than the 30th day following the end of each six month period.

(5) Owner/operator shall submit an annual emissions limitation calculation report no later than the 30th day following the end of the calendar year or quarter if a rolling average is required in paragraph (c).

(j) *Notifications.* (1) Owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with the emission limits in paragraph (c) of this section.

(2) Owner/operator shall submit semi-annual progress reports on construction of any such equipment.

(3) Owner/operator shall submit notification of initial startup of any such equipment.

(k) *Equipment operation.* At all times, owner/operator shall maintain each unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

(l) *Credible Evidence.* Nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with requirements of this section if the appropriate performance or compliance test procedures or method had been performed.

[FR Doc. 2012–21056 Filed 8–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0391; FRL–9719–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Attainment Plan for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware 1997 Fine Particulate Matter Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania on April 12, 2010, as amended on August 3, 2012. The SIP revision demonstrates attainment of the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA-NJ-DE) nonattainment area (Philadelphia Area). This Pennsylvania SIP revision (herein called the ''attainment plan'') includes the Philadelphia Area's attainment demonstration and the motor vehicle emission budgets (MVEBs) used for transportation conformity purposes in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania. The attainment plan also includes a base year emissions inventory and contingency measures. On August 3, 2012, Pennsylvania withdrew the analysis of reasonably available control measures and reasonably available control technology (RACM/RACT) from the attainment plan because the requirement was suspended by a clean data determination for the Philadelphia Area. Furthermore, EPA has determined that a reasonable further progress (RFP) plan is not required because Pennsylvania projected that attainment of the 1997 $PM_{2.5}$ NAAQS occurred in the Philadelphia Area by the attainment date of April 2010. This action is being taken in accordance with the Clean Air Act (CAA) and the Clean Air Fine Particulate Implementation Rule ($PM_{2.5}$ Implementation Rule) published on April 25, 2007.

DATES: This final rule is effective on September 27, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0391. All documents in the docket are listed in the *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 *www.regulations.gov* or in hard copy for public inspection 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2011 (76 FR 67640), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of the Pennsylvania 1997 annual $PM_{2.5}$ NAAQS attainment plan for the Philadelphia Area.

On November 27, 2009 (74 FR 62251), EPA published findings of failure to submit a SIP revision that demonstrates attainment of the 1997 $PM_{2.5}$ NAAQS for the Philadelphia Area. On April 12, 2010, the Commonwealth of Pennsylvania through the Department of Environmental Protection (PADEP) submitted a formal SIP revision and on June 19, 2010, EPA determined that this SIP revision met the requirements for completeness found in section 110(k)(1) of the CAA. On May 16, 2012 (77 FR 28782), EPA published a clean data determination and determination of attainment of the 1997 annual $PM_{2.5}$ NAAQS by the attainment date of April 5, 2010.

On May 12, 2005 (76 FR 70093), EPA published the Clean Air Interstate Rule (CAIR) that addresses the interstate transport requirements of the CAA with respect to the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. As originally promulgated, CAIR required significant reductions in emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) to limit the interstate transport of these pollutants. In 2008, however, the DC Circuit Court of Appeals (''the Court'') remanded CAIR back to EPA. *See North Carolina* v. *EPA,* 550 F.3d 1176. The Court found CAIR to be inconsistent with the requirements of the CAA, *North Carolina* v. *EPA,* 531 F.3d 896 (*D.C. Cir. 2008*), but ultimately remanded the rule to EPA without vacatur because it found that ''allowing CAIR to remain in effect until it is replaced by a rule consistent with [the Court's] opinion would at least temporarily preserve the environmental values covered by CAIR.'' *See North Carolina* v. *EPA,* 550 F.3d at 1178. CAIR thus remained in place following the remand, and was in place and enforceable through the April 5, 2010 attainment date. In response to the Court's decision, EPA has issued a new rule to address interstate transport of NO_X and SO_2 in the Eastern United States (i.e., the Transport Rule, also known as the Cross-State Air Pollution Rule). *See* 76 FR 48208, August 8, 2011. In the Transport Rule, EPA finalized regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR Federal Implementation Plans (FIPs) for control

periods in 2012 and beyond. *See* 76 FR 48322.

On December 30, 2011, the Court issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the Court stayed the Transport Rule pending the Court's resolution of the petitions for review of that rule in *EME Homer City Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The Court also indicated that EPA is expected to continue to administer the CAIR in the interim until the Court rules on the petitions for review of the Transport Rule.

EPA does not believe that the circumstances set forth above preclude EPA from approving the April 12, 2012 Pennsylvania attainment plan as amended on August 3, 2012 for the Philadelphia Area. While the monitoring data that show the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by the April 2010 attainment deadline was impacted by CAIR, CAIR was in place and enforceable through the 2010 attainment date that is relevant to acting on this attainment plan. Moreover, EPA's analysis conducted for the Transport Rule demonstrates that the Philadelphia Area would be able to attain the 1997 annual $PM_{2.5}$ NAAQS even in the absence of either CAIR or the Transport Rule. *See* Appendix B to the Air Quality Modeling Final Rule Technical Support Document for the Transport Rule.

Most importantly, EPA notes that this action is approving an attainment plan that demonstrated that the Philadelphia Area would attain the 1997 annual $PM_{2.5}$ NAAQS by 2010, which it did. As of 2010, CAIR was an enforceable control measure applicable to affected sources in the area, as well as sources throughout the Eastern United States. As such, the fact that CAIR is now in place only temporarily as a result of the judicial remand of CAIR does not detract from our conclusion that the attainment plan should be approved. Further, the fact that the Court has stayed the implementation of the Transport Rule at this time is not relevant because, as noted above, EPA's modeling for the Transport Rule demonstrates the Philadelphia Area would be able to attain the 1997 annual $PM_{2.5}$ even in the absence of CAIR and the Transport Rule. Finally, the Transport Rule, as promulgated, only addresses emissions in 2012 and beyond. As such, neither the Transport Rule itself, nor the judicial stay of the Transport Rule, is relevant to the question addressed in this proposal notice. The purpose of this action is to determine whether the attainment plan submitted by Pennsylvania is sufficient to bring the Philadelphia Area into attainment by the April 2010 attainment date, a date before the Transport Rule was even promulgated. For these reasons, neither the current status of CAIR nor the current status of the Transport Rule affects any of the criteria for proposed approval of this SIP revision.

II. Summary of SIP Revision

Pennsylvania's SIP revision demonstrates attainment of the 1997 annual $PM_{2.5}$ NAAQS for the Philadelphia Area. This April 12, 2010 attainment plan as amended on August 3, 2012, includes Pennsylvania's attainment demonstration, MVEBs used for transportation conformity purposes for the five counties in the Philadelphia Area, a base year emissions inventory, and contingency measures. A RFP plan is not required under the applicable implementation rule because the Philadelphia Area demonstrated that attainment of the 1997 annual $PM_{2.5}$ NAAQS occurred by the attainment date of April 2010. *See* 40 CFR 51.1009(b) and 72 FR 20633 (April 25, 2007). In addition, because EPA determined on May 16, 2012 (77 FR 28782) that the Philadelphia Area attained by its required attainment date in accordance with section 179(c)(9) of the CAA, no contingency measures for failure to attain by this date need to be implemented, and further EPA action respecting nonattainment contingency measures is unnecessary. Furthermore, as set forth in the $PM_{2.5}$ Implementation Rule, areas that attained the NAAQS by the attainment date are considered to have satisfied the requirement to show RFP, and as such do not need to implement contingency measures to make further progress to attainment. EPA has determined that the Philadelphia Area attained by the attainment date, therefore the contingency measures submitted by Pennsylvania are no longer necessary for the Philadelphia Area to meet RFP requirements or to attain the 1997 annual $PM_{2.5}$ NAAQS by the attainment date.

