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40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Final Rules

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R04-OAR-2010-0255-201141; FRL-9459-4]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia: Kentucky; Ohio; Huntington-Ashland Nonattainment Area; Determinations of Attainment of the 1997 Annual Fine Particulate Standards****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the tri-state Huntington-Ashland, West Virginia-Kentucky-Ohio, fine particulate (PM<sub>2.5</sub>) nonattainment Area (hereafter referred to as “the Huntington-Ashland Area” or “Area”) has attained the 1997 annual PM<sub>2.5</sub> national ambient air quality standards (NAAQS) and additionally, that the Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS by its applicable attainment date of April 5, 2010. The Huntington-Ashland Area is comprised of Cabell and Wayne Counties in their entireties and a portion of Mason County (Graham Tax District) in West Virginia; Boyd County in its entirety and a portion of Lawrence County in Kentucky; and a portion of Adams, a portion of Gallia, Lawrence, and Scioto Counties in Ohio. These determinations of attainment are based upon quality-assured and certified ambient air monitoring data for the 2007–2009 period showing that the Area has monitored attainment of the 1997 annual PM<sub>2.5</sub> NAAQS. The requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended so long as the Area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS.

**DATES:** *Effective Date:* This final rule is effective on October 7, 2011.**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R04-OAR-2010-0255. All documents in the docket 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

**FOR FURTHER INFORMATION CONTACT:** In Region 3, Ellen Wentworth, Office of Air Program Planning, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2023. Ms. Wentworth's telephone number is (215) 814-2034. Ms. Wentworth can also be reached via electronic mail at [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov). In Region 4, Joel Huey or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Huey's telephone number is (404) 562-9104. Mr. Huey can also be reached via electronic mail at [huey.joel@epa.gov](mailto:huey.joel@epa.gov). Ms. Waterson may be reached by phone at (404) 562-9061 or via electronic mail at [waterson.sara@epa.gov](mailto:watson.sara@epa.gov). In Region 5, John Summerhays, Air Planning and Maintenance Section, Air Programs Branch (AR-18)), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3507. Mr. Summerhays' telephone number is (312) 886-6067. Mr. Summerhays can also be reached via electronic mail at [summerhays.john@epa.gov](mailto:summerhays.john@epa.gov).

**SUPPLEMENTARY INFORMATION:**

- I. What action is EPA taking?
- II. What is the effect of this action?
- III. What is EPA's final action?
- IV. Statutory and Executive Order Reviews

**I. What action is EPA taking?**

EPA is determining that the Huntington-Ashland Area (comprised of Cabell and Wayne Counties in their entireties and a portion of Mason County (Graham Tax District) in West Virginia; Boyd County in its entirety and a portion of Lawrence County in Kentucky; and a portion of Adams, a portion of Gallia, Lawrence, and Scioto Counties in Ohio) has attained the 1997 annual PM<sub>2.5</sub> NAAQS. This determination is based upon quality-assured, quality-controlled and certified ambient air monitoring data that shows the Area has monitored attainment of

the 1997 annual PM<sub>2.5</sub> NAAQS based on the 2007–2009 data as well as the 2008–2010 data. EPA is also determining, in accordance with EPA's PM<sub>2.5</sub> Implementation Rule of April 25, 2007 (72 FR 20664), that the Huntington-Ashland Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS by its applicable attainment date of April 5, 2010.

Other specific requirements of the determination and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on May 11, 2011 (76 FR 27290). For summary purposes, and with regard to the data, the Lawrence County Hospital (LCH) site was demolished on February 12, 2008, and a new site in the Lawrence County, Ohio portion of the Huntington-Ashland Area, known as the Ironton DOT site, began operation on the same day. As a consequence of the shutdown of the LCH site, the site was not able to meet the data completeness requirements for 2007–2009 because it was not operating for the entire 2007–2009 monitoring period. In a statistical analysis performed by EPA's Office of Air Quality Planning and Standards, as described in the NPR, EPA determined that the upper end of the range of potential 2007–2009 design values for the LCH site did not exceed the NAAQS. The Ironton DOT site was a new site in 2008 and thus did not collect data for 2007 and part of the first quarter of 2008; however, the data are complete for the remainder of 2008 and 2009. Because this was a new monitor during the 2007–2009 period, these data are considered supplemental to the data provided from the other monitors in the Area. The annual design value for 2007–2009 for the Huntington-Ashland Area is 14.1 micrograms per cubic meter (µg/m<sup>3</sup>), at the Huntington site (54-011-0006). The annual design value for 2008–2010 for the Huntington-Ashland Area is 13.1 µg/m<sup>3</sup>, at the Huntington site (54-011-0006). These values are below the NAAQS. The comment period closed on June 10, 2011. No comments were received in response to the NPR.

**II. What is the effect of this action?**

This final action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS as long as this Area continues to meet the 1997 annual PM<sub>2.5</sub> NAAQS. Finalizing this action does not constitute a redesignation of the Huntington-Ashland Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS

under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor does it involve a determination that the Area has met all requirements for a redesignation.

In addition, EPA is making a separate and independent determination that the Area has attained the 1997 annual PM<sub>2.5</sub> standard by its applicable attainment date (April 5, 2010), thereby satisfying EPA's requirement pursuant to section 179(c)(1) of the CAA to make a determination based on the Area's air quality data as of the attainment date whether the Area attained the standard by that date.

### III. What is EPA's final action?

EPA is determining that the Huntington-Ashland Area has data indicating it has attained the 1997 annual PM<sub>2.5</sub> NAAQS, and additionally, that the Area has attained the standard by its applicable attainment date (April 5, 2010). These determinations are based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing that this Area has monitored attainment of the 1997 annual PM<sub>2.5</sub> NAAQS during the period 2007–2009 and continues to monitor attainment during the 2008–2010 period. The determination of attaining data action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS as long as the Area continues to meet the 1997 annual PM<sub>2.5</sub> NAAQS. These actions are being taken pursuant to section 179(c)(1) of the CAA and are consistent with the CAA and its implementing regulations.

### IV. Statutory and Executive Order Reviews

This action makes determinations of attainment based on air quality, and will result in the suspension of certain Federal requirements, and it will not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this 1997 PM<sub>2.5</sub> clean NAAQS data determination for the Huntington-Ashland Area 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 2011. 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).)

For purposes of judicial review, the two determinations approved by today's action are severable from one another.

### List of Subjects in 40 CFR Part 52

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

Dated: July 21, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region 3.*

Dated: August 18, 2011.

**Gwendolyn Keyes Fleming,**

*Regional Administrator, Region 4.*

Dated: July 28, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

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 S—Kentucky

- 2. Section 52.929 is added to read as follows:

#### § 52.929 Determination of attainment.

(a) Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Huntington-Ashland, West Virginia-Kentucky-Ohio PM<sub>2.5</sub> nonattainment Area attained the 1997 annual PM<sub>2.5</sub> NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Huntington-Ashland PM<sub>2.5</sub> nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

(b) [Reserved]

- 3. Section 52.933 is amended by adding paragraph (d) to read as follows:

#### § 52.933 Control Strategy: Sulfur oxides and particulate matter.

\* \* \* \* \*

(d) *Determination of Attainment.* EPA has determined, as of September 7, 2011, that based upon 2007–2009 air quality data, the Huntington-Ashland, West Virginia-Kentucky-Ohio, nonattainment Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends 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 annual PM<sub>2.5</sub> NAAQS.

#### Subpart KK—Ohio

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

**§ 52.1880 Control Strategy: Particulate matter.**

\* \* \* \* \*

(m) *Determination of Attainment.* EPA has determined, as of September 7, 2011, that based upon 2007–2009 air quality data, the Huntington-Ashland, West Virginia-Kentucky-Ohio, nonattainment Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends 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 annual PM<sub>2.5</sub> NAAQS.

■ 5. Section 52.1892 is added to read as follows:

**§ 52.1892 Determination of attainment.**

Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Huntington-Ashland, West Virginia-Kentucky-Ohio PM<sub>2.5</sub> nonattainment Area attained the 1997 annual PM<sub>2.5</sub> NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Huntington-Ashland PM<sub>2.5</sub> nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

#### Subpart XX—West Virginia

■ 6. Section 52.2526 is amended by adding paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) *Determination of Attainment.* EPA has determined, as of September 7, 2011, that based upon 2007–2009 air quality data, the Huntington-Ashland, West Virginia-Kentucky-Ohio, nonattainment Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends 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 annual PM<sub>2.5</sub> NAAQS.

■ 7. Section 52.2527 is added to read as follows:

**§ 52.2527 Determination of attainment.**

Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Huntington-Ashland, West Virginia-Kentucky-Ohio PM<sub>2.5</sub> nonattainment Area attained the 1997 annual PM<sub>2.5</sub> NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Huntington-Ashland PM<sub>2.5</sub> nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

[FR Doc. 2011–22653 Filed 9–6–11; 8:45 am]

BILLING CODE 6560–50–P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA–R04–OAR–2011–0414–201145; FRL–9459–5]

#### Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Kentucky and Indiana; Louisville; Determination of Attainment by Applicable Attainment Date for the 1997 Annual Fine Particulate Standards

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the bi-state Louisville, Kentucky-Indiana, fine particulate (PM<sub>2.5</sub>) nonattainment Area (hereafter referred to as “the Louisville Area”) has attained the 1997 annual PM<sub>2.5</sub> national ambient air quality standards (NAAQS) by the applicable attainment date of April 5, 2010. The determination of attainment was previously finalized by EPA on March 9, 2011, and was based on quality-assured and certified monitoring data for the 2007–2009 monitoring period. The Louisville Area is comprised of Jefferson County in Kentucky, and Clark, Floyd and a portion of Jefferson Counties in Indiana. EPA is determining to find that the above-identified Area attained the 1997 annual PM<sub>2.5</sub> NAAQS by its applicable attainment date. EPA is finalizing this action because it is consistent with the Clean Air Act (CAA) and its implementing regulations.

**DATES:** *Effective Date:* This final rule is effective on October 7, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2010–0414. All documents in the docket 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey's telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at [huey.joel@epa.gov](mailto:huey.joel@epa.gov). Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at [waterson.sara@epa.gov](mailto:waterson.sara@epa.gov).

**SUPPLEMENTARY INFORMATION:**