

### 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.

### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If we issue a final rule in this rulemaking, because of the closeness of the event, we would make it effective less than 30 days after publication in the **Federal Register**, and we would explain our good cause for doing so in the final rule, as required by 5 U.S.C. 553(d)(3).

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.T13–0929 to read as follows:

#### § 165.T13–0929 Safety Zone; Willamette River, Portland, OR.

(a) *Safety zone.* The following area is designated a safety zone: Waters of the Willamette River, within a 450-yard radius of the fireworks barge located between the Burnside and Steel Bridges in Portland, OR.

(b) *Regulations.* In accordance with § 165.23, no person may enter or remain in this safety zone unless authorized by the Captain of the Port Columbia River or his designated representative. Also in accordance with § 165.23, no person may bring into, or allow to remain in this safety zone any vehicle, vessel, or object unless authorized by the Captain of the Port Columbia River or his designated representative.

(c) *Enforcement period.* This section will be enforced from 6 p.m. to 8:30 p.m. on November 13, 2016.

Dated: October 17, 2016.

**D. F. Berliner,**

*Captain, U.S. Coast Guard, Alternate Captain of the Port, Sector Columbia River.*

[FR Doc. 2016–25511 Filed 10–20–16; 8:45 am]

**BILLING CODE 9110–04–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R04–OAR–2016–0526; FRL–9954–34–Region 4]

#### Air Plan Approval; KY; RACM Determination for the KY Portion of the Louisville Area 1997 Annual PM<sub>2.5</sub>

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on August 9, 2016, that addresses reasonably available control

measures (RACM) for the Kentucky portion of the Louisville, KY–IN, nonattainment area for the 1997 Annual fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS) (hereinafter referred to as the “bi-state Louisville Area” or “Area”).

**DATES:** Comments must be received on or before November 21, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0526 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](http://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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Madolyn Sanchez, 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. Ms. Sanchez can be reached by telephone at (404) 562–9644 or via electronic mail at [sanchez.madolyn@epa.gov](mailto:sanchez.madolyn@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In 1997, EPA promulgated the first air quality standards for PM<sub>2.5</sub>. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>) (based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations) and a 24-hour standard of 65 µg/m<sup>3</sup> (based on a 3-year average of the 98th percentile of 24-hour concentrations). See 62 FR 38652 (July 18, 1997). On January 5, 2005 (70 FR 944), and supplemented on April 14, 2005 (70 FR 19844), EPA designated the bi-state Louisville Area as nonattainment for the 1997 Annual PM<sub>2.5</sub> NAAQS. In that

action, EPA defined the bi-state Louisville Area to include Bullitt and Jefferson Counties in Kentucky as well as Clark and Floyd Counties and a portion of Jefferson County (Madison Township) in Indiana. Designation of an area as nonattainment for PM<sub>2.5</sub> starts the process for a state to develop and submit to EPA a SIP revision under title I, part D of the Clean Air Act (CAA or Act). This SIP revision must include, among other elements, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable, but no later than the attainment date required by the CAA.

Originally, EPA designated all 1997 PM<sub>2.5</sub> NAAQS areas under title I, part D, subpart 1 (hereinafter “Subpart 1”). Subpart 1, comprised of CAA sections 171–179B, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Section 172(c) contains the general SIP requirements for these areas, including RACM requirements under section 172(c)(1). On April 25, 2007 (72 FR 20586), EPA promulgated a rule, codified at 40 CFR part 51, subpart Z, to implement the 1997 PM<sub>2.5</sub> NAAQS under Subpart 1 (hereinafter referred to as the “1997 PM<sub>2.5</sub> Implementation Rule”).<sup>1</sup> On December 3, 2008, Kentucky submitted an attainment demonstration SIP revision for the Area that addressed RACM and certain other section 172(c) elements including a reasonable further progress (RFP) plan, base-year and attainment-year emissions inventories, and contingency measures for the Area. This SIP revision included a section 172(c)(1) RACM determination that there were no potential emissions control measures that, if considered collectively, would advance the attainment date by one year or more.

