

section 1908(b) of the Act To Prevent Pollution From Ships (“APPS”), as amended (33 U.S.C. 1908(b)).

■ 3. Section 22.3, paragraph (a), is amended by revising the definition for “Clerk of the Board” to read as follows:

**§ 22.3 Definitions.**

(a) \* \* \*

*Clerk of the Board* means an individual duly authorized to serve as Clerk of the Environmental Appeals Board.

\* \* \* \* \*

■ 4. Section 22.5, paragraph (a)(1), is amended by revising the third sentence to read as follows:

**§ 22.5 Filing, service, and form of all filed documents; business confidentiality claims.**

(a) *Filing of documents.* (1) \* \* \* Documents filed in proceedings before the Environmental Appeals Board shall be sent to the Clerk of the Board either by U.S. Mail (except by U.S. Express Mail) to U.S. Environmental Protection Agency, Environmental Appeals Board, 1200 Pennsylvania Avenue NW., Mail Code 1103M, Washington, DC 20460-0001; or delivered by hand or courier (including deliveries by U.S. Express Mail or by a commercial delivery service) to U.S. Environmental Protection Agency, Environmental Appeals Board, 1201 Constitution Avenue NW., WJC East, Room 3332, Washington, DC 20004. \* \* \*

\* \* \* \* \*

**Subpart F—Appeals and Administrative Review**

■ 5. Section 22.30, paragraph (a)(1), is amended by revising the first sentence to read as follows:

**§ 22.30 Appeal from or review of initial decision.**

(a) *Notice of appeal.* (1) Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board as set forth in § 22.5(a). \* \* \*

\* \* \* \* \*

[FR Doc. 2014-26321 Filed 11-5-14; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2014-0169; FRL-9918-73-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County; Control of Outdoor Wood-Fired Boilers**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania pertaining to the control of particulate matter (PM) emissions from the operation of outdoor wood-fired boilers (OWBs) in Allegheny County. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on December 8, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0169. All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](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.

Copies of the Commonwealth’s submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** Ellen Schmitt, (215) 814-5787, or by email at [schmitt.ellen@epa.gov](mailto:schmitt.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 5, 2014, EPA published a notice of proposed rulemaking (NPR) proposing approval of a revision to the Allegheny County portion of the Pennsylvania SIP for the control of PM

from the operation of OWBs in Allegheny County. 79 FR 45395. The formal SIP revision was submitted on January 15, 2014 by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of Allegheny County. In the NPR, EPA proposed approval of the SIP revision because EPA’s review of the revision indicated that the regulations submitted would reduce problems associated with the operation of OWBs, including smoke and burning prohibited fuels, including garbage, tires, and hazardous waste. *Id.* at 45396.

**II. Summary of SIP Revision**

The SIP revision consists of: (1) adding Section 2104.09 (Outdoor Wood-Fired Boiler) to Article XXI, “Air Pollution Control Rules and Regulations”; and (2) adding new related definitions to Section 2101.20 (Definitions) of Article XXI. Section 2104.09 contains the requirements pertaining to the sale, manufacture, installation, and operation of OWBs in Allegheny County. The specific requirements pertaining to the regulation of OWBs in Allegheny County, as well as EPA’s rationale for approving these changes, are explained in the NPR and the accompanying Technical Support Document (TSD) and will not be restated here. These documents are contained in the electronic docket available online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2014-0169.<sup>1</sup>

**III. Public Comments**

EPA received two sets of comments on the August 5, 2014 NPR proposing approval of Allegheny County’s January 15, 2014 SIP submission for control of OWBs in the County. A full set of comments is provided in the docket for this final rulemaking action. A summary of each comment and EPA’s response is provided in this section.

*A. Clean Air Council Comments*

**Comment:** Clean Air Council (CAC) urges EPA to disapprove the proposed SIP revision based on several factors and states that an outright ban on OWBs in Allegheny County is appropriate asserting, “greater action is necessary to sufficiently protect residents from harmful wood smoke” from OWBs. Specifically, CAC states that an outright ban of OWBs in Allegheny County is appropriate given the local terrain, proximity of neighbors, and magnitude of other emissions in the Allegheny County airshed.

