

level of NO<sub>x</sub> is higher than the 10 percent benchmark, WVDEP has provided additional information that supports its insignificance determination for NO<sub>x</sub>. For more detail on EPA's analysis of West Virginia's insignificance determination, see the Transportation Conformity TSD in the docket for today's rulemaking. Therefore, the March 5, 2012 submittal meets the criteria in the relevant portions of 40 CFR 93.102 and 93.118 for an insignificance finding, and EPA agrees with the determination of insignificance for both NO<sub>x</sub> and PM<sub>2.5</sub> for the West Virginia portion of the Area. As previously discussed, EPA initiated a comment period on November 5, 2012 on the proposed insignificance determination for the West Virginia portion of the Area on the OTAQ Web site to allow for a 30-day review of this proposed insignificance determination in conjunction with this proposed rulemaking. EPA is proposing to find that West Virginia's insignificance determination for transportation conformity is adequate. For more information on EPA's insignificance findings, see the TSD dated August 3, 2012, available in the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov).

### VIII. Proposed Actions

EPA is proposing to approve the redesignation of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. EPA has evaluated West Virginia's redesignation request and determined that upon approval of the base year emissions inventory in the separate rulemaking action noted previously, it would meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the monitoring data demonstrate that the Parkersburg-Marietta Area attains the 1997 annual PM<sub>2.5</sub> NAAQS and will continue to attain the standard. Final approval of this redesignation request would change the designation of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. EPA is also proposing to approve the associated maintenance plan for the West Virginia portion of the Area, submitted on March 5, 2012, as a revision to the West Virginia SIP because it meets the requirements of CAA section 175A as described previously in this notice. EPA is also proposing to approve the insignificance determination for on-road motor vehicle contribution of PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub> submitted by WVDEP for the West Virginia portion of the Area in conjunction with its redesignation

request. As noted previously, the 30-day public comment period for the proposed insignificance determination started on November 5, 2012 and will end on December 5, 2012. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IX. Statutory and Executive Order Reviews

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. 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 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 proposing approval of West Virginia's redesignation request, maintenance plan, and transportation conformity insignificance determination for the Parkersburg-Marietta Area for the 1997 annual PM<sub>2.5</sub> NAAQS 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.

### List of Subjects

#### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, PM<sub>2.5</sub>, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

#### 40 CFR Part 81

Air pollution control, National parks, Wilderness Areas.

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

Dated: November 27, 2012.

**W. C. Early,**

*Acting, Regional Administrator, Region III.*

[FR Doc. 2012-29865 Filed 12-10-12; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2012-0840, FRL-9761-7]

### Approval and Promulgation of Implementation Plans; New Jersey and New York Ozone Attainment Demonstrations

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing action on the ozone attainment demonstration portion of comprehensive State Implementation Plan revisions submitted by New Jersey and New York to meet Clean Air Act requirements for attaining the 1997 8-hour ozone national ambient air quality standard. EPA is proposing to approve New Jersey's and New York's demonstration of attainment of the 1997 8-hour ozone standard as they relate to their portions of three moderate nonattainment areas; the New York-Northern New Jersey-Long Island, NY-NJ-CT area, the Philadelphia-

Wilmington-Atlantic City, PA-NJ-MD-DE area, and the Poughkeepsie area.

**DATES:** Comments must be received on or before January 10, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-R02-OAR-2012-0840, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Email*: [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).
- *Fax*: 212-637-3901.
- *Mail*: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.
- *Hand Delivery*: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R02-OAR-2012-0840. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](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 email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your email 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866. The telephone number is (212) 637-3709. Mr. Kelly can also be reached via electronic mail at [kelly.bob@epa.gov](mailto:kelly.bob@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document, wherever "Agency," "we," "us," or "our" is used, we mean the EPA.

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

The Environmental Protection Agency (EPA) is proposing action on the ozone attainment demonstration portion of comprehensive State Implementation Plan (SIP) revisions submitted by New

Jersey and New York to meet Clean Air Act (Act or CAA) requirements for attaining the 0.08 parts per million (ppm) 8-hour ozone national ambient air quality standards (NAAQS or standard).<sup>1</sup> EPA is proposing to approve New Jersey's and New York's SIP revisions which demonstrate attainment of the 1997 8-hour ozone standard as they relate to their portions of three moderate nonattainment areas:

- The New York-Northern New Jersey-Long Island, NY-NJ-CT area, also called the New York City Metropolitan area,
- The Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area, also called the Philadelphia area, and
- The Poughkeepsie area.

The EPA is proposing to approve New Jersey's and New York's 8-hour ozone attainment demonstration SIP revisions because the EPA has determined that the New York City Metropolitan, Philadelphia, and Poughkeepsie moderate nonattainment areas have attained the ozone NAAQS by their respective attainment deadlines. This proposed determination is based on complete quality assured and certified ambient air monitoring data from 2007 to 2011 that show the area has monitored attainment of the 1997 8-hour ozone NAAQS during this monitoring period.

#### **II. What is the background for EPA's proposed action?**

##### *A. History and Time Frame of New Jersey and New York Attainment Demonstration SIPs*

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23858), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those

<sup>1</sup> Unless otherwise specifically noted in the action, references to the 8-hour ozone standard are to the 0.08 ppm ozone standard promulgated in 1997.

nonattainment areas are the New York City Metropolitan area, the Philadelphia Area and the Poughkeepsie area. The New York City Metropolitan nonattainment area is composed of: the Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties in New Jersey; the Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester Counties in New York; and the Fairfield, Middlesex and New Haven Counties in Connecticut. The Philadelphia Area includes the entire State of Delaware; Cecil County in Maryland; Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. The Poughkeepsie nonattainment area includes Dutchess, Orange and Putnam Counties in New York. See 40 CFR 81.307, 81.308, 81.321, 81.331, 81.333, and 81.339.

Also, on April 30, 2004 (69 FR 23951), EPA promulgated the Phase 1 8-hour ozone Implementation Rule which provided how areas designated nonattainment for the 1997 8-hour ozone standard would be classified. These designations triggered the Act's requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit an attainment demonstration. EPA's Phase 2 8-hour ozone implementation rule, published on November 29, 2005 (70 FR 71612) (Phase 2 Rule) specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. 40 CFR 51.908(a).

Although the focus of this proposed rulemaking action is on the attainment demonstrations for the 1997 8-hour ozone standard, we note that EPA has subsequently revised the ozone standard. On March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 ppm (annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years) to provide increased protection of public health and the environment.<sup>2</sup> The 2008 ozone NAAQS retain the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but are set at a more protective level. State emission reduction efforts already underway to

meet the 1997 8-hour ozone standard will continue with implementation of the 2008 ozone NAAQS.

#### *B. Moderate Area Requirements*

EPA's November 29, 2005 Phase 2 Rule addresses, among other things, the control obligations that apply to areas designated nonattainment for the 1997 8-hour NAAQS. The Phase 1 and Phase 2 Rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, modeling and attainment demonstrations with projection year emission inventories were due by June 15, 2007, along with reasonable further progress plans, reasonably available control technology (RACT), reasonably available control measures (RACM), motor vehicle emissions budgets and contingency measures (40 CFR 51.908(a), and (c) 59.910, 59.912). This proposed action addresses New Jersey's and New York's demonstration of attainment of the 1997 8-hour ozone standard. Moderate areas are required to attain the 1997 8-hour ozone NAAQS by no later than six years after designation, or June 15, 2010. See 40 CFR 51.903. In order to demonstrate attainment by June 2010, the area must adopt and implement all controls necessary for attainment by the beginning of the 2009 ozone season and demonstrate that the level of the standard will be met during the 2009 ozone season. The Philadelphia Area qualified for a one-year extension of its attainment date, based on the complete, certified ambient air quality data for the 2009 ozone season. On January 21, 2011, EPA approved a one-year extension of the Philadelphia Area's attainment date, from June 15, 2010 to June 15, 2011. See 76 FR 3838 and 76 FR 3840.

### **III. What was included in New Jersey's and New York's proposed SIP submittals?**

#### *A. New Jersey's SIP Submittal and EPA's Actions*

After completing the appropriate public notice and comment procedures, New Jersey made a series of submittals in order to address the Act's 8-hour ozone attainment requirements. On August 1, 2007, New Jersey submitted its RACT rules, which included a determination that many of the RACT rules currently contained in its SIP meet the RACT obligation for the 8-hour standard, and also included commitments to adopt revisions to several regulations where the State identified more stringent emission limitations that it believed should be

considered RACT. On October 29, 2007, New Jersey submitted to EPA a comprehensive 8-hour ozone SIP to address the Act's 8-hour ozone attainment requirements for the New Jersey portions of the New York City Metropolitan and the Philadelphia nonattainment areas. New Jersey's proposed SIP included, among other elements, attainment demonstrations, reasonable further progress (RFP) plans for 2008 and 2009, reasonably available control measures analyses for both areas, contingency measures, on-road motor vehicle emission budgets, and general conformity emission budgets. Finally, as part of the RACT evaluation, on December 14, 2007, New Jersey submitted to EPA an assessment of how it planned to address EPA's revised Control Technique Guidelines. New Jersey's attainment demonstration SIP revisions are the only subject of this proposed rulemaking.

EPA has taken several actions on New Jersey's SIP revisions to address the requirements of the 1997 8-hour ozone standard:

- On July 17, 2008 (73 FR 41068), EPA made a finding that the motor vehicle emissions budgets for the New Jersey portions of the New York City Metropolitan area and the Philadelphia area associated with the respective reasonable further progress and attainment demonstrations are adequate for transportation conformity purposes.
- On May 15, 2009 (74 FR 22837), EPA approved the RFP plans, RFP contingency measures, and RACM analyses from New Jersey.
- On August 3, 2010 (75 FR 45483) and on December 22, 2010 (75 FR 80340), EPA approved SIP revisions for numerous statewide RACT rules to control emissions from sources of volatile organic compounds, nitrogen oxides, particulate matter and sulfur dioxide to address the RACT requirements for the 1997 8-hour ozone standard.

New Jersey has submitted all required SIP revisions to address the 1997 8-hour ozone standard, and has implemented all of the emission control measures, including contingency measures, contained in these SIP revisions. EPA's approval of these SIP revisions, in combination with this proposed rulemaking action to approve the attainment demonstrations will serve to completely address New Jersey's requirements under the 1997 8-hour ozone standard.

#### *B. New York's SIP Submittal and EPA's Actions*

After completing the appropriate public notice and comment procedures,

<sup>2</sup> See 73 FR 16436; March 27, 2008. For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, Appendix I.

New York made a series of submittals in order to address the Act's 8-hour ozone attainment requirements. On September 1, 2006, New York submitted its state-wide 8-hour ozone RACT SIP, which included a determination that many of the RACT rules currently contained in its SIP meet the RACT obligation for the 8-hour standard and also included commitments to adopt revisions to several regulations where the State identified more stringent emission limitations that it believed should now be considered RACT. On February 8, 2008, New York submitted two comprehensive 8-hour ozone SIPs—one for the New York City Metropolitan area, entitled, "New York SIP for Ozone—Attainment Demonstration for New York Metro Area" and one for the Poughkeepsie nonattainment area, entitled, "New York SIP for Ozone—Attainment Demonstration for Poughkeepsie, NY Area." On December 28, 2009 and January 26, 2011, New York supplemented its February 8, 2008 submittal. The submittals included the 2002 base year emissions inventory, projection year emissions, attainment demonstrations, RFP plans, RACM analysis, RACT analysis, contingency measures and on-road motor vehicle emission budgets. New York's attainment demonstration SIP revisions are the only subjects of this proposed rulemaking.

EPA has taken several actions on New York's SIP revisions to address the requirements of the 1997 8-hour ozone standard:

- On May 28, 2010 (75 FR 29897), EPA approved SIP revisions for several of New York's RACT rules for emissions of volatile organic compounds to address the RACT requirements for the 1997 8-hour ozone standard.
- On July 13, 2010 (75 FR 43066), EPA conditionally approved New York's 8-hour ozone statewide RACT analysis and the 8-hour ozone RACM analysis for the New York City Metropolitan area. The condition was that New York submits to EPA the RACT rules committed to in New York's RACT plan, which ultimately New York did submit.
- On August 2, 2010 (75 FR 45057), EPA made the finding that the motor vehicle emissions budgets for the New York portions of the New York City Metropolitan area and the Poughkeepsie area associated with the respective reasonable further progress and attainment demonstrations are adequate for transportation conformity purposes.
- On August 18, 2011 (76 FR 51264), EPA approved the 2002 statewide base year emissions inventory and the projection year emissions, the motor vehicle emissions budgets used for

planning purposes, the reasonable further progress plan, and the contingency measures as they relate to the New York City Metropolitan area.

- On March 8, 2012 (77 FR 13974), EPA approved SIP revisions for several of New York's RACT rules for emissions of volatile organic compounds to address the conditional approval of New York's RACT plan to meet the requirements for the 1997 8-hour ozone standard.

New York has submitted all required SIP revisions to address the 1997 8-hour ozone standard, and has implemented all of the emission control measures, including contingency measures, contained in these SIP revisions. EPA's approval of these SIP revisions, in combination with this proposed rulemaking action to approve the attainment demonstrations for the 1997 8-hour ozone standard will serve to completely address New York's requirements under the 1997 8-hour ozone standard.

#### **IV. What is EPA's basis for proposing to approve the attainment demonstrations?**

##### *A. Air Quality Data and Attainment Determinations*

With respect to the New York City Metropolitan, Philadelphia, and Poughkeepsie areas, EPA has evaluated the ambient air quality monitoring data and has determined that all three areas attained the 8-hour ozone standard by the required attainment date.

In a June 18, 2012 **Federal Register** notice (77 FR 36163), EPA made several determinations, including two determinations regarding the 1997 8-hour ozone NAAQS for the New York City Metropolitan moderate nonattainment area. (Note EPA published a technical correction to the June 18, 2012 action on August 9, 2012 (77 FR 47533)). First, EPA made a clean data determination that the New York City Metropolitan area had attained the 1997 8-hour ozone NAAQS. This determination was based upon complete, quality assured and certified ambient air monitoring data that showed the New York City Metropolitan area had monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. Ambient air monitoring data for the 2009–2011 monitoring period is consistent with continued attainment. Second, pursuant to section 181(b)(2)(A) of the CAA, EPA made a determination of attainment that the New York City Metropolitan area had attained the 1997 8-hour ozone NAAQS by its attainment date of June 15, 2010.

In a March 26, 2012 **Federal Register** notice (77 FR 17341), EPA made two determinations regarding the 1997 8-hour ozone NAAQS for the Philadelphia moderate nonattainment area. First, EPA made a clean data determination that the Philadelphia area had attained the 1997 8-hour ozone NAAQS. This determination was based upon complete, quality assured and certified ambient air monitoring data that showed the Philadelphia area had monitored attainment of the 1997 8-hour ozone NAAQS for the 2008–2010 monitoring period. Ambient air monitoring data for the 2009–2011 monitoring period is consistent with continued attainment. Second, pursuant to section 181(b)(2)(A) of the CAA, EPA made a determination of attainment that the Philadelphia area had attained the 1997 8-hour ozone NAAQS by its attainment date of June 15, 2011.

On December 7, 2009 (74 FR 63993), EPA made a clean data determination for the Poughkeepsie area and announced the attainment determination in the **Federal Register**. The clean data determinations were based on 2006–2008 quality-assured and certified ozone monitoring data for the Poughkeepsie area. Based on complete, quality-assured and certified ozone monitoring data since the 2006–2008 monitoring period, the Poughkeepsie area continues to show attainment through 2011, and with preliminary ozone data through 2012.

While not required, New Jersey and New York requested EPA to make these determinations in certain circumstances. New Jersey requested EPA to make a determination that the New York City Metropolitan area attained the 8-hour ozone NAAQS in a letter dated January 19, 2011. New York requested EPA to make determinations that the New York City Metropolitan area and the Poughkeepsie area have attained the 8-hour ozone NAAQS in letters dated June 16, 2011 and July 30, 2009, respectively. Copies of these rulemakings containing the determinations of attainment and the clean data determinations are included in the Docket (EPA–R02–OAR–2012–0840) and available at [www.regulations.gov](http://www.regulations.gov). The reader is referred to these other rulemakings for additional information regarding all of the complete, quality-assured and certified ozone monitoring data which served as the basis for these determinations.

EPA is aware that preliminary ambient air quality monitoring data for 2012 may indicate that the New York City Metropolitan and Philadelphia areas are no longer attaining the 1997 8-

hour ozone NAAQS, while the Poughkeepsie area continues to attain the 8-hour ozone NAAQS. However, 2012 monitoring data is not relevant to this proposed rulemaking on SIP revisions which demonstrate how the states met their plan to attain the 1997 8-hour ozone standard by the June 15, 2010 attainment date (June 15, 2011 for the Philadelphia area). Based on data through 2011, these areas are attaining the 1997 8-hour ozone NAAQS. EPA has a continuing obligation to review the air quality data each year to determine whether areas are meeting the NAAQS and will continue to conduct that review in the future after data is complete, quality-assured, certified and submitted to EPA.

Lastly, pursuant to 40 CFR 51.918, these determinations suspend the requirements for various SIP items, including, the requirement to submit an attainment demonstration, an RFP plan, and section 172(c)(9) contingency measures for the eight-hour ozone NAAQS for so long as the area continues to attain the ozone NAAQS. However, section 110(k)(2) of the CAA requires EPA to take action on any administratively complete SIP revision submittal within 12 months of the SIP being deemed complete. Therefore, while the clean data determinations suspend the state's obligation to submit the attainment demonstration SIP revision, the determinations do not suspend EPA's obligation to take action on the SIP revision if it has been submitted by the state and deemed to be complete. EPA was sued by Sierra Club to take final action on these particular attainment demonstration SIP revisions ((see *Sierra Club v. Jackson*, Civil Action No. 11-2180-RBW) (D.D.C.)). EPA is proposing to take such final action in this notice. The proposed rulemaking is intended to address EPA's obligations.

#### *B. Components of the Modeled Attainment Demonstrations*

Section 110(a)(2)(k) of the Act requires states to prepare air quality modeling to demonstrate how they will meet ambient air quality standards. EPA determined that states must use photochemical grid modeling, or any other analytical method determined by the Administrator to be at least as effective, to demonstrate attainment of the ozone health-based standard in areas classified as "moderate" or above, and to do so by the required attainment date. See 40 CFR 51.908(c). EPA requires an approvable attainment demonstration, showing that attainment will occur by the attainment deadline, using air quality modeling that meets EPA's guidelines and a 'weight of evidence'

analysis that uses a variety of information to determine if the results of the modeling analysis are supported by supplemental information or need to be modified.

New Jersey submitted an attainment demonstration for the New York City Metropolitan and Philadelphia areas that included a modeling analysis and a two-part weight of evidence analysis, which the State said would result in attainment by the attainment date. The modeling analysis predicted continued nonattainment by 2009. The first part of the weight of evidence analysis included adjustments to the modeling results to account for model bias. The second part of the weight of evidence analysis included an evaluation of additional factors that would support a conclusion that attainment will be reached by 2009, despite the conclusion of the adjusted modeling analysis that predicted continued nonattainment by 2009.

New York submitted an attainment demonstration for the New York City Metropolitan and Poughkeepsie areas that included a modeling analysis and a weight of evidence analysis. With respect to the New York City Metropolitan area, New York's modeling analysis predicted continued nonattainment by 2009. Based on the measured ozone levels at the time (2007), New York did not support a weight of evidence conclusion that attainment will be reached by 2009. With respect to the Poughkeepsie area, New York's modeling analysis predicted attainment by 2009.

EPA determined that the photochemical grid modeling conducted by the states was consistent with EPA's guidelines and the model performed acceptably. Taking into account that EPA made clean data determinations and determinations of attainment of the 1997 8-hour ozone NAAQS attainment date for the New York City Metropolitan, Philadelphia and Poughkeepsie areas, EPA is proposing to approve New Jersey's and New York's demonstrations of attainment of the 1997 8-hour ozone standard for these three moderate nonattainment areas.

In addition, as noted earlier, EPA has already approved the RFP plans for the New York City Metropolitan and Philadelphia areas. Given the fact that these areas attained the ozone standard by the attainment date suggests that the RFP plans may have been sufficient for the moderate nonattainment areas to reach attainment. These RFP plans contained corresponding emission control measures and the states developed and adopted additional control measures to ensure attainment

of the ozone standard by the attainment date. All of the control measures that were relied on for attainment and contained in the RFP plans were submitted as SIP revisions and approved by EPA. Therefore, the demonstration of attainment for the New York City Metropolitan, Philadelphia and Poughkeepsie areas in New Jersey and New York SIPs are approvable because New Jersey and New York each adopted all of the control measures in its ozone plans.

#### *C. EPA's Evaluation*

In summary, the basic photochemical grid modeling used by New Jersey and New York in its SIP submittal meets EPA's guidelines and, when used with the methods recommended in EPA's modeling guidance, is acceptable to EPA. Air quality data through 2011 supports the states' conclusions that the areas will demonstrate attainment of the 8-hour ozone standard by the attainment date. The purpose of the attainment demonstration is to show how the areas will meet the standard by the attainment date. All the control measures included in the attainment demonstration SIPs have already been adopted, submitted, approved and implemented. Based on (1) the states following EPA's modeling guidance, (2) the air quality data through 2011, (3) the areas attaining the standard by the attainment date, and (4) the implemented SIP approved control measures, EPA is proposing to approve the New Jersey and New York attainment demonstration SIP revisions.

#### **V. What is EPA's conclusion?**

EPA has evaluated New Jersey's and New York's submittals for consistency with the Act, EPA regulations, and EPA policy. EPA has evaluated the information provided by New Jersey and New York and has considered all other information it deems relevant to attainment of the 1997 8-hour ozone standard, i.e., clean data determinations, determinations that these areas attained the standard by the applicable attainment date, statewide RACT analysis approval, reasonable further progress plan approvals (including all applicable control strategy regulations), continued attainment of the 1997 8-hour ozone standard based on quality assured and certified monitoring data, and the implementation of the more stringent 2008 8-hour ozone standard. EPA is therefore proposing to approve the attainment demonstrations for the New York City Metropolitan, Philadelphia and Poughkeepsie 1997 8-hour ozone moderate nonattainment areas.

## VI. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. 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 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, 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.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

**Dated:** November 26, 2012.

**Judith Enck,**

*Regional Administrator, Region 2.*

[FR Doc. 2012-29896 Filed 12-10-12; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R03-OAR-2012-0368; FRL-9761-6]

### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the West Virginia Portion of the Wheeling, WV-OH 1997 Annual Fine Particulate Matter (PM<sub>2.5</sub>) Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) is requesting that the West Virginia portion of the Wheeling, WV-OH fine particulate matter (PM<sub>2.5</sub>) nonattainment area ("Wheeling Area" or "Area") be redesignated as attainment for the 1997 annual PM<sub>2.5</sub> national ambient air quality standard (NAAQS). The Wheeling Area is comprised of Marshall and Ohio Counties in West Virginia and Belmont County in Ohio. In conjunction with its redesignation request, West Virginia submitted a SIP revision consisting of a maintenance plan for the West Virginia portion of the Area that provides for continued attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for at least 10 years after redesignation. The maintenance plan includes the 2005 base year emissions inventory that EPA is proposing to approve in this rulemaking in accordance with the requirements of the Clean Air Act (CAA). The maintenance plan also includes an insignificance determination for the onroad motor

vehicle contribution of PM<sub>2.5</sub>, nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) for the West Virginia portion of the Area. It should be noted that EPA has already initiated a comment period on the proposed insignificance determination for the West Virginia portion of the Area on the Web site for the Office of Transportation and Air Quality (OTAQ) to allow for a 30-day review of this proposed insignificance determination in conjunction with this proposed rulemaking.<sup>1</sup> EPA is proposing to find that West Virginia's insignificance determination for transportation conformity is adequate. EPA previously determined that the West Virginia portion of the Wheeling Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS, and EPA is proposing to find that the Area continues to attain the standard. This action to propose approval of the 1997 annual PM<sub>2.5</sub> NAAQS redesignation request, the maintenance plan, the 2005 base year emissions inventory, 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 CAA. EPA is taking separate action to propose redesignation for the Ohio portion of the Wheeling Area.

**DATES:** Written comments must be received on or before January 10, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2012-0368 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email:* [mastro.donna@epa.gov](mailto:mastro.donna@epa.gov).

C. *Mail:* EPA-R03-OAR-2012-0368, Donna Mastro, Acting Associate Director, Office of Air Quality 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-2012-0368. EPA's policy is that all comments

<sup>1</sup> On November 5, 2012, EPA initiated the comment period for this proposed insignificance determination on the Office of Transportation and Air Quality (OTAQ) Web site (<http://www.epa.gov/otaq/stateresources/transconf/currsips.htm>) in order to allow for a full 30 day public comment period in conjunction with this proposed rulemaking.