In 2011, EPA determined that the bi-state Louisville Area had attained the 1997 Annual PM<sub>2.5</sub> NAAQS based upon complete, quality-assured, and certified

ambient air monitoring data for the 2007–2009 period. *See* 76 FR 55544 (September 7, 2011); 40 CFR 52.929(b). As a result of this determination and in accordance with 40 CFR 51.1004(c), the requirements for the Area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures, and other planning SIP revisions related to attainment of the 1997 Annual PM<sub>2.5</sub> NAAQS are suspended for so long as: The area is redesignated to attainment, at which time the requirements no longer apply; or EPA determines that the area has violated the PM<sub>2.5</sub> NAAQS, at which time the area is again required to submit such plans. Therefore, Kentucky withdrew the aforementioned PM<sub>2.5</sub> attainment demonstration SIP revision except for the portion addressing emissions inventory requirements under section 172(c)(3). EPA later approved Kentucky’s 2002 base-year emissions inventory for the Louisville Area pursuant to section 172(c)(3) on August 2, 2012 (77 FR 45956).

On March 5, 2012, Kentucky submitted a request to redesignate the Kentucky portion of the bi-state Louisville Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS.<sup>2</sup> As the result of a 2015 decision from the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) in *Sierra Club v. EPA*, 793 F.3d 656 (6th Cir. 2015) requiring a SIP-approved Subpart 1 RACM determination prior to the redesignation of a 1997 Annual PM<sub>2.5</sub> NAAQS nonattainment area, Kentucky submitted a SIP revision on August 9, 2016, to address the section 172(c)(1) RACM requirements and to support the Commonwealth’s March 5, 2012, redesignation request. In that SIP revision, the Commonwealth determined that no additional control measures are necessary in the Area to satisfy the CAA section 172(c)(1) RACM requirements. Kentucky’s determination and the Sixth Circuit’s decision are discussed in further detail below.

## II. What action is EPA proposing to take?

EPA is proposing to determine that Kentucky’s Subpart 1 RACM determination meets the requirements of section 172(c)(1) of the CAA and is proposing to approve this RACM determination into the SIP for the reasons discussed in Section III below.

<sup>2</sup> Kentucky submitted its redesignation request prior to the aforementioned ruling in *Natural Resources Defense Council v. EPA*. As discussed in the 2014 Rule, EPA’s position is that this ruling does not apply retroactively. *See* 79 FR at 31568.

## III. What is EPA’s analysis of the Commonwealth’s RACM submittal?

### A. Relationship Between Subpart 1 RACM and Redesignation Criteria

EPA does not believe that Subpart 1 nonattainment planning requirements designed to provide for attainment, including RACM, are “applicable” for purposes of CAA section 107(d)(3)(E)(ii) once an area is attaining the NAAQS and, therefore, does not believe that these planning requirements must be approved before EPA can redesignate an area to attainment. *See, e.g.*, 57 FR 13498, 13564 (April 16, 1992); “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division (September 4, 1992). However, the aforementioned Sixth Circuit decision in *Sierra Club v. EPA* is inconsistent with this longstanding interpretation regarding section 107(d)(3)(E)(ii). In its decision, the Court vacated EPA’s redesignation of the Indiana and Ohio portions of the Cincinnati-Hamilton nonattainment area to attainment for the 1997 PM<sub>2.5</sub> NAAQS because EPA had not yet approved Subpart 1 RACM for the Cincinnati Area into the Indiana and Ohio SIPs. The Court concluded that “a State seeking redesignation ‘shall provide for the implementation’ of RACM/RACM [reasonably available control technology], even if those measures are not strictly necessary to demonstrate attainment with the PM<sub>2.5</sub> NAAQS. . . . If the State has not done so, EPA cannot ‘fully approve’ the area’s SIP, and redesignation to attainment status is improper.” *Sierra Club*, 793 F.3d at 670.

EPA is bound by the Sixth Circuit’s decision in *Sierra Club v. EPA* within the Court’s jurisdiction.<sup>3</sup> Although EPA continues to believe that Subpart 1 RACM is not an applicable requirement under section 107(d)(3)(E) for an area that has already attained the 1997 Annual PM<sub>2.5</sub> NAAQS, EPA is proposing to approve Kentucky’s RACM determination into the SIP pursuant to the Court’s decision.<sup>4</sup>

<sup>3</sup> The states of Kentucky, Michigan, Ohio, and Tennessee are located within the Sixth Circuit’s jurisdiction.