On August 3, 2012, Michael L. Krancer, Secretary of PADEP sent a letter to Shawn M. Garvin, Regional Administrator of EPA Region III withdrawing the analysis of RACM/RACT which had been included in the April 12, 2010 attainment plan since the requirement for the RACM/RACT analysis was suspended by the May 16, 2012 (77 FR 28782) clean data determination pursuant to 40 CFR 51.1004(c). Specifically, PADEP withdrew section IV.B. in its entirety, pages 29–31 in part, and Appendix G in its entirety.

Other specific requirements of the 1997 annual $PM_{2.5}$ NAAQS attainment plan for the Philadelphia Area and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On December 2, 2011, EPA received comments on the November 2, 2011 NPR. A summary of those comments and EPA's responses are provided in section III of this document.

III. Summary of Public Comments and EPA Responses

Comment: A commenter requests clarification with regard to the procedures for collecting emissions inventory data from the Port of Philadelphia and the accuracy of the data applied in this attainment plan.

Response: Emissions from the Port of Philadelphia are not considered ''facility or point'' emissions but rather treated as part of the nonroad data category. Nonroad data category consists of off-highway categories—such as cranes, yard trucks, locomotives and marine vessels. Therefore, emissions in the inventory are aggregated to the county level, separated by source category. Specifically, port emissions are comprised of marine vessels and land-based sources (such as cargo handling equipment) at ports. Activity data for land-based sources collected from various sources are used as inputs to EPA's NONROAD model. Marine vessels' emissions are calculated outside of the NONROAD model because the NONROAD model does not include marine vessel emissions.

EPA reviewed the methodology that PADEP used to estimate marine vessel emissions and found that proper guidance was followed pertaining to gathering characteristics of the port that included the types of vessels, the shipping traffic, arrival information, and any limitations on the data gathered. EPA verified that the marine vessels' emissions were accounted for in the supporting spreadsheets provided for nonroad emission estimates. EPA also verified that land-based sources for cargo handling equipment, such as terminal tractors, cranes, container handlers and forklifts, were accounted for in the nonroad spreadsheets by county provided by PADEP.

Comment: A commenter requests clarification and additional information with regard to Pennsylvania's enforcement of the Diesel-Powered Commercial Motor Vehicle Idling Act (Act 124—anti-idling requirements) and

suggests that the attainment plan should offer more detailed ''estimations of emission reductions resulting from Act 124.''

Response: Additional information is publicly available and may be found at *http://www.dep.state.pa.us/dep/deputate/airwaste/aq/cars/idling.htm.* This Internet site directs viewers to contact the PADEP's Bureau of Air Quality for additional information pertaining to Act 124. Additionally, while the commenter suggests that the attainment plan should offer more detailed ''estimations of emission reductions resulting from Act 124,'' Pennsylvania does not rely on any emission reductions resulting from the enforcement of Act 124 in order to demonstrate attainment of the 1997 annual $PM_{2.5}$ NAAQS. However, Pennsylvania does include Act 124 as a contingency measure. Since EPA has determined that the Philadelphia Area attained by its required attainment date, in accordance with section 172(c)(9) of the CAA, no contingency measures for failure to attain by this date or make reasonable further progress need to be implemented at this time. Therefore, the attainment plan provides sufficient estimations of emission reductions resulting from Act 124.

IV. Final Action

EPA is approving Pennsylvania's April 12, 2010 attainment plan as amended on August 3, 2012 for the 1997 annual $PM_{2.5}$ NAAQS for the Philadelphia Area as a revision to the Pennsylvania SIP. EPA has determined that the SIP revision meets the applicable requirements of the CAA, as described in the $PM_{2.5}$ Implementation Rule. Specifically, EPA is approving only Pennsylvania's attainment demonstration, associated MVEBs used for transportation conformity purposes, the base year emissions inventory, and contingency measures. PADEP withdrew the RACM/RACT analysis section of the attainment plan as amended on August 3, 2012 because the requirement for RACM/RACT was suspended by the May 16, 2012 clean data determination pursuant to 40 CFR 51.1004(c). Furthermore, EPA has determined that the requirement for RFP plan is satisfied because Pennsylvania demonstrated attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Philadelphia Area by April 5, 2010.

