

■ 3. Section 52.36 is amended in paragraph (c) by removing “[STATE NAME]” and by adding, “Ohio”, in its place.

■ 4. Section 52.1870 is amended by revising paragraph (c)(140) to read as follows:

**§ 52.1870 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(140) On July 15, 2009, and August 13, 2009, Ohio submitted rules addressing the requirements of the Clean Air Interstate Rule.

(i) *Incorporation by reference.*

(A) Ohio Administrative Code Rule 3745-109-01 “CAIR NO<sub>x</sub> annual, CAIR SO<sub>2</sub> and CAIR NO<sub>x</sub> ozone season trading programs definitions and general provisions.”, Rule 3745-109-04 “CAIR NO<sub>x</sub> allowance allocations.”, Rule 3745-109-07 “Monitoring and Reporting.”, Rule 3745-109-08 “CAIR NO<sub>x</sub> opt-in units.”, Rule 3745-109-11 “CAIR SO<sub>2</sub> allowance tracking system.”, Rule 3745-109-12 “CAIR SO<sub>2</sub> allowance transfers.”, Rule 3745-109-13 “Monitoring and reporting.”, Rule 3745-109-14 “CAIR SO<sub>2</sub> opt-in units.”, Rule 3745-109-17 “CAIR NO<sub>x</sub> ozone season allowance allocations.”, Rule 3745-109-18 “CAIR NO<sub>x</sub> ozone season allowance tracking system.”, Rule 3745-109-19 “CAIR NO<sub>x</sub> ozone season allowance transfers.”, Rule 3745-109-20 “Monitoring and reporting.”, and Rule 3745-109-21 “CAIR NO<sub>x</sub> ozone season opt-in units.”, adopted on July 6, 2009, effective on July 16, 2009.

(B) July 6, 2009, “Director’s Final Findings and Orders”, signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

(C) Ohio Administrative Code Rule 3745-109-02 “CAIR designated representative for CAIR NO<sub>x</sub> sources.”, Rule 3745-109-03 “Permits.”, Rule 3745-109-05 “CAIR NO<sub>x</sub> allowance tracking system.”, Rule 3745-109-06 “CAIR NO<sub>x</sub> allowance transfers.”, Rule 3745-109-09 “CAIR designated representative for CAIR SO<sub>2</sub> sources.”, Rule 3745-109-10 “Permits.”, Rule 3745-109-15 “CAIR designated representative for CAIR NO<sub>x</sub> ozone season sources.”, and Rule 3745-109-16 “Permits.”, adopted on September 17, 2007, effective on September 27, 2007.

(D) September 17, 2007, “Director’s Final Findings and Orders”, signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

■ 5. Section 52.1891 is removed.

■ 6. Section 52.1892 is removed.

[FR Doc. E9-23254 Filed 9-24-09; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2009-0506; FRL-8962-4]

**Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Determination of Clean Data for the 1997 Fine Particulate Matter Standard**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the Johnstown (Cambria and Indiana Counties), Lancaster (Lancaster County), Reading (Berks County), and York (York County), Pennsylvania nonattainment areas for the 1997 fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) have clean data for the 1997 PM<sub>2.5</sub> NAAQS.

**DATES:** *Effective Date:* This final rule is effective on September 25, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2009-0506. 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 Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. What Action Is EPA Taking?
- II. What Is the Effect of This Action?
- III. When Is This Action Effective?
- IV. What Is EPA’s Final Action?
- V. What Are the Statutory and Executive Order Reviews?

**I. What Action Is EPA Taking?**

EPA is determining that the Johnstown, Lancaster, Reading, and York nonattainment areas have clean data for the 1997 PM<sub>2.5</sub> NAAQS. This determination is based upon quality assured, quality controlled and certified ambient air monitoring data that show the area has monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS based on the 2006–2008 data. In addition, quality controlled and quality assured monitoring data submitted during the calendar year 2009, which are available in the EPA Air Quality System (AQS) database, but not yet certified, show that these areas continue to meet the 1997 PM<sub>2.5</sub> NAAQS.

Other specific requirements of the determination and the rationale for EPA’s proposed action are explained in the notice of proposed rulemaking (NPR) published on July 31, 2009 (74 FR 38158) and will not be restated here. No public 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 these areas to submit attainment demonstrations, associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning state implementation plans (SIPs) related to attainment of the 1997 PM<sub>2.5</sub> NAAQS for so long as these areas continue to meet the 1997 PM<sub>2.5</sub> NAAQS.

**III. When Is the Action Effective?**

EPA finds that there is good cause for this approval to become effective on the date of publication of this action in the **Federal Register**, because a delayed effective date is unnecessary due to the nature of the approval. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction” and 5 U.S.C. 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.” As noted above, this determination of attainment suspends the requirements for the Johnstown, Lancaster, Reading, and York, Pennsylvania PM<sub>2.5</sub> nonattainment areas to submit an attainment demonstration, associated reasonably available measures, a reasonable further progress plan, contingency measures, and any

other planning SIPs related to attainment of the standard for so long as these areas continue to meet the 1997 PM<sub>2.5</sub> NAAQS. The suspension of these requirements is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, these nonattainment areas' suspension from these requirements provide good cause to make this rule effective on the date of publication of this action in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule suspends requirements rather than imposing obligations, affected parties, such as the Commonwealth of Pennsylvania, do not need time to adjust and prepare before the rule takes effect.