<sup>4</sup> The EPA Region 4 Regional Administrator signed a memorandum on July 20, 2015, seeking concurrence from the Director of EPA’s Air Quality Policy Division (AQPD) in the Office of Air Quality Planning and Standards to act inconsistent with EPA’s interpretation of CAA sections 107(d)(3)(E) and 172(c)(1) when taking action on pending and future redesignation requests in Kentucky and Tennessee because the Region is bound by the Sixth Circuit’s decision in *Sierra Club v. EPA*. The AQPD Director issued her concurrence on July 22, 2015.

<sup>1</sup> On January 4, 2013, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013), the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) found that EPA erred in implementing the 1997 PM<sub>2.5</sub> NAAQS pursuant solely to the general implementation provisions of Subpart 1 rather than the particulate matter-specific provisions in title I, part D, subpart 4. The court remanded both the 1997 PM<sub>2.5</sub> Implementation Rule and the final rule entitled “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)” (73 FR 28321, May 16, 2008) to EPA to address this error. In 2014, EPA finalized a rule classifying areas previously designated nonattainment for the 1997 and/or 2006 fine particle pollution standards under Subpart 1, including the bi-state Louisville Area, as “Moderate” nonattainment areas under subpart 4 and setting deadlines for SIP submissions addressing the requirements of subpart 4. *See* 79 FR 31566 (June 2, 2014) [hereinafter 2014 Rule].

### B. Subpart 1 RACM Requirements

Subpart 1 requires that each attainment plan “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emission from the existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.” See CAA section 172(c)(1). EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could advance attainment.<sup>5</sup> Thus, when an area is already attaining the standard, no additional RACM measures are required. EPA’s interpretation that Subpart 1 requires only the implementation of RACM measures that would advance attainment was upheld by the United States Court of Appeals in the Fifth Circuit<sup>6</sup> and by the United States Court of Appeals for the D.C. Circuit.<sup>7</sup>

### C. Proposed Action

In its August 9, 2016, SIP submission, the Commonwealth determined that no additional control measures are necessary in the Area to satisfy the CAA section 172(c)(1) RACM requirement because the Area has attained the 1997 Annual PM<sub>2.5</sub> NAAQS. As noted above, EPA has determined that the Area attained the standard by the April 5, 2010, attainment date and that no additional measures are required to satisfy Subpart 1 RACM when an area is attaining the standard. Therefore, EPA proposes to agree with the Commonwealth’s analysis, to approve Kentucky’s SIP revision, and to incorporate the section 172(c)(1) RACM determination into the SIP.

## 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. See 42 U.S.C. 7410(k); 40 CFR 52.02(a).

This memorandum is not required to satisfy EPA’s regional consistency regulations. See 40 CFR 56.5(b)(1); 81 FR 51102 (August 3, 2016).

<sup>5</sup> This interpretation was adopted in the General Preamble, see 57 FR 13498 (April 16, 1992), and has been upheld as applied to the Clean Data Policy, as well as to nonattainment SIP submissions. See *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155 (D.C. Cir. 2002).

<sup>6</sup> *Sierra Club v. EPA*, 314 F.3d 735, 743–745 (5th Cir. 2002).

<sup>7</sup> *Sierra Club v. EPA*, 294 F.3d 155, 162–163 (D.C. Cir. 2002); *NRDC v. EPA*, 571 F.3d 1245, 1252 (D.C. Cir. 2009).

Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

### 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, Volatile organic compounds.

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

Dated: October 11, 2016.

**Heather McTeer Toney,**  
Regional Administrator, Region 4.

[FR Doc. 2016–25433 Filed 10–20–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2016–0308; FRL–9954–17–Region 3]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of Stage II Gasoline Vapor Recovery Requirements for Gasoline Dispensing Facilities

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve the state implementation plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of removing the requirement for gasoline vapor recovery equipment on gasoline dispensing pumps (otherwise referred to as Stage II vapor recovery, or simply as Stage II) in Virginia area facilities formerly required to have installed and operated Stage II vapor recovery controls under the prior, approved Virginia SIP. In the Rules and Regulations section of this **Federal Register**, EPA is approving the Commonwealth’s SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for EPA’s approval of Virginia’s Stage II-related SIP revision with amended regulations addressing vapor recovery is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by November 21, 2016.