

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.

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).

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 January 19, 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 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 3, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations 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 P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(192) to read as follows:

##### § 52.770 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(192) The Indiana Department of Environmental Management submitted a revision to Indiana's State Implementation plan on September 25, 2009, to amend 326 IAC 1–1–3, "References to the Code of Federal Regulations". The revision to 326 IAC 1–1–3 updates the references to CFR from the 2007 edition to the 2008 edition.

(i) *Incorporation by reference.* Title 326 of the Indiana Administrative Code (IAC), section 1–1–3, "References to the Code of Federal Regulations" is incorporated by reference. The rule was filed with the Publisher of the Indiana Register on July 1, 2009, and became effective on July 31, 2009. Published in the Indiana Register, on July 29, 2009 (DIN: 20090729–IR–326080901FRA).

[FR Doc. E9–27817 Filed 11–19–09; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA–R03–OAR–2009–0199; EPA–R03–OAR–2009–0547; FRL–8982–6]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Maryland; Ohio; Determinations of Attainment for the 1997 Fine Particulate Matter Standard

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

**ACTION:** Final rule.

**SUMMARY:** EPA is making determinations that three areas designated nonattainment for the 1997 fine particulate (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) have

attained the 1997 PM<sub>2.5</sub> NAAQS. These are the Martinsburg-Hagerstown, WV–MD nonattainment area; the Parkersburg-Marietta, WV–OH nonattainment area; and the Wheeling, WV–OH nonattainment area. These determinations are based upon complete, quality assured, quality controlled, and certified ambient air monitoring data that show that these areas have monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS during the 2006–2008 monitoring period. Currently available monitoring data for 2009 are consistent with continued attainment of the standard. The intended effect of these actions is to finalize these attainment determinations for these areas. With these final determinations, the requirements for States to submit for these areas an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard are suspended for so long as the areas continue to meet the 1997 PM<sub>2.5</sub> NAAQS. EPA's determinations that these areas have attained the 1997 PM<sub>2.5</sub> NAAQS are not equivalent to the redesignation of the areas to attainment. These actions do not constitute redesignations to attainment under section 107(d)(3) of the Clean Air Act (CAA), because we do not yet have an approved maintenance plan for these areas as required under that section and section 175A of the CAA, nor a determination that these areas have met the other requirements for redesignation. The designation status of these areas remains nonattainment for the 1997 PM<sub>2.5</sub> NAAQS until such time as EPA determines that these areas meet the CAA requirements for redesignation to attainment.

**DATES:** *Effective Date:* These final rules are effective on November 20, 2009.

**ADDRESSES:** EPA has established dockets for this action under Docket ID Numbers EPA–R03–OAR–2009–0199 and EPA–R03–OAR–2009–0547. All documents in the dockets 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 Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:**

Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

*Organization of this document.* The following outline is provided to aid in locating information in this preamble.

- I. What Actions is EPA Taking?
- II. Responses to Comments
- III. What is the Effect of these Actions?
- IV. When are these Actions Effective?
- V. What are EPA’s Final Actions?
- VI. What are the Statutory and Executive Order Reviews?

**I. What Actions Is EPA Taking?**

EPA is determining that the Martinsburg-Hagerstown, WV-MD, Parkersburg-Marietta, WV-OH, and Wheeling, WV-OH PM<sub>2.5</sub> nonattainment areas have attained the 1997 PM<sub>2.5</sub> NAAQS. These determinations are based upon three years of complete, quality assured, quality controlled, and certified ambient air monitoring data that show the areas have monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS during the 2006–2008 monitoring period. Currently available monitoring data for 2009 are consistent with continued attainment. Other specific details of the determinations and the rationale for EPA’s proposed actions are explained in the notices of proposed rulemaking (NPRs) published on July 31, 2009 (74 FR 38154 and 74 FR 38161) and the subsequent NPRs reopening the comment period, published on September 29, 2009 (74 FR 49833 and 74 FR 49834), and will not be restated here. Although on July 31, 2009 EPA issued separate notices of proposed rulemaking for the Maryland portion of the Martinsburg-Hagerstown nonattainment area (74 FR 38161) and the West Virginia portion (74 FR 38154), in this notice of final rulemaking EPA is addressing in combination both State portions of this nonattainment area. EPA considers its determination of attainment for the Hagerstown-Martinsburg area, and the comments and responses relating to it, as applicable to the entire nonattainment area.<sup>1</sup> Similarly, although EPA

articulated its proposals for determinations of attainment for the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas (74 FR 38154) in terms of the West Virginia and Ohio portions of the nonattainment area, in this final rulemaking EPA addresses in combination both State portions of the nonattainment area. EPA considers its determinations of attainment for those areas, and any comments and responses relating to them, as applicable to each entire nonattainment area.

**II. Responses to Comments**

EPA received comments in response to the NPRs published on July 31, 2009 (74 FR 38154 and 74 FR 38161) and the subsequent NPRs reopening the comment period, published on September 29, 2009 (74 FR 49833 and 74 FR 49834). EPA received both supporting and adverse comments. By this notice EPA is responding to adverse public comments received in response to these NPRs. EarthJustice, on behalf of the Sierra Club, submitted comments by letters dated August 31, 2009 and October 29, 2009. In its comment letter dated August 31, 2009, EarthJustice included a request that the NPRs either be revised or the comment period be reopened to allow the public to consider whether the 2009 data supports the proposed attainment determinations. EPA agreed to reopen the comment period to provide the requested data. In the technical support documents (TSDs) for the NPRs that reopened the comment period, the 2009 data were included, as was additional information that clarified the 2006–2008 data that formed the foundation for the proposed clean data determinations. EPA explained in the TSDs that its determinations were based on complete, quality assured 2006–2008 data, and that the available 2009 data, while not yet complete or quality assured, were consistent with continued attainment. On October 29, 2009, EarthJustice, on behalf of the Sierra Club, submitted additional comments on the supplemental proposals and TSDs.

The only adverse comments received were submitted by the Sierra Club and may be categorized as follows: (a) Comments specifically aimed at the 2006–2008 data that form the

foundation of EPA’s attainment determination for the Martinsburg-Hagerstown nonattainment area and (b) comments relating generally to monitoring data for 2009. Through this notice, EPA first addresses the adverse comments specifically directed at the 2006–2008 data for the Martinsburg-Hagerstown nonattainment area, and then addresses the comments relating to monitoring data for 2009.

*Martinsburg-Hagerstown Nonattainment Area*

*Comment*

Through its comment letters dated August 31, 2009 and October 30, 2009, the commenter disagrees with EPA’s proposed attainment determination for the Martinsburg-Hagerstown nonattainment area, based on information relating to a Martinsburg, WV monitor that the commenter obtained from EPA’s AirData database (<http://www.epa.gov/air/data/index.html>). As part of its August 31, 2009 comments, the commenter submitted copies of three Monitor Values Reports obtained from EPA’s AirData Web site on August 18, 2009. Each of these reports provides data showing that the Martinsburg, WV monitor (monitor ID #540030003) located in Berkeley County, West Virginia monitored annual PM<sub>2.5</sub> mean concentrations of 14.93 µg/m<sup>3</sup> in 2006, 15.61 µg/m<sup>3</sup> in 2007 and 15.36 µg/m<sup>3</sup> in 2008. Based upon the data set forth in these three reports, the commenter asserts that the design value calculated from these annual means results in nonattainment of the annual NAAQS over the 2006–2008 period. The commenter believes this is contrary to the data provided in the July 31, 2009 NPRs, and that it renders EPA’s proposed determination of attainment for the Martinsburg-Hagerstown area inaccurate; the commenter contends that finalizing the determination would be arbitrary and unlawful. Through its October 30, 2009 comments, the commenter also noted that, in accordance with a September 4, 1992 memo entitled “Procedures for Processing Requests to Redesignate Areas to Attainment” from John Calcagni, Director, Air Quality Management Division, EPA’s Office of Air Quality Planning and Standards, data used to demonstrate attainment should be recorded in the Aerometric Information Retrieval System (AIRS) in order for it to be available to the public for review. The commenter asserted that EPA cannot rely on data that is not published in AIRS to support a finding of attainment.

<sup>1</sup> EPA’s proposed rulemaking for the Maryland portion of the Martinsburg-Hagerstown area also contained a separate and independent proposed determination of attainment for the Baltimore, MD

PM<sub>2.5</sub> nonattainment area. EarthJustice, on behalf of the Sierra Club, also submitted comments on this proposal in conjunction with its comments on the other proposed rulemakings discussed in this final notice. EPA is not finalizing its proposed attainment determination for the Baltimore, MD PM<sub>2.5</sub> nonattainment area in this notice of final rulemaking, and is therefore not addressing the comments relating to Baltimore that were submitted by the commenter with respect to that proposal.

