

based on a “cost pool” as defined in § 165.3 of this part. For a system that includes more than one component, a “building block” approach (*i.e.*, the sum of NC recoupment charges for individual components) shall be used to determine the NC recoupment charge for the sale of the entire system.

(b) The NC recoupment charge shall not apply when a waiver for the specific customer/case has been approved by USD(P), in accordance with § 165.7 of this part, or when sales are financed with U.S. Government funds made available on a non-repayable basis. Approved revised NC recoupment charges shall not be applied retroactively to accepted foreign military sales agreements.

(c) When major defense equipment is sold at a reduced price due to age or condition, the NC recoupment charge shall be reduced by the same percentage reduction.

(d) The full amount of “special” research, development, test, and evaluation and nonrecurring production costs incurred for the benefit of particular customers shall be paid by those customers. However, when a subsequent purchaser requests the same specialized features that resulted from the added “special” research, development, test, and evaluation and nonrecurring production costs, a pro rata share of those costs may be paid by the subsequent purchaser and transferred to the original customer if those special NCs exceed 50 million dollars. The pro rata share may be a unit charge determined by the DoD Component as a result of distribution of the total costs divided by the total production. Such reimbursements shall not be collected after 10 years have elapsed since acceptance of the “Letter of Offer and Acceptance” DoD 5105.38–M,<sup>3</sup> by the original customer, unless otherwise authorized by USD(P). The U.S. Government shall not be charged any NC recoupment charges if it adopts the features for its own use or provides equipment with such features under a U.S. grant aid or similar program.

(e) For co-production, co-development and cooperative production DoD agreements, the policy in this part shall determine the allocation basis for recouping from the third-party purchasers the investment costs of the participants. Such DoD agreements shall provide for the application of the policies in this part to sales to third parties by any of the parties to the agreement and for the distribution of

recoupment among the parties to the agreement.

#### § 165.7 Waivers (including reductions).

(a) Section 21(e)(10)(B) of Public Law 90–629, as amended, requires the recoupment of a proportionate amount of NCs of major defense equipment from foreign military sales customers but Section 21(e)(2) authorizes consideration of reductions or waivers for particular sales which, if made, significantly advance U.S. Government interests and the furtherance of mutual defense treaties between the United States and certain countries. Waivers may also be authorized if imposition of a NC recoupment charge likely would result in the loss of the sale; or, in the case of a sale of major defense equipment that is also being procured for the use of the Armed Forces, result in savings to the United States on the cost of the equipment procured for the Armed Forces, through a resulting increase in the total quantity of equipment purchased from the source of the equipment causing a reduction in the unit cost of the equipment, substantially offsetting the revenue foregone by reason of waiving the charge. Any increase in a NC recoupment charge previously considered appropriate under Section 21(e)(1)(B) may be waived if the increase results from a correction of an estimate (reasonable when made) of the production quantity base that was used for calculating the charge.

(b) Requests for waivers should originate with the foreign government and shall provide information on the extent of standardization to be derived as a result of the waiver.

(1) Blanket waiver requests should not be submitted and shall not be considered. The term “blanket waiver” refers to a NC recoupment charge waiver that is not related to a particular sale; for example, waivers for all sales to a country or all sales of a weapon system.

(2) A waiver request shall not be considered for a sale that was accepted without a NC recoupment charge waiver, unless the acceptance was conditional on consideration of the waiver request.

(3) Requests for waivers shall be processed expeditiously, and a decision normally made to either approve or disapprove the request within 60 days after receipt. A waiver in whole or in part of the recoupment charge or a denial of the request shall be provided in writing to the appropriate DoD Component.

Dated: October 31, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2011–0801; FRL–9487–4]

#### Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia, and West Virginia; Determinations of Attainment of the 1997 Fine Particle Standard for the Metropolitan Washington and Martinsburg-Hagerstown Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** EPA is proposing to make a determination that the Metropolitan Washington, District of Columbia-Maryland-Virginia (DC-MD-VA) and Martinsburg-Hagerstown, West Virginia-Maryland (WV-MD) fine particle (PM<sub>2.5</sub>) nonattainment areas (hereafter referred to as “Areas”) have attained the 1997 annual PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. These determinations are based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period. EPA is finding these Areas to be in attainment, in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before December 5, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0801 by one of the following methods:

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

B. Email: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. Mail: EPA–R03–OAR–2011–0801, Cristina Fernandez, 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.