<sup>1</sup> In the TSD, EPA stated that the SIP revision would reduce emissions of fine particulate matter (PM<sub>2.5</sub>) from OWBs which would promote benefits such as improved visibility.

To support this argument, CAC cites a study which indicates setback regulations and stack height requirements for OWBs are insufficient to protect public health. CAC also mentions that EPA's proposed residential wood heater new source performance standards (NSPS) point to site-specific criteria that states have considered in the past when developing rules for OWBs including: (1) local terrain; (2) proximity of neighbors; and (3) magnitude of other emissions in the airshed. Regarding terrain, CAC states the Allegheny County terrain is such that emissions are frequently "trapped" which contributes to poor air quality events and states the area is prone to temperature inversions which prevent air movement and leads to stagnation. CAC contends inversions typically occur during cooler months when OWBs would likely be used more often which would lead to potentially dangerous periods of high PM levels in the County. In addition, CAC refers to Allegheny County's population density as more dense than the average density for Pennsylvania and compares it to the density for the State of Washington which banned OWBs.

Finally, CAC asserts concerns with the magnitude of emissions in the Allegheny County airshed and refers to the County as downwind of West Virginia nonattainment areas for PM<sub>2.5</sub> and sulfur dioxide (SO<sub>2</sub>) and of a maintenance area for ozone. CAC notes the Pittsburgh-Beaver Valley area is also designated nonattainment for the 1997 and 2008 ozone National Ambient Air Quality Standards (NAAQS) and the 1997 and 2006 PM<sub>2.5</sub> NAAQS while Allegheny County and Beaver County are designated nonattainment for the 2010 SO<sub>2</sub> NAAQS.<sup>2</sup> Finally, CAC cites to the recent, proposed designation of Allegheny County as nonattainment for the 2012 PM<sub>2.5</sub> NAAQS. CAC states EPA's proposed designation found Allegheny County has high emissions of PM-precursor pollutants, including nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOCs), ammonia, and SO<sub>2</sub>, and states EPA identified nine major sources of PM-precursor pollutants.

Overall, CAC claims continued operation of OWBs in the County will only "exacerbate" the County's struggle to attain the NAAQS and requested EPA disapprove the proposed SIP revision as CAC believes only a complete ban on OWBs can protect County residents given these factors.

<sup>2</sup>CAC notes a portion of Beaver County is also designated nonattainment for the 2008 lead NAAQS.

**Response:** EPA appreciates CAC's concern regarding Allegheny County's air quality and CAC's suggestion for a ban on OWBs. Present laws and regulations in the Commonwealth of Pennsylvania and in Allegheny County specifically permit operation and use of OWBs with certain conditions. This SIP revision includes regulations from the Allegheny County Health Department (ACHD) providing additional restrictions on operation and use of OWBs within the County which EPA believes will reduce smoke and PM emissions therefore also improving visibility. EPA believes approving ACHD's regulations into the Allegheny County portion of the Pennsylvania SIP will strengthen the SIP through pollution reductions within the County.

Section 110 of the CAA provides the statutory framework for approval and disapproval of SIP revisions. Under the CAA, EPA establishes NAAQS for certain pollutants. The CAA establishes a joint Federal and state program to control air pollution and protect the public health. States are required to prepare SIPs for each designated "air quality region" within their borders. The SIP must specify emission limits and other measures necessary for that area to attain and maintain the required NAAQS. Pursuant to section 107(a) of the CAA, the states have the *primary* responsibility to assure air quality within the state by submitting a SIP to attain and maintain the NAAQS. Each SIP must be submitted to the EPA for its review and approval; in reviewing SIP submissions, EPA's role is to approve state choices provided the SIP revision is found to meet the minimum requirements of the CAA or any applicable EPA regulations. *See* section 110(k)(3) of the CAA; *see also* *Union Elec. Co. v. EPA*, 427 U.S. 246, 265 (1976).

