

Dated: November 16, 2011.

**David J. Kappos,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2011-0819; FRL-9495-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Baltimore Nonattainment Area Determinations of Attainment of the 1997 Annual Fine Particulate Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to make two determinations regarding the Baltimore fine particulate matter (PM<sub>2.5</sub>) nonattainment area (hereafter referred to as “the Baltimore Area” or “Area”). First, EPA is proposing to determine that the Area has attained the 1997 annual PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS). This proposed clean data determination is based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 period showing that the Area has monitored attainment of the 1997 annual PM<sub>2.5</sub> NAAQS and data available to date for 2011 in EPA’s Air Quality System (AQS) database that show the Area continues to attain. If EPA finalizes this proposed clean data determination, the requirements for the Area to submit an attainment demonstration 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 the attainment of the standard shall be suspended for so long as the Area continues to attain the annual PM<sub>2.5</sub> NAAQS. 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. In addition, EPA is withdrawing the July 31, 2009 (74 FR 38161) proposed clean data determination for the Baltimore Area. These actions are being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before December 23, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0819 by one of the following methods:

A. *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–2011–0819, 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–2011–0819. EPA’s policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or email. The *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 *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 *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 *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:** Ruth Knapp, (215) 814–2191, or by email at [knapp.ruth@epa.gov](mailto:knapp.ruth@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 actions are 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 actions are EPA proposing?**

In accordance with section 179(c)(1) of the CAA, 42 U.S.C. 7509(c)(1), and 40 CFR 51.1004(c), EPA is proposing to determine that the Baltimore Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS. The proposal is based upon quality-assured and certified ambient air monitoring data for the 2007–2009 and 2008–2010 monitoring periods that show that the Area attained the 1997 annual PM<sub>2.5</sub> NAAQS, and data available to date for 2011 that shows 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 Baltimore Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS by its applicable attainment date of April 5, 2010. Finally, EPA is withdrawing the previous clean data proposal for the Baltimore Area published on July 31, 2009 (74 FR 38161) since that action was never finalized and more current data is now available.

#### **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>. (Today’s action does not address the 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 annual 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 Baltimore Area was designated nonattainment for the 1997 annual PM<sub>2.5</sub> NAAQS during this designations process. See, 40 CFR 81.321 (Maryland).

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 Baltimore Area as attainment for the 2006 24-hour standard. In that action, EPA also clarified the designations for the PM<sub>2.5</sub> NAAQS promulgated in 1997 stating that the Baltimore Area was attainment for the 1997 24-hour standard (74 FR 58688). Today’s action, however, does not address either the 1997 or the 2006 24-hour standard.

In response to legal challenges of the annual standards 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.

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 EPA 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 later.

On July 31, 2009 (74 FR 38161), EPA proposed, but never finalized a clean data determination for the Baltimore Area. See, Docket ID No. EPA–R03–OAR–2009–0199. EPA is withdrawing this previous clean data proposal for the Baltimore Area.

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

Today’s proposed rulemaking determines that the Baltimore Area has clean data for the 1997 annual PM<sub>2.5</sub> NAAQS, based on the most recent three years of quality-assured data and data available to date for 2011 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 1997 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.

EPA has determined that the PM<sub>2.5</sub> monitoring network for the Baltimore 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 the 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 annual PM<sub>2.5</sub> NAAQS for the Baltimore Area monitors for the years 2008–2010. All data considered have been quality-assured, certified, and recorded in AQS. Table 2 shows the design values (i.e., the 3-year average of annual mean PM<sub>2.5</sub> concentrations) for the annual PM<sub>2.5</sub> NAAQS for the Baltimore Area monitors for the years 2007–2009. All data considered have been quality-assured, certified, and recorded in AQS. EPA’s review of these data indicates that the Baltimore Area has met the annual PM<sub>2.5</sub> NAAQS and that the Area attained the PM<sub>2.5</sub> standard by its attainment date of April 5, 2010.

TABLE 1—BALTIMORE AREA 2008–2010 PM<sub>2.5</sub> DATA (IN µg/m<sup>3</sup>)

City	Site ID	2008 Annual mean	2009 Annual mean	2010 Annual mean	2008–2010 Design value
Glen Burnie .....	24–003–1003	12.6	11.1	11.0	11.6
Padonia .....	24–005–1007	11.9	10.2	10.4	10.8
Essex .....	24–005–3001	12.6	11.0	11.6	11.7
Edgewood .....	24–025–1001	11.3	9.6	9.5	10.1
Baltimore .....	24–510–0006	12.2	10.1	10.1	10.8
Baltimore .....	24–510–0007	12.4	10.3	10.3	11.0
Baltimore .....	24–510–0008	12.7	11.1	11.0	11.6

TABLE 2—BALTIMORE AREA 2007–2009 PM<sub>2.5</sub> DATA (IN µg/m<sup>3</sup>)

City	Site ID	2007 Annual mean	2008 Annual mean	2009 Annual mean	2007–2009 Design value
Glen Burnie .....	24–003–1003	13.4	12.6	11.1	12.4
Padonia .....	24–005–1007	13.3	11.9	10.2	11.8
Essex .....	24–005–3001	14.0	12.6	11.0	12.6
Edgewood .....	24–025–1001	12.2	11.3	9.6	11.0
Baltimore .....	24–510–0035	14.1	*	*	*
Baltimore .....	24–510–0006	13.1	12.2	10.1	11.8
Baltimore .....	24–510–0007	13.4	12.4	10.3	12.0
Baltimore .....	24–510–0008	15.0	12.7	11.1	12.9

\* Monitor Site ID 24–510–0035 shut down in August 2008 due to demolition of the monitoring site.

Preliminary data for 2011 which has not been quality-assured or certified is

included in Table 3 below. This preliminary 2011 data indicates that the

Area continues to attain the annual PM<sub>2.5</sub> NAAQS.

TABLE 3—BALTIMORE AREA PRELIMINARY 2011 PM<sub>2.5</sub> DATA (IN µg/m<sup>3</sup>)

City	Site ID	2011 Preliminary annual mean
Glen Burnie .....	24-003-1003	10.5
Padonia .....	24-005-1007	9.9
Essex .....	24-005-3001	10.6
Edgewood .....	24-025-1001	9.3
Baltimore .....	24-510-0006	9.9
Baltimore .....	24-510-0007	9.5
Baltimore .....	24-510-0008	10.8

Additional information about the monitoring network and air quality data can be found in the Technical Support Document (TSD) for this action which is available online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2011-0819.

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

If EPA's proposed clean data determination based on the most recent three years of quality-assured data and data available to date for 2011, is made final, the requirements for the Baltimore Area to submit an attainment demonstration and associated RACM, 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 Baltimore 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 Baltimore Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. If this proposed determination 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 Baltimore 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 a maintenance plan 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 Baltimore 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 Baltimore 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 Baltimore 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. EPA is also withdrawing its previously proposed clean data determination (74 FR 38161) for the 1997 annual PM<sub>2.5</sub> standard since the previous action was never finalized and more current data is now available. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. Statutory and Executive Order Reviews

This action proposes to make attainment determinations based on air quality data and would, 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 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 proposed rule to find that the Baltimore Area attained the annual 1997 PM<sub>2.5</sub> standard and attained the standard by its attainment date 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.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 15, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

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