<sup>3</sup> Available at <http://www.dsca.osd.mil/samm/>.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2011-0801. 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 email. 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 email comment directly to EPA without going through <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.

**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:** Irene Shandruk, (215) 814-2166, or by email at [shandruk.irene@epa.gov](mailto:shandruk.irene@epa.gov).

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

This supplementary information section is arranged as follows:

- I. What is EPA proposing?
- II. What is the background of these actions?
- III. What is EPA's analysis of the relevant air quality data?
- IV. What are the effects of these actions?
- V. Statutory and Executive Order Reviews

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

In accordance with section 179(c)(1) of the CAA, EPA is proposing to determine that the Metropolitan Washington, DC-MD-VA PM<sub>2.5</sub> nonattainment area and the Martinsburg-Hagerstown, WV-MD PM<sub>2.5</sub> nonattainment area have attained the 1997 annual PM<sub>2.5</sub> NAAQS by the applicable attainment date of April 5, 2010. The proposal is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007-2009 monitoring period.

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

On July 18, 1997 (62 FR 36852), EPA established a health-based 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 Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas were designated nonattainment for the 1997 PM<sub>2.5</sub> NAAQS during this designations process. See 40 CFR part 81.309 (the District), 40 CFR 81.321 (Maryland), 40 CFR 81.347 (Virginia), and 40 CFR 81.349 (West Virginia).

The Metropolitan Washington 1997 annual PM<sub>2.5</sub> nonattainment area consists of the District of Columbia (the District), a Northern Virginia portion (Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park), and Charles, Frederick, Montgomery, and Prince George's Counties in Maryland. The Martinsburg-Hagerstown 1997 annual PM<sub>2.5</sub> nonattainment area consists of Washington County in Maryland and Berkley County in West Virginia.

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual PM<sub>2.5</sub> NAAQS at 15 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 Martinsburg-Hagerstown, WV-MD and Metropolitan Washington, DC-MD-VA areas as attainment for the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that these geographical Areas were designated as nonattainment for the annual standard, but attainment for the 1997 24-hour standard (40 CFR part 81.309 for the District, 40 CFR part 81.321 for Maryland, 40 CFR part 81.347 for Virginia, and 40 CFR part 81.349 for West Virginia). Today's action, however, does not address attainment designations of 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 Cir. 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.

EPA previously made clean data determinations related to the 1997 annual PM<sub>2.5</sub> NAAQS for each of these Areas pursuant to 40 CFR 51.1004(c). Determinations were made for the Metropolitan Washington Area on January 12, 2009 (74 FR 1146) and for the Martinsburg-Hagerstown Area on November 20, 2009 (74 FR 60199). These clean data determinations remain in effect.

Under CAA section 179(c), EPA is required to make a determination that a nonattainment area has attained by its attainment date, and publish that determination in the **Federal Register**. The determination of attainment is not equivalent to a redesignation, and the states must still meet the statutory requirements for redesignation in order for the Areas to be redesignated to attainment.

Complete, quality-assured, and certified PM<sub>2.5</sub> air quality monitoring data recorded in the EPA Air Quality System (AQS) database for 2007 through 2009, show that the Metropolitan Washington, DC-MD-VA and the

Martinsburg-Hagerstown, WV-MD nonattainment areas attained the 1997 annual PM<sub>2.5</sub> NAAQS by their applicable attainment date of April 5, 2010.

**III. What is EPA's analysis of the relevant air quality data?**

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 in the data in the EPA AQS database for the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas for the monitoring period from 2007 through 2009. On the basis of that review, EPA has concluded that the Areas attained the 1997 annual PM<sub>2.5</sub> NAAQS based on

data for the 2007–2009 monitoring period.

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 concentrations, 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. The values calculated in accordance with 40 CFR part 50, appendix N, are referred to as design values, and these values are used to determine if an area is attaining the PM<sub>2.5</sub> NAAQS. According to the PM<sub>2.5</sub> implementation rule, the attainment date for these Areas is April 5, 2010 and the monitoring data from 2007 through 2009 is used to determine if the Areas attained by April 5, 2010.

Table 1 shows the annual PM<sub>2.5</sub> design values for each monitor in the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD areas for the years 2007–2009. All 2007–2009 design values are below 15.0 µg/m<sup>3</sup>. Based on these data, the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD areas have attained the 1997 annual PM<sub>2.5</sub> NAAQS by the attainment date. A detailed summary of EPA's rationale for proposing these determinations may be found in the Technical Support Document (TSD) for this action which is available on line at <http://www.regulations.gov>, Docket number EPA–R03–OAR–2011–0801.

