 a.m. on January 29, 2011.

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the U.S. Army Corps of Engineers' dispersal barrier IIB operational testing poses risks to life and property. The combination of vessel traffic and electric current in the water makes the controlling of vessels through the impacted portion of the Chicago Sanitary and Ship Canal necessary to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR 165.T09–0166 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Sector Lake Michigan, will also provide notice through other means,

which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and e-mail notifications.

Dated: December 29, 2010.

**S.R. Schenk,**

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

[FR Doc. 2011-851 Filed 1-14-11; 8:45 am]

BILLING CODE 9110-04-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA-R03-OAR-2010-0881; FRL-9251-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Adoption of 8-hour Ozone Standard and Related Reference Conditions, and Update of Appendices

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Commonwealth of Virginia State Implementation Plan (SIP). The revision adds the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) of 0.075 parts per million (ppm) and related reference conditions and updates the list of appendices under "Documents Incorporated by Reference." Virginia's SIP revision for the NAAQS for ozone is consistent with the 8-hour Federal standard. This action is being taken under the Clean Air Act (CAA).

**DATES:** This rule is effective on March 21, 2011 without further notice, unless EPA receives adverse written comment by February 17, 2011. 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 Number EPA-R03-OAR-2010-0881 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: *powers.marilyn@epa.gov*. C. Mail: EPA-R03-OAR-2010-0881, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**D. Hand Delivery:** At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2010-0881. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, 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 in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of

Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Irene Shandruk, (215) 814-2166, or by e-mail at [shandruk.irene@epa.gov](mailto:shandruk.irene@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On September 27, 2010, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision amends the existing SIP to add the 2008 8-hour ozone NAAQS and related reference conditions.

The Clean Air Act (CAA) specifies that EPA must reevaluate the appropriateness of each of the NAAQS every five years. As part of the process, EPA reviewed the latest health-based research and determined that a revised NAAQS for ozone was necessary to protect public health. EPA revised the 8-hour standard to a level of 0.075 parts per million (ppm) to provide increased protection for children and other "at risk" populations against an array of ozone-related adverse health effects. EPA promulgated this more stringent NAAQS for ozone on March 27, 2008 (73 FR 16436).

**II. Summary of SIP Revision**

On September 27, 2010, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of an amendment which includes the revised ambient air quality standard for ozone, and related reference conditions. Virginia's revision incorporates the Federal 8-hour ozone NAAQS into the Code of Virginia (9VAC5 Chapter 30). In addition, the list of appendices to 40 CFR Part 51 is being updated under documents incorporated by reference (9VAC5-20-21).

The following are the specific sections that are being modified or added:

- 9VAC5-20-21: Documents incorporated by reference (modified).
- 9VAC5-30-55: Ozone (8-hour, 0.08 ppm) (modified).
- 9VAC5-30-56: Ozone (8-hour, 0.075 ppm) (added).

**III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides for, subject to certain conditions, an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to

certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. \* \* \* The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent

with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, State audit privilege or immunity law.

#### IV. Final Action

EPA is approving Virginia's SIP revisions for the 2008 ozone NAAQS and related reference conditions, as well as the updated list of appendices to 40 CFR part 51 under “Documents Incorporated by Reference.” EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 21, 2011 without further notice unless EPA receives adverse comment by February 17, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

Under the Clean Air Act, 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 Clean Air Act. 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 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.

#### 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 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 March 21, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action pertaining to Virginia's adoption of the 2008 8-hour ozone NAAQS of 0.075 parts per million (ppm) and related reference conditions 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 22, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart VV—Virginia**

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entry for Section 5–30–55 and by adding the entry for Section 5–30–56. The table in paragraph (e) is amended by adding an entry for “Documents Incorporated by

Reference” after the ninth existing entry for “Documents Incorporated by Reference.” The amendments read as follows:

**§ 52.2420 Identification of plan.**

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

**EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES**

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
5–30–55 .....	Ozone (8-hour, 0.08 ppm) .....	6/24/09	1/18/11 [Insert page number where the document begins].	Revised section.
5–30–56 .....	Ozone (8-hour, 0.075 ppm) .....	6/24/09	1/18/11 [Insert page number where the document begins].	Added section.

\* \* \* \* \*  
(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Documents Incorporated by Reference (9 VAC 5–20–21, Sections B and E.1.).	Statewide .....	9/27/10	1/18/11 [Insert page number where the document begins].	Revised sections.
*	*	*	*	*

\* \* \* \* \*  
[FR Doc. 2011–487 Filed 1–14–11; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 60 and 63**

**[EPA–HQ–OAR–2002–0051; EPA–HQ–OAR–2007–0877; FRL–9253–4]**

**RIN 2060–AQ59**

**National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants**

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

**ACTION:** Direct Final rule; amendments.

**SUMMARY:** The EPA is taking direct final action on amendments to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and Standards of Performance (NSPS) for Portland Cement Plants. The final rules were published on September 9, 2010. This direct final action amends certain regulatory text to clarify compliance dates and clarifies that the previously issued emission limits that were changed in the September 9, 2010, action remain in effect until sources are required to comply with the revised limits. We are also correcting two minor typographical errors in the regulatory text to the September 9, 2010 action.

**DATES:** The direct final rule is effective on March 21, 2011, without further notice, unless EPA receives significant adverse written comment by February 17, 2011, or if a public hearing is requested by February 2, 2011. If

significant adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** clarifying which provisions will become effective and which provisions are being withdrawn due to adverse comment.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0051, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
  - *E-mail*: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
  - *Fax*: (202) 566–9744.
  - *Mail*: U.S. Postal Service, send comments to: EPA Docket Center (6102T), National Emission Standards for Hazardous Air Pollutant From the Portland Cement Manufacturing Industry Docket, Docket ID No. EPA–HQ–OAR–2002–0051, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two