EPA's authority to approve SIP revisions is governed by CAA section 110(k). EPA does not have authority under the CAA to condition (or otherwise require) as a prerequisite for approval of a state's SIP submittal the adoption of the most stringent or most protective control measure possible for achieving the NAAQS within the state as long as the SIP meets the minimum requirements of the CAA or its implementing regulations. *See Commonwealth of Virginia, et al., v. EPA*, 108 F.3d 1397, 1410 (D.C. Cir. 1997) (*citing Natural Resources Defense Council, Inc. v. Browner*, 57 F.3d 1122, 1123 (D.C. Cir. 1995)). EPA cannot condition approval of Pennsylvania's SIP submission of ACHD's regulations upon inclusion of a particular emission reduction program such as banning

OWBs as long as the SIP otherwise meets the requirements of the CAA. As explained in the NPR and the TSD, ACHD's regulations should reduce emissions of PM and PM<sub>2.5</sub> and should improve visibility within the County which should aid in the County's attainment of the PM<sub>2.5</sub> NAAQS. EPA believes including ACHD's regulations within the Pennsylvania SIP will strengthen the SIP and believes the SIP revision meets the requirements of the CAA including section 110 of the CAA. Thus, EPA disagrees that the submitted SIP revision should be disapproved for not including in the regulations more stringent provisions.

Regarding EPA's 2014 proposed NSPS for OWBs, EPA stated in the proposed residential heater NSPS, which EPA proposed pursuant to section 111 of the CAA, that additional actions *may be needed* by local regulatory authorities in addressing impacts from residential heaters due to site-specific concerns, such as local terrain, meteorology, proximity of neighbors and other exposed individuals. 79 FR 6330, 6336 (February 3, 2014). Thus, in keeping with Congressional intent for states to design emission reduction programs within their states for SIPs in accordance with sections 107(a) and 110, local and state regulatory authorities may consider requirements for residential wood heaters for SIPs which are beyond the requirements EPA has proposed for the NSPS and may consider such factors as local terrain, meteorology, proximity of neighbors and other exposed individuals. These factors are not mandatory for states to consider for emission reduction measures for SIPs and were not used by EPA in developing the 2014 NSPS proposal; they are also not mandatory minimum requirements in the CAA for approvability of Pennsylvania's SIP revision to include ACHD's regulations for OWBs.<sup>3</sup>

EPA also notes that CAC correctly indicated the attainment status of several areas in West Virginia as well as in Allegheny County. However, EPA is approving this SIP revision pursuant to section 110 of the CAA as the PM reductions and visibility improvement from ACHD's regulations will strengthen the Pennsylvania SIP. Pennsylvania did not submit this SIP

<sup>3</sup>In the 2014 NSPS proposal, EPA stated, "our BSER [Best System of Emission Reduction] determination rests on: (1) the achievability of the proposed emission levels (i.e., the fact that top-performing models for each appliance type are already achieving the proposed emission levels); and (2) the cost effectiveness of the proposed standards when considering the design life span and the emitting life span of the appliances in residences." 79 FR at 6354.

revision as an attainment plan for any NAAQS, thus, no provisions in part D, Title I of the CAA, relating to attainment planning, are applicable to this rulemaking action. EPA notes that when Pennsylvania develops any required attainment plans for Allegheny County for any NAAQS it could consider whether a total ban on OWBs might be appropriate to demonstrate timely attainment or represent reasonably available control measures, and EPA would consider the potential availability of such controls in reviewing any attainment SIPs for Allegheny County.

In summary, nothing in the CAA requires EPA to consider the terrain, proximity of neighbors, or magnitude of other emissions in the airshed before determining the approvability of a particular regulation for a SIP revision. EPA finds the SIP revision to include ACHD's regulations for OWBs strengthens the Pennsylvania SIP with pollution reduction requirements, particularly for PM, and therefore meets the requirements for SIP approval in section 110 of the CAA.

Comment: CAC also claims that the enforceability of ACHD's prohibition on the use of OWBs during air quality action days (in Section 2104.09(h) of Article XXI, Rules and Regulations of the ACHD) is "dubious at best" as it will be difficult for ACHD to assess compliance and take corrective action when needed. CAC claims an outright ban of OWBs is therefore appropriate for Allegheny County.

Response: EPA appreciates CAC's concern with the enforceability of ACHD's regulation; however, EPA disagrees that CAC's concern with enforceability of the regulation impacts our ability to approve this SIP revision.<sup>4</sup> EPA is approving ACHD's OWB regulations for inclusion in the Pennsylvania SIP because the regulations will reduce PM and improve visibility within Allegheny County, and therefore the SIP revision meets requirements in CAA section 110 as the revision strengthens the Pennsylvania SIP. CAC has presented no factual or legal argument supporting its concern for the enforceability of ACHD's OWB regulations. EPA has previously concluded the Pennsylvania SIP includes enforceable emission limitations and control measures and provides necessary assurances that

Pennsylvania has adequate personnel, funding and authority to implement the Pennsylvania SIP.<sup>5</sup> CAC provides no factual or legal argument to challenge our prior conclusions. EPA believes ACHD's regulations include clear and practically enforceable terms for fuel requirements for OWBs and for sale, distribution and operation of OWBs, including a prohibition on OWB operation on Air Quality Action Days in Allegheny County.<sup>6</sup> As EPA has previously concluded Pennsylvania has adequate funding and other tools such as personnel to implement its SIP, EPA disagrees with CAC that its unsubstantiated concerns with enforceability of ACHD's OWB regulations lead to any conclusion that a ban on OWBs is appropriate or required instead of approval of this SIP revision. In addition, including the OWB regulations in the Pennsylvania SIP ensures Federal enforceability of the regulations providing additional assurance the SIP will be implemented. See section 113(a) of the CAA.

Comment: CAC cites to a 2010 study by Environment and Human Health, Inc. (EHHI) that indicates setback regulations and stack height requirements for OWBs have been insufficient to protect human health. CAC asserts the study concluded OWBs should be banned as no regulations put in place protect neighboring properties or health of families in homes on those properties. CAC requests that EPA disapprove the proposed SIP revision in light of the study.

Response: EPA disagrees with the CAC that EPA should disapprove the SIP revision for ACHD's regulations on OWBs based on this EHHI study. The 2010 EHHI study investigated how homes are affected by neighboring OWBs and the health implications for the families living *inside* homes impacted by wood smoke. The EHHI study measured *indoor* PM (PM<sub>2.5</sub> and even finer particulate matter less than 0.5 micrometers (PM<sub>0.5</sub>)) inside homes varying in distance from an operating OWB in the State of Connecticut over the course of three days. The proposed

SIP revision from ACHD is intended to reduce *outdoor* air pollution. As discussed previously, EPA is approving this SIP revision because it strengthens the SIP and will provide benefits by reducing PM and PM<sub>2.5</sub> emissions from OWBs overall and improving visibility. Congress did not design the CAA (including the SIP process, NAAQS pollutants, or area nonattainment designations) to have any effect on indoor air pollution. Even though concentrations of PM from OWBs may enter nearby resident's homes, the CAA does not require states to control outdoor pollution based on indoor impacts. The CAC has not articulated any legal argument regarding why a study of indoor PM impacts EPA's ability to approve a SIP revision which EPA finds benefits emissions of PM<sub>2.5</sub> to outdoor air. EPA recognizes that there may be ancillary health benefits in a community that coincide with OWB programs. As mentioned in the TSD accompanying our NPR, EPA noted the ACHD regulations for OWBs, which are in addition to Pennsylvania's requirements for OWBs in 25 Pa. Code 123.14, should provide further protections to the residents of Allegheny County. However, as previously discussed, states have primary responsibility for deciding how to attain and maintain the NAAQS. Under the CAA, the sole issue for EPA's consideration in this rulemaking action is whether ACHD's OWB regulations, as an additional PM control measure for the Pennsylvania SIP, would be consistent with CAA provisions. EPA is approving the inclusion of ACHD's OWB regulations into the SIP because the approval is consistent with the requirements of section 110 of the CAA, including attainment and maintenance of the NAAQS, including the PM NAAQS. CAC's request for a ban on OWBs in Allegheny County based on health concerns, particularly concerns for indoor air pollution, may be considered and implemented at the local level without EPA's review or approval. See 77 FR 1414 (January 10, 2012) (final action approving revisions to the Alaska SIP relating to removing the motor vehicle inspection and maintenance program for control of carbon monoxide in Anchorage).

#### B. American Lung Association Comments

The American Lung Association (ALA) provides several comments in order to "amplify" comments received from CAC.

Comment: With respect to the issue of proximity of neighbors, ALA emphasizes that this factor renders

<sup>4</sup> As part of the SIP submittal, Pennsylvania included ACHD's response to comments received during ACHD's public comment process on these OWB regulations. In the responses, ACHD stated it regularly implements effective enforcement of all Article XXI regulations and expects to do the same with the proposed new OWB regulations.

<sup>5</sup> See 77 FR 58955 (approving Pennsylvania's infrastructure SIPs as meeting requirements in CAA section 110(a)(2) including 110(a)(2)(A) and (E) for the 1997 8-Hour Ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS).

<sup>6</sup> "Air Quality Action Day" is clearly defined in section 2101.20 of ACHD's Article XXI to mean "a day for which a forecast has been issued by the Pennsylvania Department of Environmental Protection, the Allegheny County Health Department or the Southwest Pennsylvania Air Quality Partnership indicating that ambient concentrations of ozone, particulate matter, carbon monoxide, sulfur dioxide, or nitrogen dioxide might reach unhealthful levels or exceed the National Ambient Air Quality Standards."

OWBs problematic for the City of Pittsburgh and the remainder of Allegheny County, which has a population density nearly five times that of the state average. ALA states the areas of the County beyond the City of Pittsburgh are also at increased risk from OWBs. ALA asserts that any rule regulating any air pollution source should address the issue from the macro scale of air pollution inventories and that source's impacts on ambient air quality for the region as a whole, and should not institutionalize highly localized adverse air pollution impacts. ALA asserts it could support a rule for OWBs if ACHD could demonstrate widespread use of OWBs (operating with the local topographic variations and uneven compliance with rules for feedstock quality and operating conditions) would not produce significantly elevated concentrations of air pollutants in neighboring properties. ALA claims evidence it has seen shows such a rule is unlikely to be so effective. ALA also asserts any rule on OWBs must not only be workable for the current locations and prevalence of these units but should be forward-looking and able to handle possible future expansions of this source. ALA claims the regulatory burden of managing emissions from a much larger local inventory of OWBs, along with all of the issues related to cumulative adverse effects of individually, apparently "well-controlled" sources, and even neighbor-versus-neighbor disputes, should not be regarded as inconsiderable. ALA claims once OWBs are widely used it will be difficult to return to non-use.

Finally, ALA notes studies done in southwestern Pennsylvania and in Allegheny County in particular show evidence that current levels of air pollution and emissions of carcinogens already pose higher risks to health and lives of regional and county residents. ALA claims such a situation does not support taking less than a strict health-protective approach with respect to sources of air pollution that are already problematic, both in terms of emission factors, and in terms of the necessary surveillance and enforcement resources to control them properly.

**Response:** EPA appreciates the health-based concerns expressed by ALA. EPA notes that it considers health based impacts when setting the NAAQS, including in particular the 2012 PM<sub>2.5</sub> NAAQS. EPA sets the NAAQS to protect public health with an adequate margin of safety. As previously discussed, Congress placed the role of implementing the NAAQS and devising measures to attain and maintain the

NAAQS with the states. *See* section 107(a) of CAA. EPA's role is to approve SIP submittals that meet minimum criteria in the CAA and its implementing regulations. EPA believes ACHD's OWB regulations strengthen the Pennsylvania SIP as the regulations should reduce overall emissions of PM<sub>2.5</sub> from OWBs. Pennsylvania's SIP submittal discussed how ACHD tailored its OWB regulations to the specific situations encountered in Allegheny County and how ACHD expected the regulations to benefit the health of citizens of Allegheny County.<sup>7</sup> EPA's TSD, supporting the approval of the SIP revision, stated the ACHD regulations would reduce problems associated with the operation of OWBs, including smoke and burning prohibited fuels, and would reduce ambient levels of PM<sub>2.5</sub> which would improve visibility. To approve these regulations as a SIP-strengthening measure, EPA does not have to determine if the emissions reductions from the regulations are or are not significant or address health concerns in Allegheny County. EPA merely needs to determine if the regulations will generate *some* additional emissions reductions that would not be achieved by the current Pennsylvania SIP. EPA has reviewed these regulations in accordance with that framework and finds the provisions approvable for the SIP as the regulations will reduce PM<sub>2.5</sub> and improve visibility. EPA has concluded the OWB regulations meet the minimum criteria for SIP approvability. No provision in the CAA, or in its implementing regulations, requires consideration of additional health impacts available from alternative, more stringent emission control measures before EPA may approve emission control measures submitted by a state for SIP approval, nor requires EPA to take a "strict health-protective approach" before approving SIPs as suggested by ALA. *See Commonwealth of Virginia v. EPA*, 108 F.3d 1397 (limiting role of EPA to reviewing SIP submissions for compliance with CAA requirements). As discussed in a prior response, and in the TSD, EPA recognizes that there may be ancillary health benefits in Allegheny County from the OWB regulations from reduced exposure to PM<sub>2.5</sub> emissions. However, as discussed previously, states have primary responsibility for deciding how to attain and maintain the NAAQS, which EPA set to protect health with an adequate margin of safety. Under the CAA, the sole issue for EPA's

consideration in this rulemaking action is whether adding the OWB regulations from ACHD in the SIP would be consistent with CAA provisions. EPA has found the ACHD regulations are a PM control measure and approval is therefore consistent with the requirements of the CAA, including attainment and maintenance of the NAAQS. Concerns regarding population density, institutionalized air pollution impacts, cumulative adverse health impacts, property impacts, and increased usage of OWBs are not criteria for approving SIP submissions under the CAA. ACHD is able to consider on its own any additional restrictions on OWBs or other emission sources to benefit the health of residents of Allegheny County given ALA's concerns for air pollution in the area.

Finally, operation of OWBs is permissible generally within Allegheny County and the Commonwealth of Pennsylvania. ACHD's regulations add restrictions on OWB operations and therefore reduce impacts from the OWB operation. Therefore, contrary to ALA's comments, ACHD's regulations should reduce air pollutant concentrations and not lead to elevated concentrations of air pollutants. Thus, EPA appreciates ALA's comments and concerns but finds the submitted SIP provision approvable and in accordance with the CAA.

#### IV. Correction

During the course of this rulemaking action EPA became aware of three inadvertent errors involving Section 2101.20 in the "EPA-Approved Allegheny County Health Department (ACHD) Regulations" at 40 CFR 52.2020(c), table (2). The first error occurs at the second entry for Section 2101.20. The title of the section should read "Definitions" not "Definitions related to gasoline volatility." The second error occurs at the fourth entry for Section 2101.20. The EPA approval date should read "12/28/10, 75 FR 81480" not "12/28/10, 75 FR 81555." The third error occurs at the fifth entry for Section 2101.20. The EPA approval date should read "1/2/14, 79 FR 54" not "1/2/14, 79 FR." In this rulemaking action, EPA corrects these errors.

#### V. Final Action

EPA is approving the Pennsylvania SIP revision consisting of: (1) The addition of Section 2104.09 (Outdoor Wood-Fired Boilers) to Article XXI, "Air Pollution Control Rules and Regulations"; and (2) the addition of related new definitions to Section 2101.20. EPA is also correcting minor typographical errors found in 40 CFR

<sup>7</sup>The SIP submittal is available in the electronic docket online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2014-0169.

52.2020(c), table (2), related to Section 2101.20 (Definitions).

## VI. 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 January 5, 2015. 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 regulation of OWBs in Allegheny County, 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: October 23, 2014.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

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

## Subpart NN—Pennsylvania

- 2. In § 52.2020, the table in paragraph (c)(2) is amended by:

- a. Under Part A, revising the second, fourth, and fifth entries for “2101.20”, and adding a new entry for “2120.20” and

- b. Under Part D, adding in numerical order an entry for “2104.09”.

The revised and added text reads as follows:

### § 52.2020 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

Article XX or XXI citation	Title/Subject	State effective date	EPA Approval date	Additional explanation/ § 52.2063 citation
<b>Part A—General</b>				
2101.20 .....	Definitions .....	*	*	*
		5/15/98, 9/1/99	4/17/01, 66 FR 19724 .....	(c)(151); See Part I of the IBR document.
2101.20 .....	Definitions .....	*	*	*
		5/24/10	12/28/10, 75 FR 81480 .....	Addition of four new definitions: Exterior panels, interior panels, flat wood panel coating, and tileboard. See Part III of the IBR document.
2101.20 .....	Definitions .....	*	*	*
		5/24/10	1/2/14, 79 FR 54 .....	Addition of “PM <sub>2.5</sub> ” definition.

Article XX or XXI citation	Title/Subject	State effective date	EPA Approval date		Additional explanation/ § 52.2063 citation	
2101.20 .....	Definitions .....	6/8/13	11/6/14 [Insert <b>Federal Register</b> citation].		Added seven definitions related to Outdoor Wood-Fired Boilers.	
*	*	*	*	*	*	*
<b>Part D—Pollutant Emission Standards</b>						
*	*	*	*	*	*	*
2104.09 .....	Outdoor Wood-Fired Boilers .....	6/8/13	11/6/14 [Insert <b>Federal Register</b> citation].		Added new regulation.	
*	*	*	*	*	*	*

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**BILLING CODE 6560-50-P****FEDERAL COMMUNICATIONS  
COMMISSION****47 CFR Parts 0, 1, 2, 15, 27, 73, and 74**

[GN Docket No. 12-268; FCC 14-143]

**Expanding the Economic and  
Innovation Opportunities of Spectrum  
Through Incentive Auctions****AGENCY:** Federal Communications  
Commission.**ACTION:** Clarification.

**SUMMARY:** This document clarifies how the Commission intends to preserve the “coverage area” as well as the “population served” of eligible broadcasters in the repacking process associated with the broadcast television spectrum incentive auction. This action is taken in order to remove any uncertainty regarding the repacking approach the Commission adopted in the *Incentive Auction R&O*.

**DATES:** Effective November 6, 2014.**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Declaratory Ruling, GN Docket No. 12-268, FCC 14-143, adopted September 20, 2014 and released September 30, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission’s copy contractor, Best Copy and Printing, Inc., 445 12th Street

SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

**Summary of Declaratory Ruling**

1. In this Declaratory Ruling, the Commission clarifies how it intends to preserve the “coverage area” as well as the “population served” of eligible broadcasters in the repacking process associated with the broadcast television spectrum incentive auction. The Commission takes this action in order to remove any uncertainty regarding the repacking approach it adopted in the *Incentive Auction R&O*, 79 FR48442, August 15, 2014. The Commission addresses each of these factors independently and in a manner that fully comports with Congress’s mandate to make “all reasonable efforts” to “preserve” both coverage area and population served as of the enactment date of the Spectrum Act.

**Background**

2. The Spectrum Act requires the Commission, in repacking the television bands to repurpose spectrum through the incentive auction, to “make all reasonable efforts to preserve, as of the date of the enactment of the Act [February 22, 2012], the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69.” In the *Incentive Auction R&O*, the Commission interpreted “coverage area,” consistent with the definition of “service area” in OET Bulletin 69 (OET-69) and 47 CFR 73.622(e), as the area within a full

power station’s noise-limited F(50,90) contour where the signal strength is predicted to exceed the noise-limited service level, and as the area within a Class A station’s protected contour. The Commission interpreted “population served,” consistent with OET-69 and 47 CFR 73.616(e), to mean persons who reside within a station’s “coverage area” at locations where the signal is not subject to interference from other stations.

3. Section 6403(b)(2) requires that the Commission determine each eligible station’s “coverage area” and “population served” using “the methodology described in OET Bulletin 69.” The OET-69 methodology has two major steps. First, “service area or coverage”—the area within a station’s relevant contour where the signal strength is predicted to exceed a specified level—is determined using 2-kilometer spacing increments or “cells.” Second, interference from other stations is evaluated on a cell-by-cell basis within that area. The result of the interference analysis is data that indicate the population and area (in square kilometers) within the “coverage area” lost to interference from other stations.

4. While OET-69 does not provide standards for preserving a television station’s coverage area or population served, the Commission’s rules provide that applications for new or modified digital television station facilities are acceptable if they are not predicted to cause interference “to more than an additional 0.5 percent of the population served . . . by another DTV station.” In other words, the rules protect from interference populated portions of a station’s coverage area that are not lost to existing interference from other stations. Consistent with this standard, the Commission adopted a 0.5 percent interference threshold in the *Incentive Auction R&O*. The Commission also