

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	Statewide	12/10/07 12/13/07 6/8/10 6/9/10	10/11/11 [Insert page number where the document begins].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 1997 PM <sub>2.5</sub> NAAQS	Statewide	7/10/08 9/2/08 6/8/10 6/9/10 4/1/08	10/11/11 [Insert page number where the document begins].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2006 PM <sub>2.5</sub> NAAQS.	Statewide	8/30/10 4/1/11	10/11/11 [Insert page number where the document begins].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2011-0454; FRL9477-5]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Determination of Attainment and Determination of Clean Data for the Annual 1997 Fine Particle Standard for the Charleston Area**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is making two determinations regarding the Charleston, West Virginia fine particulate matter (PM<sub>2.5</sub>) nonattainment area (hereafter referred to as “Charleston Area” or “Area”). First, EPA is determining that the Area has attained the 1997 annual average PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS). This determination of attainment is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 period showing that the Charleston Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS and data available to date for 2010 in EPA’s Air Quality System (AQS) database that show the area continues to attain. EPA’s determination releases the Charleston Area from the requirements to submit attainment demonstrations 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 for so long as the Area continues to attain the annual PM<sub>2.5</sub> NAAQS. Second, EPA

is determining based on quality-assured and certified monitoring data for the 2007–2009 monitoring period that the area has attained the 1997 annual PM<sub>2.5</sub> NAAQS, by its applicable attainment date of April 5, 2010.

**DATES:** *Effective Date:* This final rule is effective on November 10, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2011-0454. All documents in the docket are listed in the <http://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 <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:** Asrah Khadr, (215) 814-2071, or by e-mail at [khadr.asrah@epa.gov](mailto:khadr.asrah@epa.gov).

**SUPPLEMENTARY INFORMATION:**

- I. What actions is EPA taking?
- II. What are the effects of these actions?
- III. Statutory and Executive Order Reviews.

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

In accordance with section 179(c)(1) of the Clean Air Act (CAA), 42 U.S.C. section 7509(c)(1), and 40 Code of Federal Regulations (CFR) section 51.1004(c), EPA is determining that the Charleston Area (composed of Kanawha and Putnam Counties) has attained the 1997 annual PM<sub>2.5</sub> NAAQS. This action is based upon complete, quality-

assured, and certified ambient air monitoring data for the 2007–2009 monitoring period that show that the Area has monitored attainment of the 1997 annual PM<sub>2.5</sub> NAAQS and data available to date for 2010 that show the Area continues to attain. 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 Charleston Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS by its applicable attainment date of April 5, 2010.

EPA published in the **Federal Register** its proposed determination for the Charleston Area on July 15, 2011 (76 FR 41739). A discussion of the rationale behind this determination and the effect of the determination was included in the notice of proposed rulemaking. EPA received no comments on this notice of proposed rulemaking.

**II. What are the effects of these actions?**

In determining the Charleston Area attained the 1997 annual PM<sub>2.5</sub> standard by its applicable attainment date (April 5, 2010), EPA has met its requirement pursuant to 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. This action does not constitute a redesignation of the Area to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS under section 107(d)(3) of the CAA. Further, this action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor does it find that the Area has met all other requirements for redesignation. Even after a determination of attainment by EPA, the designation status of the Charleston Area is nonattainment for the 1997 annual PM<sub>2.5</sub> NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to

attainment and takes action to redesignate the Charleston Area.

EPA's clean data determination releases the Charleston Area from the requirement to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for so long as the Charleston Area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS. *See* 40 CFR 51.1004(c).

After a final clean data determination, if EPA determines that the Area has violated the 1997 annual PM<sub>2.5</sub> NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Charleston Area and it would thereafter have to address the applicable requirements. *See* 40 CFR 51.1004(c). The two actions regarding the Charleston Area's attainment are only with respect to the 1997 annual PM<sub>2.5</sub> NAAQS. Today's actions do not address the 24-hour PM<sub>2.5</sub> NAAQS.

### 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 (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 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 December 12, 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 pertaining to the determination of attainment and clean data determination for the Charleston Area 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, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 27, 2011.

**W. 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 XX—West Virginia

- 2. In § 52.2526, paragraph (e) is added to read as follows:

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

\* \* \* \* \*

(e) *Determination of Attainment.* EPA has determined, as of October 11, 2011, that based on 2007 to 2009 ambient air quality data, the Charleston 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.

- 3. In § 52.2527, paragraph (c) is added to read as follows:

#### § 52.2527 Determination of attainment.

\* \* \* \* \*

(c) Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Charleston fine particle (PM<sub>2.5</sub>) nonattainment area attained the 1997 annual PM<sub>2.5</sub> National Ambient Air Quality Standard (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 Charleston PM<sub>2.5</sub> nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

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