



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2014-0281; FRL-9920-42-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Redesignation Request and Associated Maintenance Plan for the Maryland Portion of the Martinsburg-Hagerstown, WV-MD Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of Maryland's request to redesignate to attainment the Maryland portion of the Martinsburg-Hagerstown, WV-MD Nonattainment Area (Martinsburg Area or Area) for the 1997 annual fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS). The Maryland portion of the Martinsburg Area is comprised of Washington County, Maryland. EPA has found that the Martinsburg Area attained the standard and continues to attain the standard. In addition, EPA is approving, as a revision to the Maryland State Implementation Plan (SIP), the Washington County maintenance plan to show maintenance of the 1997 annual PM_{2.5} NAAQS through 2025 for the Maryland portion of the Area. The maintenance plan includes the 2017 and 2025 PM_{2.5} and nitrogen oxides (NO_x) mobile vehicle emissions budgets (MVEBs) for Washington County, Maryland for the 1997 annual PM_{2.5} NAAQS, which EPA is proposing to approve for transportation conformity purposes. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0281. 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 Maryland Department of the Environment, Air and Radiation Management Administration, 1800 Washington Boulevard, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers at (215) 814-2308, or by e-mail at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 12, 2013, the State of Maryland, through the Maryland Department of the Environment (MDE), formally submitted a request to redesignate the Maryland portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS. Concurrently, MDE submitted a maintenance plan for Washington County as a SIP revision to ensure continued attainment throughout the Maryland portion of the Area over the next 10 years. In addition, the maintenance plan includes the 2017 and 2025 PM_{2.5} and NO_x MVEBs used for

transportation conformity purposes for Washington County, Maryland for the 1997 annual PM_{2.5} standard.

On August 21, 2014 (79 FR 49474), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of Maryland's redesignation request for its portion of the Martinsburg Area for the 1997 annual PM_{2.5} NAAQS. EPA also proposed approval of the associated maintenance plan as a SIP revision for the 1997 annual PM_{2.5} NAAQS, which includes the 2017 and 2025 PM_{2.5} and NO_x MVEBs for the 1997 annual PM_{2.5} NAAQS for purposes of transportation conformity.

In the August 21, 2014 NPR, EPA explains that the redesignation of this Area does not rely on either the Clean Air Interstate Rule (CAIR) or the Cross State Air Pollution Rule (CSAPR) for maintenance. However, EPA notes here the changed status of CSAPR since the publication of the NPR on August 21, 2014. As discussed in the NPR, on April 29, 2014, the Supreme Court vacated and reversed the D.C. Circuit Court's decision regarding CSAPR and remanded that decision to the D.C. Circuit Court to resolve remaining issues in accordance with its ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). In light of the April 29, 2014 Supreme Court decision, on June 26, 2014, EPA moved to have the D.C. Circuit Court's December 30, 2011 stay of CSAPR lifted. *EME Homer City Generation, L.P. v. EPA*, Case No. 11-1302, Document No. 1499505 (D.C. Cir. filed June 26, 2014). On October 23, 2014, the D.C. Circuit Court granted EPA's motion and lifted the stay of CSAPR which was imposed on December 30, 2011. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014), Order at 3.

The details of Maryland's submittal and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. EPA received one adverse comment from Mr. Robert Ukeiley, representing the Law Office of Robert Ukeiley.

Comment: Mr. Ukeiley contends that EPA cannot approve the redesignation request until PM_{2.5} increments are fully approved into Maryland's SIP - approved Prevention of Significant Deterioration (PSD) program, and that without these increments, Maryland does not have a fully approved relevant SIP and does not have an adequate maintenance plan.

Response: EPA disagrees with the commenter that EPA's pending action on Maryland's PM_{2.5} PSD increments presents an obstacle to redesignating the Maryland portion of the Martinsburg nonattainment area. The commenter has not specified which provisions of the Clean Air Act he thinks are not being met in this redesignation action, but states only that "without the increments, Maryland does not have a fully approved relevant SIP." EPA assumes that the commenter is referring to the requirements of Clean Air Act sections 107(d)(3)(E)(ii) and (v), which require that the Administrator has fully approved the applicable implementation plan for the area under section 110(k), and that the state containing the nonattainment area has met all requirements applicable to the area under CAA section 110 and part D. As stated in the NPR, EPA has long interpreted the term "applicable" in these two provisions to mean only those requirements that are linked to a particular nonattainment area's designation and classification. *See* 79 FR 49482 (August 21, 2014). As is the case with other requirements which remain applicable to an area after redesignation, the requirements of a PSD program, which apply only to attainment areas, need not be fully approved in order for a nonattainment area to be redesignated to attainment

under sections 107(d)(3)(E)(ii) and (v) because they are not applicable requirements for purposes of those provisions.

