

analysis checklist and a categorical exclusion determination are not required for this rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 117.789 is revised to read as follows:

#### § 117.789 Harlem River.

(a) The draws of all railroad bridges across the Harlem River may remain in the closed position from the time a train scheduled to cross the bridge is within five minutes from the bridge, and until that train has fully crossed the bridge. The maximum time permitted for delay shall not exceed ten (10) minutes. Land and water traffic should pass over or through the draw as soon as possible to prevent unnecessary delays in the opening and closure of the draw.

(b)(1) The draws of the bridges at 103 Street, mile 0.0, 125 Street (Triborough), mile 1.3, Willis Avenue, mile 1.5, Third Avenue, mile 1.9, Madison Avenue, mile 2.3, 145 Street, mile 2.8, Macombs Dam, mile 3.2, 207 Street, mile 6.0, and the Broadway Bridge, mile 6.8, shall open on signal if at least a four-hour advance notice is given to the New York City Highway Radio (Hotline) Room and the Triborough Bridge and Tunnel Authority (TBTA) for the 125 Street (Triborough), mile 1.3. The draws of the above bridges, except the Broadway Bridge, need not open for the passage of vessel traffic from 6 a.m. to 9 a.m. and 5 p.m. to 7 p.m., Monday through Friday, except federal holidays. The draw of the Broadway Bridge need not open for the passage of vessel traffic from 7 a.m. to 10 a.m. and 4 p.m. to 7 p.m., Monday through Friday, except federal holidays.

(2) The draws of the Willis Avenue Bridge, mile 1.5, Third Avenue Bridge, mile 1.9, and the Madison Avenue Bridge, mile 2.3, need not open for the passage of vessel traffic at various times between 8 a.m. and 5 p.m. on the first Sunday in May and November. The exact time and date of each bridge closure will be published in the Local Notice to Mariners several weeks prior to each closure.

(c) The draw of the Metro North (Park Avenue) Bridge, mile 2.1, shall open on signal, except, as provided in paragraph (a) of this section, if at least a four-hour advance notice is given. The draw need not open for the passage of vessel traffic from 5 a.m. to 10 a.m. and 4 p.m. to 8 p.m., Monday through Friday, except Federal holidays.

(d) The draw of the Spuyten Duyvil railroad bridge, mile 7.9, shall open on signal at all times, except as provided in paragraph (a) of this section.

Dated: July 6, 2009.

**Dale G. Gabel,**

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

[FR Doc. E9–31228 Filed 1–4–10; 8:45 am]

**BILLING CODE 9110–04–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R04–OAR–2009–0751–200928; FRL–9098–9]

#### Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; North Carolina: Hickory-Morganton-Lenoir; Determination of Attainment Data for the 1997 Fine Particulate Matter Standard

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

**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the Hickory-Morganton-Lenoir, North Carolina, (hereafter referred to as “Hickory, North Carolina”) nonattainment area for the 1997 fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) has attaining data for the 1997 PM<sub>2.5</sub> NAAQS.

**DATES:** *Effective Date:* This final rule is effective on January 5, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2009–0751. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, 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 <http://www.regulations.gov> or in hard

copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey may be reached by phone at (404) 562–9104 or via electronic mail at [huey.joel@epa.gov](mailto:huey.joel@epa.gov). For information relating to the North Carolina State Implementation Plan (SIP), please contact Nacosta Ward at (404) 562–9140. Ms. Ward can also be reached at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

#### SUPPLEMENTARY INFORMATION:

- I. What Action Is EPA Taking?
- II. What Is the Effect of This Action?
- III. When Is This Action Effective?
- IV. What Is EPA’s Final Action?
- V. What Are the Statutory and Executive Order Reviews?

#### I. What Action Is EPA Taking?

EPA is determining that the Hickory, North Carolina, nonattainment area has attaining data for the 1997 PM<sub>2.5</sub> NAAQS. This determination is based upon quality assured, quality controlled and certified ambient air monitoring data that show the area has monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS based on the 2006–2008 data. In addition, quality controlled and quality assured monitoring data submitted during the calendar year 2009, which are available in the EPA Air Quality System database, but not yet certified, indicate that this area continues to meet the 1997 PM<sub>2.5</sub> NAAQS.

Other specific requirements of the determination and the rationale for EPA’s proposed action are explained in the notice of proposed rulemaking (NPR) published on October 6, 2009 (74 FR 48863) and will not be restated here. The comment period closed on November 5, 2009. No public comments were received in response to the NPR.

#### II. What Is the Effect of This Action?

This final action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit attainment demonstrations, associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the 1997 PM<sub>2.5</sub> NAAQS as long as this

area continues to meet the 1997 PM<sub>2.5</sub> NAAQS.

### III. When Is the Action Effective?

EPA finds that there is good cause for this approval to become effective on the date of publication of this action in the **Federal Register**, because a delayed effective date is unnecessary due to the nature of the approval. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction” and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” As noted above, this determination of attainment suspends the requirements for the Hickory, North Carolina, PM<sub>2.5</sub> nonattainment area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the standard as long as this area continues to meet the 1997 PM<sub>2.5</sub> NAAQS. The suspension of these requirements is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, this nonattainment area’s suspension from these requirements provide good cause to make this rule effective on the date of publication of this action in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule suspends requirements rather than imposing obligations, affected parties, such as the State of North Carolina, do not need time to adjust and prepare before the rule takes effect.