### Response

EPA has reviewed the AirData Monitor Values Reports that were submitted by the commenter. The "airdata files" submitted by the commenter were obtained using EPA's "AirData" Web site which accesses an extracted static subset of the Aerometric Information Retrieval System Air Quality System (AQS) database. This distinction is relevant because, although, prior to February 2009, the "airdata files" were extracted from AQS on a monthly basis,<sup>2</sup> some values may be absent due to incomplete reporting and some values may be subsequently changed after being subjected to quality assurance activities. EPA does not rely on incomplete, non-quality assured data to make determinations of attainment with the NAAQS. Instead, EPA uses certified air monitoring data generally from AQS that meet requirements found in Appendices A, C, D, and E of 40 CFR Part 58, to determine compliance with the NAAQS. Each of the AirData Monitor Values Reports that was submitted by the commenter includes a disclaimer which states in part: "AirData reports are produced from a monthly extract of EPA's air pollution database, AQS. Data for this report were extracted on January 10, 2009. They represent the best information available to EPA from state agencies on that date. However, some values may be absent due to incomplete reporting, and some values subsequently may be changed due to quality assurance activities." This disclaimer is particularly relevant to the EPA's review of the data presented in the Monitor Values Report for the Martinsburg, WV monitor (monitor ID #540030003) located in Berkeley County, West Virginia ("the Martinsburg monitor") for the 2008 calendar year. The monitored data set forth in this 2008 Monitor Values Report were incomplete because this report did not include monitoring data for the fourth quarter of 2008. The submitted report included data for only the first three quarters of 2008. Due to the absence of the fourth quarter 2008 monitoring data, the 2008 design value

for the Martinsburg monitor cannot be accurately calculated using the data set forth in the submitted 2008 Monitor Values Report. The fourth quarter monitored PM<sub>2.5</sub> mean concentration level at the Martinsburg monitor, which became available after January 2009, was 10.68 µg/m<sup>3</sup>. The annual PM<sub>2.5</sub> mean concentration for 2008 is derived from the average of the quarterly means for each of the four quarters of 2008: 15.70 µg/m<sup>3</sup>, 13.80 µg/m<sup>3</sup>, 16.57 µg/m<sup>3</sup>, and 10.68 µg/m<sup>3</sup>; and such calculation results in a finding that the annual PM<sub>2.5</sub> mean concentration for 2008 is 14.19 µg/m<sup>3</sup>. The design value for the Martinsburg monitor for the 2006–2008 period is 14.9 µg/m<sup>3</sup>; this is the average of the monitored annual PM<sub>2.5</sub> mean concentrations of: 14.93 µg/m<sup>3</sup> in 2006, 15.61 µg/m<sup>3</sup> in 2007, and 14.19 µg/m<sup>3</sup> in 2008. The design value shown in the initial NPRs for the Martinsburg-Hagerstown, WV-MD nonattainment area published on July 31, 2009 (74 FR 38154 and 74 FR 38161) was 14.9 µg/m<sup>3</sup>. The annual PM<sub>2.5</sub> mean concentrations data and additional 2008 data, that form the foundation for EPA's attainment determination were supplied and made available for public comment when EPA re-opened its public comment period and issued its supplemental NPRs and TSDs. For further information, see paragraph C(1) on page 3 of the TSDs for the September 29, 2009 NPR reopening of the comment period (74 FR 49833 and 74 FR 49834).

### Comment

Based on the commenter's contention, set forth above in the preceding comment, that in 2006–2008 a monitor in Martinsburg, WV recorded a violation of the PM<sub>2.5</sub> NAAQS, the commenter argues that EPA cannot make a determination of attainment solely for the Maryland portion of the Martinsburg-Hagerstown area.

### Response

As set forth in the response to comment above, EPA disagrees that the Martinsburg monitor in the Martinsburg-Hagerstown nonattainment area shows a violation of the annual PM<sub>2.5</sub> standard for the period 2006–2008. EPA agrees, however, that if, hypothetically, the commenter were correct and EPA determines that complete, quality assured data from any monitor in the area eligible for comparison to the NAAQS shows nonattainment, the violation would affect the attainment status of the entire area that had been designated nonattainment. As set forth in detail above, however, the complete, quality-assured data for both monitors in the

Martinsburg-Hagerstown area show that the entire area is in attainment of the NAAQS. EPA agrees that 40 CFR 51.1004(c) applies "upon a determination by EPA that an area designated nonattainment for the PM<sub>2.5</sub> NAAQS has attained the standard." EPA is making the determination here that the entire Martinsburg-Hagerstown area has attained the PM<sub>2.5</sub> NAAQS, based on monitors in both portions of the bi-state area.

