

Representatives and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

**K. Unfunded Mandates Reform Act of 1995:** The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

**L. National Environmental Policy Act:** This rule making will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

**M. National Technology Transfer and Advancement Act:** The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rule making does not contain provisions which involve the use of technical standards.

**N. Paperwork Reduction Act:** The changes in this rule making involve information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been reviewed and approved by OMB under OMB control number 0651-0031. This rule making proposes to harmonize the standard for materiality under §§ 1.56 and 1.555 with the standard for materiality required to establish inequitable conduct. This notice does not propose any additional fees or information collection requirements on patent applicants or patentees.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a

penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

#### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be amended as follows:

#### PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. Section 1.56 is amended by revising paragraph (b) to read as follows:

##### § 1.56 Duty to disclose information material to patentability.

\* \* \* \* \*

(b) Information is material to patentability if it is material under the standard set forth in *Therasense, Inc. v. Becton, Dickinson & Co.*, \_\_\_ F.3d \_\_\_ (Fed. Cir. 2011). Information is material to patentability under *Therasense* if:

(1) The Office would not allow a claim if it were aware of the information, applying the preponderance of the evidence standard and giving the claim its broadest reasonable construction; or

(2) The applicant engages in affirmative egregious misconduct before the Office as to the information.

\* \* \* \* \*

3. Section 1.555 is amended by revising paragraph (b) to read as follows:

##### § 1.555 Information material to patentability in ex parte reexamination and inter partes reexamination proceedings.

\* \* \* \* \*

(b) Information is material to patentability if it is material under the standard set forth in *Therasense, Inc. v. Becton, Dickinson & Co.*, \_\_\_ F.3d \_\_\_ (Fed. Cir. 2011). Information is material to patentability under *Therasense* if:

(1) The Office would not find a claim patentable if it were aware of the information, applying the preponderance of the evidence standard and giving the claim its broadest reasonable construction; or

(2) The patent owner engages in affirmative egregious misconduct before the Office as to the information.

\* \* \* \* \*

Dated: July 15, 2011.

**David J. Kappos,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2011-18408 Filed 7-20-11; 8:45 am]

BILLING CODE 3510-16-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA-R03-OAR-2011-0469; FRL-9441-9]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia and Ohio; Determinations of Attainment of the 1997 Annual Fine Particle Standard for the Parkersburg-Marietta and Wheeling Nonattainment Areas

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to make a determination that the Parkersburg-Marietta, West Virginia-Ohio (WV-OH) nonattainment area and the Wheeling, WV-OH fine particle (PM<sub>2.5</sub>) nonattainment areas (hereafter referred to as "Areas") have attained the 1997 annual PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. These determinations are based upon complete, quality-assured, and certified ambient air monitoring data for the 2007-2009 monitoring period. EPA is finding these Areas to be in attainment, in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before August 22, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2011-0469 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA-R03-OAR-2011-0469, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2011-0469. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., 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 in <http://www.regulations.gov> or in hard copy 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:** Region 3, Irene Shandruk, Office of Air Program Planning (3AP30), Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-2166, [shandruk.irene@epa.gov](mailto:shandruk.irene@epa.gov). Region 5, Carolyn Persoon, Control

Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8290, [persoon.carolyn@epa.gov](mailto:persoon.carolyn@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What actions is EPA proposing?
- II. What is the background of these actions?
- III. What is EPA's analysis of the relevant air quality data?
- IV. What are the effects of these actions?
- V. Statutory and Executive Order Reviews

#### **I. What actions is EPA proposing?**

In accordance with section 179(c)(1) of the CAA, EPA is proposing to determine that the Parkersburg-Marietta, WV-OH PM<sub>2.5</sub> nonattainment area and the Wheeling, WV-OH PM<sub>2.5</sub> nonattainment area have attained the 1997 annual PM<sub>2.5</sub> NAAQS by the applicable attainment date of April 5, 2010. The proposal is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period and EPA's determinations are in accordance with EPA's PM<sub>2.5</sub> Implementation Rule of April 25, 2007 (72 FR 20664).