### IV. What Is EPA’s Final Action?

EPA is determining that the Hickory, North Carolina, nonattainment area has attaining data for the 1997 PM<sub>2.5</sub> NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that this area has monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS during the period 2006–2008. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this area to submit attainment demonstrations, associated reasonably available control measures,

reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the 1997 PM<sub>2.5</sub> NAAQS as long as the Area continues to meet the 1997 PM<sub>2.5</sub> NAAQS.

### V. What Are 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 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.

#### 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 March 8, 2010. 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, pertaining to the determination of attaining data for the 1997 fine particulate matter standard for the Hickory, North Carolina, PM<sub>2.5</sub> nonattainment area, 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, Particulate matter.

Dated: December 15, 2009.

J. Scott Gordon,

Acting Regional Administrator, Region 4.

■ Accordingly, 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 II—North Carolina

■ 2. Section § 52.1781 is amended by adding paragraph (f) to read as follows:

### § 52.1781 Control strategy: Sulfur oxides and particulate matter.

\* \* \* \* \*

(f) *Determination of Attaining Data.* EPA has determined, as of January 5, 2010, the Hickory-Morganton-Lenoir, North Carolina, nonattainment area has attaining data for the 1997 PM<sub>2.5</sub> NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 PM<sub>2.5</sub> NAAQS.

[FR Doc. E9–31084 Filed 1–4–10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–HQ–OAR–2009–0898; FRL–9099–7]

### Finding of Failure To Submit Certain State Implementation Plans Required for the 1-Hour Ozone NAAQS

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking a final action finding that the State of California has failed to submit revisions to its State Implementation Plans (SIPs) for three ozone nonattainment areas to satisfy certain requirements of the Clean Air Act (CAA) for the 1-hour ozone National Ambient Air Quality Standards (NAAQS). To accompany this action we are issuing additional guidance to states on developing the required SIP revisions. Under the CAA and EPA's implementing regulations, states with 1-hour ozone nonattainment areas classified as Severe or Extreme were required by the provisions of CAA sections 181(b)(4) and 182(d)(1)(3) to submit by December 31, 2000, SIPs to satisfy CAA section 185. By this action, EPA is making a finding of failure to submit the required SIPs for the State of California for three 1-hour ozone nonattainment areas. With the issuance of additional EPA guidance to states on developing section 185 fee program SIPs, California will be able to complete development and promulgation of these

programs. According to the CAA, for each area subject to this finding, EPA must affirmatively find that California has submitted the required plan revision within 18 months of the effective date of this finding, or the offset sanction must apply in that area. Additionally, according to the CAA, if EPA has still not affirmatively determined that a state has submitted the required plan for an area within 6 additional months, the highway funding sanction must apply in that area. Lastly, the CAA requires that no later than 2 years after the effective date of this finding, EPA must promulgate a Federal Implementation Plan (FIP) if the state has not submitted and EPA has not approved the required SIP.

**DATES:** *Effective Date.* This action is effective on January 5, 2010.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this notice should be addressed to: Ms. Denise Gerth, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code: C504–02, 109 TW Alexander Drive, Research Triangle Park, NC 27709, telephone (919) 541–5550, or by E-mail at [gerth.denise@epa.gov](mailto:gerth.denise@epa.gov); or Mr. Andrew Steckel, Air Rulemaking Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 947–4115, or by e-mail at [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

### SUPPLEMENTARY INFORMATION:

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## N. Judicial Review

### I. Background

The CAA requires states with Severe and Extreme ozone nonattainment areas to develop a SIP program that provides for collecting fees from each major stationary source of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) for each calendar year following a failure to attain the ozone standard by the applicable attainment date. Section 185 fee program SIPs are required for any area that was designated as not attaining the 1997 8-hour ozone NAAQS in June 2004 and that was also classified as a Severe or Extreme nonattainment area for the 1-hour standard at that time. In a decision by the Circuit Court of Appeals for the District of Columbia, the Court determined that these fee program SIPs were required to prevent backsliding in the transition from implementing the revoked 1-hour NAAQS to implementing the 1997 8-hour NAAQS (*South Coast AQMD v. EPA*, December 22, 2006). Although EPA has not determined through notice-and-comment rulemaking that the areas identified in this notice have failed to attain the 1-hour ozone NAAQS by their statutory attainment dates, current air quality data for these areas indicate they are violating the 1-hour NAAQS and the 1997 8-hour NAAQS.<sup>1</sup>

EPA has been working with states and other stakeholders on EPA guidance for developing required fee program SIPs, including the convening of a group of diverse stakeholders through the Clean Air Act Advisory Committee (CAAAC). On May 15, 2009, CAAAC submitted its report to EPA with suggestions and issues for consideration in creating guidance that would provide flexibility to states to develop programs that will meet the requirements of section 185 of the CAA. In conjunction with this action EPA has issued additional guidance that will assist California with development of its section 185 fee SIPs for the affected areas.

#### A. Statutory Requirements

Section 185 of the CAA requires each Severe and Extreme ozone

<sup>1</sup> Although EPA has not in all cases completed determinations through notice-and-comment rulemaking, current air quality data indicate that a number of nonattainment areas classified as Severe or Extreme for the 1-hour NAAQS and also designated in June 2004 nonattainment for the 1997 8-hour NAAQS appear to have attained the 1-hour NAAQS and/or the 1997 8-hour NAAQS. In this notice EPA is not making findings that states failed to submit SIP revisions for these areas. These areas are: Chicago-Gary-Lake County, IL-IN; Milwaukee-Racine, WI; Philadelphia-Trenton-Wilmington, MD-DE-PA-NJ; Ventura County, CA; Metropolitan Washington, DC-VA-MD; Baton Rouge, LA; New York, NY-NJ-CT; Houston, TX; and Baltimore, MD.