### 2009 Data

### Comment

In its August 31, 2009 comments, the commenter requested that the 2009 data referred to in the NPRs be made available to the public via either revised NPRs or a reopening of the comment period to enable the public to comment on whether the 2009 data supports a finding of attainment. In its October 29, 2009 comments, the commenter agreed that "EPA cannot rely on the 2009 data to make a finding of attainment as it is not complete and does not meet EPA requirements for demonstration of attainment."

### Response

EPA granted the commenter's August 31, 2009 request, presented available 2009 data, and reopened the comment period. As requested by the commenter, the portion of the 2009 data that was available at the time of EPA's July 31, 2009 proposed rulemaking was included as part of the docket, and the public comment period was reopened on September 29, 2009 (74 FR 49833 and 74 FR 49834). In addition to the 2009 data, additional information was provided in the September 29, 2009 NPRs that clarifies how the design value was calculated for the 2006–2008 period. Thus the commenter and the public have been provided an opportunity to review data and analyses relating to EPA's determinations of attainment that are the subject of today's rulemakings.

At the time of EPA's proposed determinations EPA did not have complete, quality-assured, State-certified air quality data for the entire 2009 calendar year. Nor does EPA have those data at the time of this final rulemaking. The complete, quality assured, State certified air quality data for the entire 2009 calendar year will not be available until well into calendar year 2010, and, therefore, cannot be used at this time for purposes of design value calculations during calendar year 2009. In accordance with 40 CFR Part 50 Appendix N and standard EPA practice, EPA's determinations of attainment are

<sup>2</sup> EPA no longer supports the monthly updating of the AirData Web site from official data contained within AQS. Ambient data reported to AQS after January 2009 would not be available through this tool. Due to resources constraints and EPA's plan to replace AirData with a new method allowing up-to-date access by the public to data in AQS, as of the date of this response EPA has not updated the AirData summary data to reflect all 2008 data submitted to AQS. At the present time, the preferred method for the general public to access the publicly available PM<sub>2.5</sub> AQS data is to use the data and information available as part of EPA's AirTrends Site at: <http://www.epa.gov/airtrends/values.html>.

based on the three most recent years of complete, quality-assured data, from 2006 to 2008. Appendix N does not provide for examining partial years of data, because various seasons of the year reflect various influences on PM<sub>2.5</sub> concentrations, and a partial year's data may not be representative of values that would be determined from a full year's data set. Nevertheless, EPA also examined currently available data from 2009 for the limited purpose of determining whether they are consistent with its determination of attainment. The available data for 2009, though not the basis of EPA determinations of attainment, indicate a continuing trend that is consistent with EPA's determination of attainment, based on 2006 to 2008 data, that the Martinsburg-Hagerstown, Parkersburg-Marietta, and Wheeling 1997 PM<sub>2.5</sub> nonattainment areas are attaining the 1997 PM<sub>2.5</sub> standards.

In its October 29, 2009 comments, which the Sierra Club submitted after having an opportunity to review the 2009 data it requested, the Sierra Club did not raise any additional concerns about the data apart from their incomplete and preliminary nature. EPA has addressed these concerns above and in its TSDs. EPA has thus fully explained the scope of its review of these data, and the basis for its determinations of attainment based on 2006–2008 data that are complete and quality assured.

### III. What Is the Effect of These Actions?

These final actions, in accordance with 40 CFR 51.1004(c), suspend the requirements for the Martinsburg-Hagerstown, WV-MD nonattainment area, the Parkersburg-Marietta, WV-OH nonattainment area, and the Wheeling, WV-OH nonattainment 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 for so long as that area continues to attain the 1997 PM<sub>2.5</sub> NAAQS.

### IV. When Are These Actions Effective?

EPA finds that there is good cause for these determinations 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 these actions 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, these determinations of attainment suspend the requirements for the Martinsburg-Hagerstown, Parkersburg-Marietta, and Wheeling PM<sub>2.5</sub> nonattainment areas 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 for so long as these areas continue 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, the suspension of 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 rules suspend requirements rather than imposing obligations, affected parties do not need time to adjust and prepare before the rule takes effect.

