

a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must include notification that the requester may obtain judicial review of the decision under 5 U.S.C. 552(a)(4)(B)–(G). The decision shall also inform the requester of the dispute resolution services offered by OGIS as a non-exclusive alternative to litigation. If the Chairman's decision is remanded or modified on appeal to the court, the requester will be notified by the agency of that determination in writing. The Commission shall then further process the request in accordance with the appeal determination and shall respond directly to the requester.

(d) *Engaging in dispute services provided by OGIS.* Dispute resolution is a voluntary process. If the Commission agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner in the process in an attempt to resolve the dispute.

(e) *When appeal is required.* Before seeking review by a court of the Commission's adverse determination, a requester generally must first submit a timely administrative appeal.

#### § 2201.11 [Amended]

■ 11. Amend redesignated § 2201.11 by removing the words “through OSHRC's Web site” and adding, in their place, the words “on OSHRC's Web site” in paragraph (b).

■ 12. Add § 2201.12 to read as follows:

#### § 2201.12 Preservation of records.

OSHRC shall preserve all correspondence pertaining to FOIA requests, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the applicable General Records Schedule of the National Archives and Records Administration. OSHRC shall not dispose of or destroy records while they are the subject of a pending request, appeal or lawsuit under the FOIA.

[FR Doc. 2016–31133 Filed 12–23–16; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2016–0280]

#### Drawbridge Operation Regulation; Chambers Creek, Steilacoom, WA

AGENCY: Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Chambers Creek Burlington Northern Santa Fe Railroad vertical lift railroad bridge across Chambers Creek, mile 0.01, near Steilacoom in Pierce County, WA. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is appropriate. This test deviation will change the requirement for a bridge operator, and modify the existing regulation to add an advance notification requirement for obtaining bridge openings during designated evening hours.

**DATES:** This deviation is effective from Midnight (12:01) on December 28, 2016 to Midnight (11:59) on June 23, 2017.

Comments and related material must reach the Coast Guard on or before June 15, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG–2016–0280 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email [Steven.M.Fischer3@uscg.mil](mailto:Steven.M.Fischer3@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Background, Purpose and Legal Basis

The Chambers Creek Burlington Northern Santa Fe Railroad vertical lift railroad bridge across Chambers Creek, mile 0.01, near Steilacoom in Pierce County, WA, has a vertical clearance of 10ft in the closed-to-navigation position, and 50ft of vertical clearance in the open-to-navigation position (reference plane is MHW elevation of 12.2 feet). The bridge currently operates under 33 CFR 117.5.

The bridge owner, Burlington Northern Santa Fe Railroad, has observed minimal to no usage of the drawbridge between 10 p.m. and 6 a.m., and has requested to test this schedule to see if it better balances the needs of marine and rail traffic. The USCG conducted a test deviation from July 1, 2016 to December 27, 2016. However, only one bridge opening request was received during that time, and a quantitative ruling could not be made

from the lack of data. The following facts support BNSF's proposal: (1) over the last 6 years only 2% of the subject bridge lifts have occurred between the hours of 10 p.m. and 6 a.m., which equates to approximately 5 openings a year, (2) from February 2009 to June 2015 there were 1932 total openings of which only 40 occurred between the hours of 10 p.m. and 6 a.m., and (3) the navigation traffic consists primarily of the tenants of Chambers Bay marina (recreational users) that are members of the Chambers Bay Boating Association.

The Coast Guard is publishing this temporary deviation to test the proposed schedule change to determine whether a permanent change to the schedule is appropriate to better balance the needs of marine and rail traffic. Under this temporary deviation, in effect from Midnight (12:01) on December 28, 2016 to Midnight (11:59) on June 23, 2017, the subject bridge shall open on signal, except from 10 p.m. to 6 a.m. the draw shall open on signal if at least 4 hours notice is given. The bridge will be required to open as soon as possible, no later than 1 hour after notification, for vessels engaged in emergency response.

The Coast Guard will inform the users of the waterways of this temporary deviation through our Local and Broadcast Notices to Mariners and through direct outreach with the Chambers Creek Boating Association so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation. Vessels able to pass underneath the bridge in the closed-to-navigation position may do so at any time. In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

##### II. 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.

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 notice, and all public comments, are 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.

Dated: December 19, 2016.

**Steven M. Fischer,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2016-31058 Filed 12-23-16; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2016-0526; FRL-9957-39-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:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving 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:** This rule will be effective January 26, 2017.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2016-0526. 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 may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Ms. Sanchez can be reached via telephone at (404) 562-9644 and 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,

<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].