**TABLE 1—1997 ANNUAL PM<sub>2.5</sub> DESIGN VALUES FOR THE METROPOLITAN WASHINGTON, DC-MD-VA AND MARTINSBURG-HAGERSTOWN, WV-MD AREAS \***

State	County	Monitor ID	2007 Annual mean	2008 Annual mean	2009 Annual mean	Certified design value 2007–2009 (µg/m <sup>3</sup> )
<b>Metropolitan Washington, DC-VA-MD</b>						
DC	District of Columbia	110010041	13.6	12.0	10.5	12.0
	District of Columbia	110010042	13.7	12.3	10.1	12.1
	District of Columbia	110010043	13.0	11.6	10.2	11.6
VA	Alexandria	No monitor				
	Arlington	510130020	13.8	12.0	10.1	11.9
	Fairfax	510590030	12.5	11.1	9.8	11.1
	Farifax County	510591005	13.3	11.2	9.5	11.3
	Fairfax	510595001	13.5	11.8	9.7	11.7
	Falls Church	No monitor				
	Loudoun	511071005	12.8	11.5	9.2	11.2
	Manassas	No monitor				
	Manassas Park	No monitor				
MD	Charles	No monitor				
	Frederick	No monitor				
	Montgomery	240313001	11.7	10.8	9.4	10.7
	Prince George's	240330025	14.1	12.4	10.7	12.4
	Prince George's	240330030	11.8	10.9	8.7	10.5
	Prince George's	240338003	12.4	11.2	8.8	10.8
<b>Martinsburg-Hagerstown, WV-MD</b>						
WV	Berkley	240430009	12.9	11.8	9.7	11.5
MD	Washington	540030003	15.6	14.2	12.1	14.0

\* The data presented in Table 1 are available at <http://www.epa.gov/air/airtrends/values.html>.

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

If EPA's proposed determination that the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas have attained the 1997 annual PM<sub>2.5</sub> standard by the applicable attainment date (April 5, 2010) is finalized, EPA will have met its requirement pursuant to section 179(c) of the CAA to make a determination based on the Areas' air quality data as of the attainment date that the Areas attained the standard by

that date. The action described above is a proposed determination regarding the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD Areas' attainment of the 1997 annual PM<sub>2.5</sub> NAAQS.

Finalizing this proposed action would not constitute a redesignation of the Areas 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 Areas as required under section 175A of the CAA, nor would it find that the

Areas have met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD areas would remain nonattainment for the 1997 annual PM<sub>2.5</sub> NAAQS until such time as EPA determines that the Areas meet the CAA requirements for redesignation to attainment and take action to redesignate the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD areas.

EPA is soliciting comment on the action discussed in this document. These comments will be considered before EPA takes final action. Please note that if EPA receives adverse comment on either of the proposed determinations described above and if that determination may be severed from the remainder of the final agency action, EPA may adopt as final these provisions of the final agency action that are not the subject of an adverse comment.

## V. Statutory and Executive Order Reviews

This action proposes to make attainment determinations based on air quality data and would not, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. 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 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, these proposed PM<sub>2.5</sub> NAAQS attainment determinations for the Metropolitan Washington and

Martinsburg-Hagerstown Areas, 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: October 25, 2011.

**W.C. Early,**

*Acting, Regional Administrator, Region III.*

[FR Doc. 2011–28648 Filed 11–3–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2011–0605; FRL–9487–2]

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Pennsylvania Clean Vehicles Program

**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 SIP revision contains Pennsylvania’s Clean Vehicle Program, which adopts California’s second generation low emission vehicle program for light-duty vehicles (LEV II). The Clean Air Act (CAA) contains specific authority allowing any state to adopt new motor vehicle emissions standards that are identical to California’s standards in lieu of applicable Federal standards. Pennsylvania has adopted a Clean Vehicle Program that incorporates by reference provisions of California’s LEV II rules and specifies a transition mechanism for compliance with these clean vehicle standards in Pennsylvania. The intended effect of this action is to approve, consistent with the CAA, a control strategy that will help Pennsylvania to achieve and maintain attainment of the National Ambient Air Quality Standard (NAAQS) for ozone.

**DATES:** Written comments must be received on or before December 5, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0605 by one of the following methods:

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

B. *Email:* [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA–R03–OAR–2011–0605, 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–2011–0605. 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 email. 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 email comment directly to EPA without going through <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.

*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.