### V. What Are EPA's Final Actions?

EPA is determining that the Martinsburg-Hagerstown, Parkersburg-Marietta, and Wheeling nonattainment areas have attained the standards for the 1997 PM<sub>2.5</sub> NAAQS. These determinations are based upon complete, quality assured, quality controlled, and certified ambient air monitoring data showing that these areas have monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS based on the 2006–2008 data. In addition, preliminary air quality data available for 2009 are consistent with continuing attainment. These final actions, in accordance with 40 CFR 51.1004(c), will suspend the requirements for States 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 for each area, for so long as that area continues to meet the 1997 PM<sub>2.5</sub> NAAQS. EPA's determination that these areas have attained the 1997 PM<sub>2.5</sub> NAAQS are not equivalent to the redesignation of these areas to attainment. These actions do not constitute redesignations to attainment under section 107(d)(3) of

the CAA, because we do not yet have an approved maintenance plan for these areas as required under section 175A of the CAA, nor a determination that these areas have met the other requirements for redesignation. The designation status of these areas remains nonattainment for the 1997 PM<sub>2.5</sub> NAAQS until such time as EPA determines that these areas meet the CAA requirements for redesignation to attainment.

### VI. What Are the Statutory and Executive Order Reviews?

#### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), these actions are not “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, these actions are not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). These actions make determinations based on air quality data and result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that these rules will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because these rules make determinations based on air quality data, and result in the suspension of certain Federal requirements, they do 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).

These rules also do not have tribal applications because they will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). These actions also do not have Federalism implications because they do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because they merely make determinations based on air quality data and result in the suspension of certain Federal requirements, and do not alter the relationship or the distribution of power and responsibilities established in the

CAA. These rules also are not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks" (62 FR 19885, April 23, 1997) because they determine that air quality in the affected areas are meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures to otherwise satisfy the provisions of the CAA.

These rules do not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Under Executive Order 12898, EPA finds that these rules involve determinations of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in these areas, including minority and low-income communities.

#### *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 these actions 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**. These actions are not "major rules" 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 these actions must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions 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 actions.

These actions, pertaining to the determinations of attainment for the 1997 fine particulate matter standard for the Martinsburg-Hagerstown, Parkersburg-Marietta, and Wheeling PM<sub>2.5</sub> nonattainment areas, may not be challenged later in proceedings to enforce 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: November 10, 2009.

**William 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 V—Maryland**

■ 2. Section 52.1081 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

##### **§ 52.1081 Control strategy: Particulate matter.**

\* \* \* \* \*

(b) *Determination of Attainment.* EPA has determined, as of November 20, 2009, the Martinsburg-Hagerstown, WV-MD PM<sub>2.5</sub> nonattainment area has attained the 1997 PM<sub>2.5</sub> NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspend 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.

#### **Subpart KK—Ohio**

■ 3. Section 52.1880 is amended by adding paragraph (k) to read as follows:

##### **§ 52.1880 Control strategy: Particulate matter.**

\* \* \* \* \*

(k) *Determinations of Attainment.* EPA has determined, as of November 20, 2009, the Parkersburg-Marietta, WV-OH and the Wheeling, WV-OH PM<sub>2.5</sub> nonattainment areas have attained the 1997 PM<sub>2.5</sub> NAAQS. These determinations, in accordance with 40 CFR 52.1004(c), suspend the

requirements for these areas 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 these areas continue to meet the 1997 PM<sub>2.5</sub> NAAQS.

#### **Subpart XX—West Virginia**

■ 4. Section 52.2526 is amended by designating the existing paragraph as paragraph (a) and by adding paragraph (b) to read as follows:

##### **§ 52.2526 Control strategy: Particulate matter.**

\* \* \* \* \*

(b) *Determinations of Attainment.* EPA has determined, as of November 20, 2009, the Martinsburg-Hagerstown, WV-MD, the Parkersburg-Marietta, WV-OH and the Wheeling, WV-OH PM<sub>2.5</sub> nonattainment areas have attained the 1997 PM<sub>2.5</sub> NAAQS. These determinations, in accordance with 40 CFR 52.1004(c), suspend the requirements for these areas 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 these areas continue to meet the 1997 PM<sub>2.5</sub> NAAQS.

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Federal Emergency Management Agency**

#### **44 CFR Part 206**

[Docket ID FEMA-2006-0028]

RIN 1660-AA45

#### **Public Assistance Eligibility**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) provides financial assistance to State, local, and Tribal governments, as well as certain private non-profit organizations, for response and recovery activities required as a result of a presidentially-declared major disaster or emergency. Assistance may include reimbursement for sheltering and evacuation costs