EPA also disagrees that pending action on Maryland's PSD increments into its approved PSD program means that Maryland does not have an adequate maintenance plan under CAA section 175A. Maryland has an EPA-approved PSD program that includes PM_{2.5} as a regulated new source review (NSR) pollutant. Therefore, any increase in direct PM_{2.5} emissions or emissions of its precursors (sulfur dioxide (SO₂) and NO_x) planned by a new source or from a modified source will trigger the requirements to obtain a PSD permit; to perform an air quality analysis that demonstrates that the proposed source or modification will not cause or contribute to a violation of the PM_{2.5} NAAQS; and to apply best available control technology (BACT) for PM_{2.5}. The commenter is correct that EPA has not yet taken action on Maryland's August 22, 2013 submission of proposed PM_{2.5} increments for approval into the Maryland SIP. EPA is currently in the process of taking action on this submission. However, the absence of PM_{2.5} increments from Maryland's PSD program does not prevent the program from addressing and helping to assure maintenance of the PM_{2.5} standard in accordance with CAA section 175A. A PSD increment is the maximum increase in concentration that is allowed to occur above a baseline concentration for a pollutant, but the level of the increment can never exceed the NAAQS. Therefore, even in the absence of an approved PSD increment, Maryland's PSD program prohibits air quality from deteriorating beyond the concentration allowed by the applicable NAAQS. *See* COMAR 26.11.06.14- General Emissions Standards, Prohibitions, and Restrictions - Control of PSD Sources. Thus, Maryland's PSD program is adequate for purposes of assuring maintenance of the 1997 annual PM_{2.5} standard as required by section 175A.

For the reasons explained above, EPA concludes that the features of the PSD program in Maryland's SIP do not detract from the program's adequacy for purposes of maintenance of the standard and redesignation of the Area. It is, therefore, sufficient for the purposes of maintaining the 1997 annual PM_{2.5} NAAQS in the Maryland portion of the Martinsburg Area.

II. Final Action

EPA is taking final action on the redesignation request and SIP revision submitted by the State of Maryland, on December 12, 2013, for the Maryland portion of the Martinsburg Area for the 1997 annual PM_{2.5} NAAQS. EPA is approving Maryland's redesignation request for the 1997 annual PM_{2.5} NAAQS, because EPA has determined that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for this standard. EPA is approving the associated maintenance plan for the Maryland portion of the Area as a revision to the Maryland SIP for the 1997 annual PM_{2.5} NAAQS because it meets the requirements of section 175A of the CAA. EPA is also approving the 2017 and 2025 PM_{2.5} and NO_x MVEBs submitted by Maryland for Washington County for transportation conformity purposes. Approval of this redesignation request will change the official designation of the Maryland portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS.

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 the State of Maryland of the obligation to comply with nonattainment-related planning requirements for the Maryland portion of the Area pursuant to Part D of the CAA and approves certain emissions inventories and MVEBs for the Maryland portion of the Area. 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, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 and maintenance plan for the Maryland portion of the Martinsburg Area for the 1997 annual PM_{2.5} NAAQS, 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 oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 3, 2014.

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

40 CFR parts 52 and 81 are amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart V– Maryland

2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for the 1997 Annual PM_{2.5} Maintenance Plan, Maryland portion of the Martinsburg, WV-MD Area to the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) ***

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * *	* * *	*	*	*
1997 Annual fine particulate (PM _{2.5}) Maintenance Plan for the Maryland portion of the Martinsburg WV-Hagerstown, MD Area	Washington County	12/12/13	<u>[Insert Federal Register publication date]</u> <u>[Insert Federal Register Citation]</u>	See §52.2526(k) and §52.2531(h)

3. Section 52.1081 is amended by adding paragraph (f) to read as follows:

§ 52.1081 Control strategy: Particular matter.

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(f) *Maintenance Plan and Transportation Conformity Budgets.* EPA approves the maintenance plan for the Maryland portion of the Martinsburg, WV-Hagerstown, MD nonattainment area for

the 1997 annual PM_{2.5} NAAQS submitted by the State of Maryland on December 12, 2013. The maintenance plan includes motor vehicle emission budgets (MVEBs) to be applied to all future transportation conformity determinations and analyses for the Maryland portion of the Martinsburg, WV-Hagerstown, MD Area for the 1997 PM_{2.5} NAAQS.

Maryland Portion of the Martinsburg, WV-Hagerstown, MD Area’s Motor Vehicle Emissions Budgets for the 1997 Annual PM_{2.5} NAAQS, (tpy)

Type of control strategy SIP	Year	NO _x	PM _{2.5}	Effective date of SIP approval
Maintenance Plan	2017	4,057.00	149.63	<u>[Insert date of publication]</u>
	2025	2,774.63	93.35	

PART 81 – DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

5. In § 81.321 the table “Maryland–1997 Annual PM_{2.5} NAAQS” is amended by revising the entry for the Martinsburg, WV-Hagerstown, MD Area to read as follows:

§ 81.321 Maryland.

* * * * *

Maryland–1997 Annual PM_{2.5} NAAQS

[Primary and secondary]

Designated Area	Designation ^a		Classification	
	Date ¹	Type	Date ²	Type
* * * * *				
Martinsburg, WV-Hagerstown, MD:				

Washington County	<u>[Insert Federal Register publication date]</u>	Attainment		
* * * * *				

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

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

² This date is July 2, 2014, unless otherwise noted.

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[FR Doc. 2014-29336 Filed 12/15/2014 at 8:45 am; Publication
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