



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0174; FRL-9764-4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the West Virginia Portion of the Huntington-Ashland, WV-KY-OH 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a redesignation request and State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) requested that the West Virginia portion of the Huntington-Ashland, WV-KY-OH fine particulate matter (PM_{2.5}) nonattainment area (“Huntington-Ashland Area” or “Area”) be redesignated as attainment for the 1997 annual PM_{2.5} national ambient air quality standard (NAAQS). In this rulemaking action, EPA is approving the 1997 annual PM_{2.5} redesignation request for the West Virginia portion of the Area. EPA is also approving the maintenance plan SIP revision that the State submitted in conjunction with its redesignation request. The maintenance plan provides for continued attainment of the 1997 annual PM_{2.5} NAAQS for 10 years after redesignation of the West Virginia portion of the Area. The maintenance plan includes an insignificance determination for the onroad motor vehicle contribution of PM_{2.5}, nitrogen oxides (NO_x), and sulfur dioxide (SO₂) for the West Virginia portion of the Area for purposes of transportation conformity. EPA is approving West Virginia’s insignificance determination for transportation conformity. EPA is also finding that the Area continues to attain the standard. This rulemaking action approving the 1997 annual PM_{2.5}

NAAQS redesignation request, maintenance plan, and insignificance determination for transportation conformity for the West Virginia portion of the Area is based on EPA's determination that the Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA).

DATES: This final rule is effective on [insert publication date].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2012-0174**. All documents in the docket are listed in the www.regulations.gov website. 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 West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Huntington-Ashland Area is composed of Cabell and Wayne Counties and the Graham Tax

District in Mason County in West Virginia (West Virginia portion of the Area); Boyd County and a portion of Lawrence County in Kentucky; and Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio. On November 15, 2012 (77 FR 68076), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. Pursuant to sections 107(d)(3) and 175A of the CAA, the NPR proposed approval of West Virginia's redesignation request, a SIP revision that establishes a maintenance plan for the West Virginia portion of the Area that provides for continued attainment of the 1997 annual PM_{2.5} NAAQS for at least 10 years after redesignation, and the insignificance determination for transportation conformity for the West Virginia portion of the Area. The formal SIP revision was submitted by WVDEP on June 30, 2011. In a separate action, EPA approved the base year emissions inventory on December 11, 2012 (77 FR 73544) meeting the requirements of section 172(c)(3) of the CAA. Other specific details of West Virginia's redesignation request, the associated maintenance plan SIP revision and insignificance determination, and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the redesignation request, maintenance plan, and insignificance determination for transportation conformity for the West Virginia portion of the Area that was submitted by WVDEP on June 30, 2011 because the requirements for approval have been satisfied. EPA has evaluated West Virginia's redesignation request, and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Approval of this redesignation request will change the legal designation of the West Virginia portion of the Area from nonattainment to

attainment for the 1997 annual PM_{2.5} NAAQS. EPA is approving the associated maintenance plan for the West Virginia portion of the Area, submitted on June 30, 2011, as a revision to the West Virginia SIP because it meets the requirements of section 175A of the CAA. EPA is also approving the transportation conformity insignificance determination submitted by West Virginia for this Area in conjunction with its redesignation request.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a redesignation to attainment, which eliminates CAA obligations that would otherwise apply. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction,” and section 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.” The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today’s rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today’s rule relieves West Virginia of the obligation to comply with nonattainment-related planning requirements for this PM_{2.5} Area pursuant to Part D of the CAA. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this action to become effective on the date of publication of this notice.

III. 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 (Public Law 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 [Insert date 60 days from date of publication of this document in the Federal Register]. 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 approving the redesignation request, maintenance plan, and transportation conformity insignificance determination for the West Virginia portion of the Area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

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.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas

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

Dated: December 18, 2012.

W. C. Early,
Acting Regional Administrator,
Region III.

40 CFR parts 52 and 81 are 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 XX– West Virginia

2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for the 1997 annual PM_{2.5} Maintenance Plan, West Virginia portion of the Huntington-Ashland, WV-KY-OH Area at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) ***

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	* *	* *	* *
1997 annual PM _{2.5} Maintenance Plan for Huntington-Ashland WV-KY-OH Area	Cabell and Wayne Counties, and the Graham Tax District in Mason County	6/30/11	[Insert Federal Register publication date] [Insert page number where the document begins]	

PART 81 - [AMENDED]

1. The authority citation for Part 81 continues to read as follows:

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

2. Section 81.349 is amended by revising the PM_{2.5} (Annual NAAQS) table entry for the Huntington-Ashland, WV-KY-OH Area to read as follows:

§ 81.349 West Virginia

* * * * *

West Virginia – PM_{2.5} (Annual NAAQS)

Designated Area	Designation ^a	
	Date ¹	Type
* * * * *	* *	* *
Huntington-Ashland, WV-KY-OH		
Cabell County	[Insert Federal Register publication date]	Attainment
Mason County (part) Graham Tax District	[Insert Federal Register publication date]	Attainment
Wayne County	[Insert Federal Register publication date]	Attainment
* * * * *	* *	* *

^a Includes Indian County located in each county or area, except otherwise specified.

¹This date is 90 days after January 5, 2005, unless otherwise noted.

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