#### **II. What is the background of these actions?**

On July 18, 1997 (62 FR 36852), EPA established a health-based PM<sub>2.5</sub> NAAQS at 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations (hereafter referred to as "the annual PM<sub>2.5</sub> NAAQS" or "the annual standard"). At that time, EPA also established a 24-hour standard of 65 µg/m<sup>3</sup> (the "1997 24-hour standard"). See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 PM<sub>2.5</sub> NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas were designated nonattainment for the 1997 PM<sub>2.5</sub> NAAQS during this designations process. See 40 CFR 81.349 (West Virginia) and 40 CFR 81.336 (Ohio). The Parkersburg-Marietta, WV-OH nonattainment area consists of Wood County, WV, the Grant Tax District of Pleasants County, WV, and Washington County, OH. The Wheeling, WV-OH nonattainment area consists of Marshall

County, WV, Ohio County, WV, and Belmont County, OH.

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual PM<sub>2.5</sub> NAAQS at 15 µg/m<sup>3</sup> based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations, and promulgated a 24-hour standard of 35 µg/m<sup>3</sup> based on a 3-year average of the 98th percentile of 24-hour concentrations (the "2006 24-hour standard"). On November 13, 2009, EPA designated the Parkersburg-Marietta and Wheeling Areas as attainment for the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Parkersburg-Marietta and Wheeling Areas were designated as nonattainment for the annual standard, but attainment for the 1997 24-hour standard. Today's action, however, does not address attainment of either the 1997 or the 2006 24-hour standard.

In response to legal challenges of the annual standard promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (DC Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard.

EPA previously made clean data determinations related to the 1997 annual PM<sub>2.5</sub> NAAQS for each of these Areas pursuant to 40 CFR 51.1004(c). These determinations were made on November 20, 2009 (74 FR 60199) and remain in effect.

Under CAA section 179(c), EPA is required to make a determination that a nonattainment area has attained by its attainment date, and publish that determination in the **Federal Register**. The determination of attainment is not equivalent to a redesignation, and the state must still meet the statutory requirements for redesignation in order for the Areas to be redesignated to attainment.

Complete, quality-assured, and certified PM<sub>2.5</sub> air quality monitoring data recorded in the EPA Air Quality System (AQS) database for 2007 through 2009, show that the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas attained the 1997 annual PM<sub>2.5</sub> NAAQS by their applicable attainment date.

### III. What is EPA's analysis of the relevant air quality data?

EPA has reviewed the ambient air monitoring data for PM<sub>2.5</sub>, consistent with the requirements contained in 40 CFR part 50 and recorded in the data in the EPA AQS database for the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas for the monitoring period from 2007 through 2009. On the basis of that review, EPA proposes to determine that the Areas attained the 1997 annual PM<sub>2.5</sub> NAAQS by the April 5, 2010 attainment date.

Under EPA regulations at 40 CFR 50.7, the annual primary and secondary PM<sub>2.5</sub> standards are met when the annual arithmetic mean concentrations, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 µg/m<sup>3</sup>, at all relevant monitoring sites. The values calculated in accordance with 40 CFR part 50, Appendix N, are referred to as design values, and these values are used to determine if an area is attaining the PM<sub>2.5</sub> NAAQS. According to the PM<sub>2.5</sub> implementation rule, the attainment date for these Areas is April 5, 2010 and the monitoring data from 2007 through

2009 is used to determine if the Areas attained by April 5, 2010.

Table 1 shows the PM<sub>2.5</sub> design values for each monitor in the Parkersburg-Marietta, WV-OH nonattainment area and the Wheeling, WV-OH nonattainment area, respectively, for the years 2007–2009. All 2007–2009 design values are below 15.0 µg/m<sup>3</sup>, and all monitors meet the data completeness requirements. Therefore, the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas attained the 1997 annual PM<sub>2.5</sub> NAAQS by their attainment date.

TABLE 1.—ANNUAL PM<sub>2.5</sub> DESIGN VALUES FOR PARKERSBURG-MARIETTA, WV-OH AND WHEELING, WV-OH NONATTAINMENT AREAS \*

State	County	Monitor ID	Certified annual design value 2007–2009 (µg/m <sup>3</sup> )
<b>Parkersburg-Marietta, WV-OH</b>			
West Virginia .....	Wood County .....	541071002 .....	13.7
	Grant Tax District of Pleasants County ..	No monitor .....	
Ohio .....	Washington County .....	No monitor .....	
<b>Wheeling, WV-OH</b>			
West Virginia .....	Marshall County .....	540511002 .....	13.4
	Ohio County .....	540690010 .....	13.2
Ohio .....	Belmont County .....	No monitor .....	

\* The data presented in Table 1 are available at <http://www.epa.gov/air/airtrends/values.html>.

### IV. What are the effects of these actions?

If EPA's proposed determination that the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas have attained the 1997 annual PM<sub>2.5</sub> standard by the applicable attainment date (April 5, 2010) is finalized, EPA will have met its requirement pursuant to section 179(c) of the CAA to make a determination based on the Areas' air quality data as of the attainment date that the Areas attained the standard by that date. The action described above is a proposed determination regarding the Parkersburg-Marietta, WV-OH, and Wheeling, WV-OH areas' attainment of the 1997 annual PM<sub>2.5</sub> NAAQS.

Finalizing this proposed action would not constitute a redesignation of the Areas to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action does not involve approving maintenance plans for the Areas as required under section 175A of the CAA, nor would it find that the Areas have met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation

status of the Parkersburg-Marietta, WV-OH, and Wheeling, WV-OH areas would remain nonattainment for the 1997 annual PM<sub>2.5</sub> NAAQS until such time as EPA determines that the Areas meet the CAA requirements for redesignation to attainment and take action to redesignate the Parkersburg-Marietta, WV-OH, and Wheeling, WV-OH areas.

EPA is soliciting comment on the action discussed in this document. These comments will be considered before EPA takes final action. Please note that if EPA receives adverse comment on either of the proposed determinations described above and if that determination may be severed from the remainder of the final agency action, EPA may adopt as final these provisions of the final agency action that are not the subject of an adverse comment.

### V. Statutory and Executive Order Reviews

This action proposes to make attainment determinations based on air quality data and would not, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. For that reason, this proposed 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 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, these proposed PM<sub>2.5</sub> NAAQS attainment determinations do 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.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 25, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region 3.*

Dated: June 24, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2011-18427 Filed 7-20-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2011-0451; FRL-9441-1]

#### Approval and Promulgation of Air Quality Plans: State of Missouri

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve an April 20, 2011, request from the State of Missouri to exempt sources of Nitrogen Oxides (NO<sub>x</sub>) in the Missouri portion of the St. Louis (MO-IL) metropolitan 8-hour ozone nonattainment area from the Clean Air Act (CAA) requirements for NO<sub>x</sub> Reasonably Available Control Technology (RACT) for purposes of attaining the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Missouri NO<sub>x</sub> RACT waiver request for its portion of the St.

Louis metropolitan 8-hour ozone nonattainment area is based on the most recent three years of complete, quality-assured ozone monitoring data, which demonstrate that additional reductions of NO<sub>x</sub> emissions in the Area would not contribute to attainment of the 1997 8-hour ozone NAAQS.

**DATES:** Comments on this proposed action must be received in writing by August 22, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2011-0451, by mail to Ms. Lachala Kemp, Air Planning and Development Branch, U.S. EPA Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

Lachala Kemp, Air Planning and Development Branch, 901 N. 5th Street, Kansas City, Kansas 66101 at 913 551 7214, or by e-mail at [kemp.lachala@epa.gov](mailto:kemp.lachala@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's request to exempt sources of NO<sub>x</sub> in the Missouri portion of the St. Louis (MO-IL) metropolitan 8-hour ozone nonattainment area from the CAA requirements for NO<sub>x</sub> RACT for purposes of attaining the 1997 8-hour ozone NAAQS. EPA is approving the Missouri's SIP revision as a direct final rule without prior proposal because the Agency views this as a non-controversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: July 12, 2011.

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2011-18182 Filed 7-20-11; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1038]

#### Proposed Flood Elevation Determinations

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

**ACTION:** Proposed rule; correction.

**SUMMARY:** On March 25, 2009, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 74 FR 12799. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Monroe County, Kentucky, and Incorporated Areas. Specifically, it addresses the following flooding sources: Bailey Branch (backwater effects from Cumberland River), Butler Branch (backwater effects from Cumberland River), Cumberland River, McFarland Creek (backwater effects from Cumberland River), Meredith Creek (backwater effects from Cumberland River), Meshack Creek (backwater effects from Cumberland River), Murphy Branch (backwater effects from Cumberland River), and Ward Branch (backwater effects from Cumberland River).

**DATES:** Comments are to be submitted on or before October 19, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. FEMA-B-1038, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064 or (e-mail) [luis.rodriguez1@dhs.gov](mailto:luis.rodriguez1@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064 or (e-mail) [luis.rodriguez1@dhs.gov](mailto:luis.rodriguez1@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities