

# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA-R03-OAR-2020-0197; FRL-10014-80-Region 3]

### Air Plan Approval; West Virginia; 1997 8-Hour Ozone Standard Second Maintenance Plan for the West Virginia Portion of the Parkersburg-Marietta, WV-OH Area Comprising Wood County

**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 West Virginia Department of Environmental Protection (WVDEP) of the State of West Virginia. This revision pertains to West Virginia's plan for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) through June 7, 2027 for the West Virginia portion of the Parkersburg-Marietta, WV-OH Area comprising Wood County. EPA is approving these revisions to the West Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on November 9, 2020.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0197. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., 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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Keila M. Pagán-Incle, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2926. Ms. Pagán-Incle can also be reached via electronic mail at [pagan-incle.keila@epa.gov](mailto:pagan-incle.keila@epa.gov).

#### SUPPLEMENTARY INFORMATION:

## I. Background

On July 6, 2020 (85 FR 40160), EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the NPRM, EPA proposed approval of West Virginia's plan for maintaining the 1997 8-hour ozone NAAQS through June 7, 2027, in accordance with CAA section 175A. The formal SIP revision was submitted by WVDEP on December 10, 2019.

## II. Summary of SIP Revision and EPA Analysis

On May 8, 2007 (72 FR 25967, effective June 7, 2007), EPA approved a redesignation request (and maintenance plan) from WVDEP for the Parkersburg-Marietta Area. Section 175A(b) of the CAA requires that at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District v. EPA*,<sup>1</sup> the D.C. Circuit held that this requirement cannot be waived for areas, like Parkersburg, that had been redesignated to maintenance for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.<sup>2</sup> WVDEP's December 10, 2019 SIP submittal fulfills West Virginia's obligation to submit a second maintenance plan and adequately addresses each of the five necessary elements.

As discussed in the July 6, 2020 NPRM, consistent with longstanding EPA guidance,<sup>3</sup> areas that meet certain

criteria may be eligible to submit a limited maintenance plan (LMP) to meet the requirements of CAA section 175A. Specifically, states may meet CAA section 175A's requirement to "provide for maintenance" by demonstrating that an area's design values<sup>4</sup> are well below the NAAQS and that it has had historical stability attaining the NAAQS. EPA evaluated WVDEP's December 10, 2019 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Parkersburg-Marietta, WV-OH Area comprising Wood County as a revision to the West Virginia SIP. The effect of this action makes certain commitments related to the maintenance of the 1997 8-hour ozone NAAQS Federally enforceable as part of the West Virginia SIP.

Other specific requirements of WVDEP's December 10, 2019 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

## III. EPA's Response to Comments Received

EPA received three comments on the July 6, 2020 NPRM, only two of which related to air quality issues. All comments received are in the docket for this rulemaking action. A summary of the two comments and EPA's responses are provided herein.

*Comment 1:* The commenter alleges that the plan should not be approved due to "a well-documented history of excessive emissions, including particulates," in Parker County. The commenter asserts that the concentration of PM<sub>10</sub><sup>5</sup> in Parker County is one of the highest in the nation and that "if there were pollution control measures in place for Parker County, Parker County would be able to meet its air quality standards." In addition, the commenter raises a number of issues related to road improvement plans, including a request for EPA's position on the "Parker County Road Improvement Plan."

*Response 1:* As stated in the NPRM, the state's submission addresses the Parkersburg-Marietta Area's

PM<sub>10</sub> Nonattainment Areas" from Lydia Wegman, OAQPS, dated August 9, 2001.

<sup>4</sup> The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

<sup>5</sup> PM<sub>10</sub> is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

<sup>1</sup> 882 F.3d 1138 (D.C. Cir. 2018).

<sup>2</sup> "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

<sup>3</sup> See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate

maintenance of the 1997 8-hour ozone NAAQS. Therefore, the commenter's concerns about particulate matter pollution and emissions are beyond the scope of this action. Particulate matter is regulated under a separate NAAQS.<sup>6</sup> Emissions of particulate matter and concentrations of PM<sub>10</sub> particulates are not relevant to whether the Parkersburg-Marietta Area continues to attain and has a plan for maintaining the 1997 8-hour ozone NAAQS for an additional 10 years. Similarly, road projects in an unspecified Parker County Road Improvement Plan are not relevant to whether the LMP for the 1997 8-hour ozone NAAQS is approvable. EPA set forth in the NPRM the criteria relevant to approvability of the LMP. EPA has determined that the December 10, 2019 SIP revision includes adequate information to support West Virginia's LMP. As set forth in the NPRM, EPA has determined that the State provided sufficient assurances in the LMP for EPA to approve West Virginia's 1997 8-hour ozone second maintenance plan for the Parkersburg-Marietta Area. EPA's evaluation of the West Virginia's December 10, 2019 SIP revision and the rationale for taking rulemaking action on this submission was discussed in detail in the NPRM. EPA continues to believe that it has considered the correct criteria and that the LMP meets the criteria for approvability. Concerns about particulate matter and road projects raised by the commenter are not relevant with respect to EPA's decision to approve the LMP.