#### IV. What Is EPA's Final Action?

EPA is determining that the Johnstown, Lancaster, Reading, and York, Pennsylvania nonattainment areas have clean data for the 1997 PM<sub>2.5</sub> NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that these areas have monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS based on the 2006–2008 data. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for these areas to submit attainment demonstrations, associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the 1997 PM<sub>2.5</sub> NAAQS for so long as each of these areas continue to meet the 1997 PM<sub>2.5</sub> NAAQS.

#### V. What Are 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 November 24, 2009. 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 clean data for the 1997 fine particulate matter standard for the Johnstown, Lancaster, Reading, and York, Pennsylvania PM<sub>2.5</sub> nonattainment areas, 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.

Dated: September 15, 2009.

**William 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 NN—Pennsylvania

- 2. Section 52.2059 is amended by adding paragraph (d) to read as follows:

##### § 52.2059 Control strategy: Particulate matter.

\* \* \* \* \*

(d) Determination of Clean Data. EPA has determined, as of September 25, 2009, the Johnstown (Cambria and Indiana Counties), Lancaster (Lancaster County), Reading (Berks County) and York (York County), Pennsylvania nonattainment areas have clean data for the 1997 PM<sub>2.5</sub> NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for these areas to submit an attainment demonstration, associated reasonably available measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as these areas

continue to meet the 1997 PM<sub>2.5</sub> NAAQS.

[FR Doc. E9-23057 Filed 9-24-09; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1410-CN]

#### 42 CFR Part 483

RIN 0938-AP46

#### Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical errors that appeared in the final rule published in the **Federal Register** (74 FR 40288) on August 11, 2009 entitled, "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2010; Minimum Data Set, Version 3.0 for Skilled Nursing Facilities and Medicaid Nursing Facilities."

**DATES:** *Effective Date:* This correction is effective October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Bill Ullman, (410) 786-5667.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In FR Doc. E9-18662 of August 11, 2009 (74 FR 40288), there were three errors (two typographical errors and a technical error in the wage index values) that we are identifying and correcting in section III—"Correction of Errors". The corrections in this notice are effective as if they were included in the final rule published on August 11, 2009. Accordingly, the corrections are effective October 1, 2009.

##### II. Summary of Errors

In the August 11, 2009 final rule, we made two typographical errors in the preamble that resulted in an incorrect date being cited. First, on page 40293, we stated that the "\* \* \* final rule sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2010." We are correcting the date that appears in this sentence so that it correctly reads "October 1, 2009"

consistent with Tables 2 and 3 ("FY 2010 Unadjusted Federal Rate Per Diem Urban" and "FY 2010 Unadjusted Federal Rate Per Diem Rural"), and with the fiscal year (FY) 2010 effective date for the Federal rates specified throughout the preamble. In addition, on page 40297, we made a typographical error resulting in an incorrect date being cited in describing the prospective nature of the recalibration of the case-mix weights. The purpose of the paragraph where the date appears is to explain that in order to avoid possible negative consequences, the recalibration of the case-mix weights is being implemented on a prospective basis only, and does not include a retroactive recoupment of any overpayments already made. We are correcting the date that appears in the preamble, so that it correctly reads "October 1, 2009" rather than "October 1, 2010", consistent with the FY 2010 effective date specified for the recalibration throughout the final rule.

In addition, in the addendum to the August 11, 2009 final rule, we are revising an entry in Table B: "FY 2010 Wage Index Based on CBSA Labor Market Areas for Rural Areas" in order to correct a technical error arising from the revision of wage data for two inpatient prospective payment system (IPPS) providers. We inadvertently excluded the wage data for a hospital that should have been included in the wage index calculation, and included the wage data for a hospital that should have been excluded from the wage index. Accordingly, we are revising the wage index value displayed in Table B for rural California from "1.2001" to the corrected value of "1.2051". As this revision involves only a single entry in Table B, we are not republishing the table in its entirety in this notice; however, we note that the corrected version of this table is available on the SNF PPS Web site, which can be accessed online at <http://www.cms.hhs.gov/SNFPSPS/>.

##### III. Correction of Errors

In FR Doc. E9-18662 (74 FR 40288), make the following corrections:

1. On page 40293, in column 2, in the first paragraph under Section III.B.1 (Federal Prospective Payment System), in the first sentence, the date "October 1, 2010" is corrected to read "October 1, 2009".

2. On page 40297, in column 2, in the last paragraph, in the first line from the bottom, the date "October 1, 2010" is corrected to read "October 1, 2009".

3. On page 40385, in Table B, in column 3 of the table, in line 5, the

wage index "1.2001" is corrected to read "1.2051".

##### IV. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a proposed rule in the **Federal Register** to provide a period for public comment before the provisions of a rule such as this take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that a notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons for it in the notice.

We find for good cause that it is unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations. We are not making substantive changes to our payment methodologies or policies, but rather, are simply implementing correctly the payment methodologies and policies that we previously proposed, received comment on, and subsequently finalized. The public has already had the opportunity to comment on these payment methodologies and policies, and this correction notice is intended solely to ensure that the FY 2010 skilled nursing facility (SNF) prospective system (PPS) final rule accurately reflects them. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections into the final rule is unnecessary and contrary to the public interest.

Further, we believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent technical errors. The changes noted above do not make any substantive changes to the SNF PPS payment methodologies or policies. Moreover, we regard imposing a delay in the effective date as being contrary to the public interest. We believe that it is in the public interest for providers to receive appropriate SNF PPS payments in as timely a manner as possible and to ensure that the FY 2010 SNF PPS final rule accurately reflects our payment methodologies, payment rates, and policies. Therefore, we find good cause to waive notice and comment procedures, as well as the 30-day delay in effective date.