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 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 October 29, 2012. 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 Pennsylvania 1997 annual $PM_{2.5}$ NAAQS attainment plan for the Philadelphia Area, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2) of the CAA.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 9, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for the 1997 $PM_{2.5}$ NAAQS attainment plan at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	*	*	*
1997 $PM_{2.5}$ NAAQS Attainment Demonstration, 2002 Base Year Emissions Inventory, Contingency Measures and Motor Vehicle Emission Budgets for 2009.	Pennsylvania portion of the Philadelphia-Wilmington, PA-NJ-DE $PM_{2.5}$ Nonattainment Area.	4/12/10, 8/3/12	8/28/12 [*Insert page number where the document begins*].	

[FR Doc. 2012–21046 Filed 8–27–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 5b

[Docket Number NIH–2011–0001]

Privacy Act; Implementation

AGENCY: Department of Health and Human Services.

ACTION: Direct Final rule.

SUMMARY: The Department of Health and Human Services (HHS or Department), through the National Institutes of Health (NIH), is implementing a new system of records, 09–25–0223, ''NIH Records Related to Research Misconduct Proceedings, HHS/NIH.'' HHS is exempting this system of records from certain provisions of the Privacy Act to protect the integrity of NIH research misconduct proceedings and to protect the identity of confidential sources in such proceedings. HHS is issuing a direct final rule for this action because the agency expects that there will be no significant adverse comment on this rule. Elsewhere in this issue of the **Federal Register**, HHS is publishing a companion proposed rule under the agency's usual procedure for notice-and-comment rulemaking to provide a procedural framework to finalize the rule in the event the agency receives any significant comments and withdraws this direct final rule. The companion proposed rule and this direct final rule are substantively identical.

DATES: This rule is effective January 10, 2013. Submit either electronic or written comments by November 13, 2012. If HHS/NIH receives no significant adverse comments within the specified comment period, the agency will publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

ADDRESSES: You may submit comments, identified by [Docket No(s).], by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–402–0169.
- *Mail:* Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852–7669.

To ensure more timely processing of comments, HHS/NIH is no longer accepting comments submitted to the agency by email. HHS/NIH encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions.*

Instructions: All submissions received must include the agency name and Docket No. for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the instructions provided for conducting a search, using the docket number(s) found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852–7669, telephone 301–496–4607, fax 301–402–0169, email *jm40z@nih.gov.*

SUPPLEMENTARY INFORMATION: NIH is implementing a new system of records called, ''NIH Records Related to Research Misconduct Proceedings'' (09–25–0223). This system of records is part of NIH's implementation of its responsibilities under the Public Health Service (PHS) Policies on Research Misconduct, 42 CFR part 93. The system notice applies to alleged or actual research misconduct involving research: (1) Carried out in NIH facilities by any person; (2) funded by the NIH Intramural Research Program (IRP) in any location; or (3) undertaken by an NIH employee or trainee as part of his or her official NIH duties or NIH training activities, regardless of location. A person who, at the time of the alleged or actual research misconduct, was employed by, was an agent of, or was affiliated by contract, agreement, or other arrangement with NIH, is covered by the system if, for example, he or she is involved in: (1) NIH- or PHS-supported biomedical or behavioral research; (2) NIH- or PHS-supported biomedical or behavioral research training programs; (3) NIH- or PHS-supported activities that are related to biomedical or behavioral research or research training, such as the operation of tissue and data banks and the dissemination of research information; (4) plagiarism of research records produced in the course of NIH- or PHS-supported research, research training or activities related to that research or research training; or (5) an application or proposal for NIH or PHS support for biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information (regardless of whether it is approved or funded).

The term ''research misconduct'' is defined at 42 CFR 93.103 to mean ''fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.'' The general policy of the PHS Policies on Research Misconduct is that ''Research misconduct involving PHS support is contrary to the interests of the PHS and the Federal government and to