*Comment 2:* The commenter claims that EPA must disapprove West Virginia's LMP because "the proposed rule will not ensure that the communities in this area will be well served in terms of its electrical needs and its water needs," and "will not address the potential problems with drinking water supplies nor the environmental damage from increased air pollution this plan allows." The commenter alleges that EPA "will not allow" the LMP go into effect without evaluating the impact it could have on the state and communities, because Federal agencies are required under the National Environmental Policy Act (NEPA) to assess impacts from proposed Federal actions on the environment, health and safety. Further the commenter contends that the LMP proposal includes an increase of "the amount of gas extraction that would require pumping water deep underground," which will potentially harm the drinking water supplies in communities, including Parkersburg.

*Response 2:* The commenter raised several issues with respect to EPA's proposed approval of West Virginia's second 10-year maintenance plan for the Parkersburg-Marietta Area for the 1997 8-hour ozone NAAQS, but EPA disagrees that any of them provide a basis for disapproving the state's submission. The commenter first raises concern about the plan's "failure to ensure that the community will be well served in terms of its electrical needs and its water needs." However, these issues are beyond the scope of EPA's action, which address only CAA requirements for the Parkersburg-Marietta Area with respect to the 1997 8-hour ozone NAAQS. Second, the commenter's allegation that the EPA is required under NEPA to assess the impacts of its maintenance plan approval is incorrect; section 7(c) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 793(c)(1)) exempts all EPA actions under the CAA from the requirements of NEPA, and this action is an approval of a SIP under the CAA. Third, the commenter's allegation that "the plan proposes to increase the amount of gas extraction that would require pumping water deep underground" and her concern that the "plan also lacks mitigation measures . . . related to the increased use of water and gas to extract shale gas in the area" appears to be referring to a different action. The SIP submission at issue in this action does not affect in any way gas extraction in West Virginia, much less propose to increase the amount of extraction, and therefore it appropriately does not address mitigation measures related to that subject. Finally, EPA does not agree with the commenter's allegation that the plan allows for increased air pollution. The state's submission maintains the same controls and contingency measures that were adopted into the SIP to attain and maintain the 1997 8-hour ozone NAAQS and any potential future violations of that standard.

As noted in the NPRM, CAA section 175A requires only that the State of West Virginia make adequate demonstration that the Parkersburg-Marietta Area will continue to maintain the 1997 8-hour ozone NAAQS until 2027 (20 years after redesignation). EPA has considered the appropriate statutory criteria and believes the record supports approval of the LMP. Concerns regarding electricity supply and water supply raised by the commenter are not relevant with respect to EPA's decision to approve the LMP.

#### IV. Final Action

EPA is approving the 1997 8-hour ozone NAAQS second 10-year maintenance plan for the Parkersburg-Marietta, WV-OH Area comprising Wood County as a revision to the West Virginia SIP.

#### V. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866.
- 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

<sup>6</sup> See 40 CFR 50.6 and 50.7

• 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 December 8, 2020. 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 West Virginia’s limited maintenance plan for the Parkersburg-Marietta, WV-OH Area comprising Wood 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, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: September 15, 2020.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

For the reasons stated in the preamble the EPA amends 40 CFR part 52 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 XX—West Virginia**

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding the entry “1997 8-Hour Ozone Standard Second Maintenance Plan for the West Virginia Portion of the Parkersburg-Marietta WV-OH Area Comprising Wood County” at the end of the table to read as follows:

#### **§ 52.2520 Identification of plan.**

*	*	*	*	*
(e)	*	*	*	*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	*	*	*	*
1997 8-Hour Ozone Standard Second Maintenance Plan for the West Virginia Portion of the Parkersburg-Marietta, WV-OH Area Comprising Wood County.	Parkersburg-Marietta WV-OH Area Comprising Wood County.	12/10/2019	10/9/2020, [insert <b>Federal Register</b> citation].	

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA–HQ–OAR–2019–0611; FRL–10013–72–OAR]

RIN 2060–AU54

### **Implementation of the Revoked 1997 8-Hour Ozone National Ambient Air Quality Standards; Updates to 40 CFR Part 52 for Areas That Attained by the Attainment Date**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating part 52 of title 40, chapter 1 of the Code of Federal

Regulations (CFR) to codify its findings that nine areas in four states attained the revoked 1997 8-hour ozone National Ambient Air Quality Standards (herein referred to as the 1997 ozone NAAQS) by the applicable attainment dates. In February 2019, EPA Regional Offices sent letters to the affected states to communicate the EPA’s findings. The areas that timely attained the standards include the Buffalo-Niagara Falls area, and the Jefferson County, Poughkeepsie and Jamestown areas in the state of New York; the Shoreline Sheboygan County and Inland Sheboygan County areas in Wisconsin; the Denver-Boulder-Greeley-Ft. Collins-Loveland area in Colorado; and the San Francisco Bay and Ventura County areas in California. Publishing these determinations in part 52 will document for the public and state air agencies that these areas attained the standards by the applicable attainment dates and are therefore not subject to

anti-backsliding consequences for failure to timely attain the standards.

**DATES:** The direct final rule is effective on January 7, 2021 without further notice unless the EPA receives relevant adverse written comments, or if a public hearing is requested by October 14, 2020, on the proposed rule. In such case, refer to the *General Information* section.

**ADDRESSES:** The EPA established Docket ID No. EPA–HQ–OAR–2019–0611 for this action. All documents on the docket are listed at <https://www.regulations.gov>. Although listed in the docket index, some information may not be publicly available, e.g., Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Certain other information, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.