

otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action proposes to waive the requirement for states to adopt Stage II programs, based on a determination of widespread use of ORVR. The EPA believes that by the date specified in the proposed rule, the amount of control that ORVR alone will achieve will be equivalent to the amount of control Stage II alone would achieve.

*K. Determination Under Section 307(d)*

Pursuant to sections 307(d)(1)(K) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine."

**VI. Statutory Authority**

The statutory authority for this action is provided by sections 182(b)(3) and 202(a)(6) of the CAA, as amended (42 U.S.C. 7511a(b)(3) and 42 U.S.C. 7521(a)(6)). This notice is also

subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

**List of Subjects in 40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Particulate matter, Volatile organic compounds.

Dated: July 8, 2011.

**Lisa P. Jackson**,  
Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS**

1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

**Subpart G—[Amended]**

2. Section 51.126 is added to read as follows:

**§ 51.126 Determination of widespread use of ORVR and waiver of CAA section 182(b)(3) Stage II gasoline vapor recovery requirements.**

(a) Pursuant to section 202(a)(6) of the Clean Air Act, the Administrator has determined that, effective June 30, 2013, onboard refueling vapor recovery (ORVR) systems are in widespread use in the motor vehicle fleet within the United States.

(b) Effective June 30, 2013, the Administrator waives the requirement of Clean Air Act section 182(b)(3) for Stage II vapor recovery systems in ozone nonattainment areas regardless of classification. States must submit and receive the EPA approval of a revision to their State Implementation Plans before removing Stage II requirements that are contained therein.

(c) Notwithstanding paragraphs (a) and (b) of this section, States may submit to the EPA demonstrations that ORVR systems are in widespread use for areas within their borders as of a date earlier than June 30, 2013, and may request an earlier date for revision or waiver of the Clean Air Act section 182(b)(3) Stage II requirement based on such a demonstration. The Administrator may act on such requests by rule under Clean Air Act section 202(a)(6).

[FR Doc. 2011–17888 Filed 7–14–11; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2011–0454; FRL–9439–9]

**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:** Proposed rule.

**SUMMARY:** EPA is proposing to make 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 proposing to determine that the Area has attained the 1997 annual average PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS). This proposed 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. If EPA finalizes this proposed determination of attainment, the requirements for the Charleston Area 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 shall be suspended for so long as the Area continues to attain the annual PM<sub>2.5</sub> NAAQS. Second, EPA is also proposing to determine 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:** Comments must be received on or before August 15, 2011.

**ADDRESSES:** Submit your comments regarding the Charleston Area, identified by Docket ID No. EPA–R03–OAR–2011–0454, by one of the following methods:

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

B. *E-mail:*  
*fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2011–0454, Cristina Fernandez, Associate Director,

Office of Air Program Planning, Mail code 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-2011-0454. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <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 <http://www.regulations.gov> or e-mail. The <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 e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail 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.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., 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 in <http://www.regulations.gov> or in hard copy 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 is the background for these actions?
- III. Has the Charleston Area attained the 1997 annual PM<sub>2.5</sub> standard?
  - A. Criteria
  - B. Charleston Area Air Quality
  - C. How did EPA address air quality in the Charleston Area?
  - D. Has the Charleston Area met the 1997 annual PM<sub>2.5</sub> air quality standard?
- IV. What is the effect of these actions?
- V. 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 United States Code section 7509(c)(1), and 40 Code of Federal Register (CFR) section 51.1004(c), EPA is proposing to determine that the Charleston Area (composed of Kanawha and Putnam Counties) has attained the 1997 annual PM<sub>2.5</sub> NAAQS. This proposed 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 proposing to determine, 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.

**II. What is the background for these actions?**

On July 18, 1997 (62 FR 36852), EPA established an annual PM<sub>2.5</sub> NAAQS at 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations (hereafter referred to as "the annual PM<sub>2.5</sub> NAAQS" or "the annual standard"). At that time, EPA also established a 24-hour standard of 65 µg/m<sup>3</sup> (the "1997 24-hour standard"). See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 PM<sub>2.5</sub> NAAQS based upon air quality monitoring data from those monitors for calendar years 2001-2003. These designations became effective on April 5, 2005. The Charleston Area was designated nonattainment for the annual 1997 PM<sub>2.5</sub> NAAQS during this designations process. See 40 CFR 81.349 (West Virginia).

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual PM<sub>2.5</sub>

NAAQS at 15.0 µg/m<sup>3</sup> based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations and promulgated a 24-hour standard of 35 µg/m<sup>3</sup> based on a 3-year average of the 98th percentile of 24-hour concentrations (the "2006 24-hour standard"). On November 13, 2009, EPA designated the Charleston Area as nonattainment for the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the PM<sub>2.5</sub> NAAQS promulgated in 1997, stating that the Charleston Area was designated as nonattainment for the annual standard and attainment for the 1997 24-hour standard. Today's action, however, does not address either the 1997 or the 2006 24-hour standard.

In response to legal challenges of the annual standard promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (DC Circuit 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard.

On April 25, 2007 (72 FR 20664), EPA promulgated its PM<sub>2.5</sub> implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 PM<sub>2.5</sub> standard. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the standard, as discussed below.

**III. Has the Charleston Area attained the 1997 annual PM<sub>2.5</sub> standard?**

**A. Criteria**

Today's rulemaking proposes to approve that the Charleston Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS, based on the most recent three years of quality-assured data and that the Area attained the 1997 annual PM<sub>2.5</sub> NAAQS by its applicable attainment date of April 5, 2010. Under EPA regulations at 40 CFR 50.7, the annual primary and secondary PM<sub>2.5</sub> standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 µg/m<sup>3</sup> at all relevant monitoring sites in the subject area.

**B. Charleston Area Air Quality**

EPA has determined that the PM<sub>2.5</sub> monitoring network for the Charleston Area is adequate. First, the number of

monitors in the Area meets the minimum regulatory requirements given in 40 CFR part 58 Appendix D. Second, the monitoring is in accordance with state monitoring plans that have been reviewed and approved by EPA.

Table 1 shows the design values (*i.e.*, the 3-year average of annual mean PM<sub>2.5</sub> concentrations) for the 1997 annual PM<sub>2.5</sub> NAAQS for the Charleston Area monitors for the years 2007–2009. All

data considered have been quality-assured, certified, and recorded in AQS. The highest 3-year average annual concentration for 2007–2009 on this table was recorded in Kanawha County, West Virginia at the South Charleston site 54–039–1005, recording a 3-year average annual concentration of 14.4 µg/m<sup>3</sup>.

EPA’s review of these data indicates that the Charleston Area has met the

1997 annual PM<sub>2.5</sub> NAAQS. Table 1 and the related discussion below show that based on EPA’s analysis of data for 2007–2009, the Area attained the 1997 annual PM<sub>2.5</sub> standard by its attainment date of April 5, 2010. In addition, Table 2 and the related discussion below, show that the Area continues to attain the standard based on data available to date for 2010.

TABLE 1—2007–2009 ANNUAL AVERAGE CONCENTRATIONS IN THE CHARLESTON AREA

Site name	County	Site No.	Design value (µg/m <sup>3</sup> )
Charleston .....	Kanawha .....	54–039–0010	13.1
South Charleston .....	Kanawha .....	54–039–1005	14.4

*C. How did EPA address the air quality in Charleston?*

There are two monitors located in Kanawha County. There is a monitor located in Charleston and a monitor located in South Charleston. There was a Guthrie site monitor also located in Kanawha County that was shut down in 2007 because a carbon monitor for the PM<sub>2.5</sub> chemical speciation network replaced it at its respective location. EPA data completeness requirements require at least 75 percent of the scheduled sampling days for each quarter have valid data. See 40 CFR part

50, Appendix N section 4.1(b). The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data (40 CFR part 50, Appendix N, section 4.1(c)).

Determinations of attainment are based on three years of complete, quality-assured data. Nevertheless, any such assessment should consider additional quality-assured data, to the extent that quality-assured data exist. In accordance with Appendix N and

standard EPA practice, this review of data is based on the three most recent years of complete data, generally 2007–2009. Quality-assured data are now available for 2010, which EPA used to compute preliminary design values. The Charleston site has a preliminary 2008–2010 design value of 11.8 µg/m<sup>3</sup> and the South Charleston site has a preliminary 2008–2010 design value of 13.2 µg/m<sup>3</sup>. On the basis of this review, EPA is proposing to determine that the Charleston Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS and is soliciting public comments on its proposed determination.

TABLE 2—2008–2010 ANNUAL AVERAGE CONCENTRATIONS IN THE CHARLESTON AREA

Site name	County	Site No.	Preliminary design value (µg/m <sup>3</sup> )
Charleston .....	Kanawha .....	54–039–0010	11.8
South Charleston .....	Kanawha .....	54–039–1005	13.2

*D. Has the Charleston Area met the 1997 annual PM<sub>2.5</sub> air quality standard?*

EPA has reviewed the ambient air monitoring data for PM<sub>2.5</sub>, consistent with the requirements contained in 40 CFR part 50 and recorded the data in the EPA AQS database, for the Charleston Area from 2007 through the present time.

On the basis of this review, EPA proposes to determine that the Charleston Area has attained and continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS based on the quality-assured data for the 2007–2009 period and preliminary data for the 2008–2010 monitoring period. In addition, based on EPA’s review of the data for 2007–2009 and in accordance with section 179(c)(1) of the CAA and EPA’s regulations, EPA proposes to determine that the

Charleston Area attained the 1997 annual PM<sub>2.5</sub> NAAQS by its applicable attainment date of April 5, 2010.

**IV. What is the effect of these actions?**

If EPA’s proposed determination of attainment, based on the most recent three years of quality-assured data is made final, the requirements for the Charleston Area to submit attainment demonstrations 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 would be suspended 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). Notably, as described below, any such determination would not be equivalent to the redesignation of the Charleston

Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS.

If this proposed determination of attainment is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, 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 the Area would thereafter have to address the applicable requirements. See 40 CFR 51.1004(c).

Finalizing this proposed action would 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, finalizing this proposed action does not involve approving maintenance plans for the Area as required under section 175A of

the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Charleston Area would remain 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.

In addition, if EPA's separate and independent proposed determination that the Area has attained the 1997 annual PM<sub>2.5</sub> standard by its applicable attainment date (April 5, 2010), is finalized, EPA will have met its 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. These two actions described above are proposed determinations regarding the Charleston Area's attainment 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.

#### V. Statutory and Executive Order Reviews

These actions propose to make determinations of attainment based on air quality, and would, if finalized, result in the suspension of certain federal requirements, and it would not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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, these proposed 1997 annual PM<sub>2.5</sub> NAAQS determinations for the Charleston Area do 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, Particulate matter, Reporting and record-keeping requirements.

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

Dated: June 27, 2011.

**W. C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2011-17868 Filed 7-14-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2011-0288; FRL-9440-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of Particulate Matter Emissions From the Operation of Outdoor Wood-Fired Boilers

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the control of particular matter emissions from the operation of outdoor wood-fired boilers. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before August 15, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2011-0288 by one of the following methods

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* fernandez.cristina@epa.gov

C. *Mail:* EPA-R03-OAR-2011-0288, Cristina Fernandez, Associate Director, Office of Air Program 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-2011-0288. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <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 <http://www.regulations.gov> or e-mail. The <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 e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail 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.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute.