

C. Small Business Regulatory Enforcement Fairness Act

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Issued in Washington, DC, on February 23, 2012.

John W. McGraw,

Acting Director, Flight Standards Service.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2010-0986; FRL-9634-6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Determinations of Attainment of the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Washington, DC-MD-VA 8-Hour Ozone Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making two determinations regarding the Washington, DC-MD-VA moderate 8-hour ozone nonattainment area (the Washington Area). First, EPA is making a determination that the Washington Area has attained the 1997 8-hour ozone national ambient air quality standard (NAAQS) by its June 15, 2010 attainment date. This determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 monitoring period. Second, EPA is making a clean data determination, finding that the Washington Area has attained the 1997 8-hour ozone NAAQS, based on complete, quality assured, and certified ambient air monitoring data for the 2007–2009 and 2008–2010 monitoring periods. In accordance with EPA's applicable ozone implementation rule,

this clean data determination suspends the requirement for the Washington Area to submit an attainment demonstration, reasonably available control measures (RACM), a reasonable further progress (RFP) plan and contingency measures related to attainment of the 1997 8-hours ozone NAAQS. These requirements shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. These actions are being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on March 29, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0986. All documents in the docket are listed in the 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 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.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814-2181, or by email at pino.maria@epa.gov.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this action.

- I. Background
- II. Summary of Actions
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background

EPA published a notice of proposed rulemaking (NPR) for the District of Columbia, the State of Maryland, and the Commonwealth of Virginia (the States) on September 20, 2011 (76 FR 58206). Pursuant to section 181(b)(2)(A)¹ of the CAA, the September 20, 2011 NPR proposed to determine that the Washington Area attained the 1997 8-hour ozone NAAQS by its attainment date, June 15, 2010. This proposed determination was based

¹ The NPR cited CAA sections 181(b)(2)(A) and 179(c) as the statutory authority for determining whether the Washington Area attained the 1997 8-hour ozone NAAQS by its attainment date. In this final notice, EPA is correcting that statement to clarify that here the appropriate statutory authority derives from section 181(b)(2)(A).

upon complete, quality assured, and certified ambient air monitoring data for the 2007–2009 monitoring period that show the area has monitored attainment of the 1997 8-hour ozone NAAQS during this monitoring period. Complete, quality assured, and certified ambient air monitoring data for the 2008–2010 monitoring period shows continued attainment.

The September 20, 2011 NPR also proposed to make a clean data determination that the Washington Area has attained the 1997 8-hour ozone NAAQS. This proposed clean data determination was based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. As a result of this determination, the requirement for this area to submit an attainment demonstration, a RACM analysis, an RFP plan, contingency measures, and other planning requirements related to attainment of the 1997 8-hours ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS.

II. Summary of Actions

A. Determination of Attainment by the Attainment Date

EPA is making a determination that the Washington Area has attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010. As a result of this action, EPA has met its requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date. The effect of a final determination of attainment by the area's attainment date is to discharge EPA's obligation under CAA section 181(b)(2)(A),² and to establish that, in accordance with CAA section 181(b)(2)(A), the area will not be reclassified for failure to attain by its applicable attainment date. This determination of attainment is not equivalent to a redesignation. The state must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

² In the NPR, EPA stated that its obligations to determine if an area attained the 1997 8-hour NAAQS by its attainment was found under CAA sections 181(b)(2)(A) and 179. EPA notes that for an area such as the Washington Area, which is designated moderate nonattainment for the 1997 8-hour ozone standard, the proper citation is CAA section 181(b)(2)(A).

B. Clean Data Determination

EPA is making a clean data determination, finding that the Washington Area is attaining the 1997 8-hour ozone NAAQS. Under the provisions of EPA's ozone implementation rule (40 CFR 51.918), this clean data determination suspends the CAA requirement for the Washington Area to submit certain planning SIPs related to attainment of the 1997 8-hour ozone NAAQS for so long as the area continues to attain the 1997 8-hour ozone NAAQS. This clean data determination is not equivalent to a redesignation. The state must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

The clean data determination suspends the requirements to submit an attainment demonstration, RACM, RFP, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS; continues until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 8-hour ozone NAAQS; is separate from, and does not influence or otherwise affect, any future designation determination or requirements for the area based on any new or revised ozone NAAQS; and remains in effect regardless of whether EPA designates this area as a nonattainment area for purposes of any new or revised ozone NAAQS.

Although these requirements are suspended, EPA is not precluded from acting upon these elements. The States submitted these SIP elements for the Washington Area to EPA for review and approval in June 2007. EPA approved the States' submittal pertaining to RFP, RFP contingency measures, and RACM, along with the Washington Area's 2002 base year inventory and 2008 transportation conformity motor vehicle emissions budgets (MVEBs) on September 20, 2011 (76 FR 58116).

C. Ambient Air Quality Monitoring Data

Complete, quality assured, certified 8-hour ozone air quality monitoring data for 2007 through 2009 show that the Washington Area has attained the 1997 8-hour ozone NAAQS. The Washington Area continues to attain the 1997 8-hour ozone NAAQS considering complete, quality assured, certified 8-hour ozone air quality monitoring data for 2008 through 2010. Additional information on air quality data for the Washington Area can be found in the Technical Support Document (TSD) prepared for

this action. The TSD can be viewed at <http://www.regulations.gov>.

III. Final Action

EPA is making two determinations regarding the Washington Area. First, EPA is making a clean data determination, finding that the Washington Area has attained the 1997 8-hour ozone NAAQS. This clean data determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. This clean data determination suspends the requirements for the Washington Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Second, pursuant to section 181(b)(2)(A) of the CAA, EPA is making a determination that the Washington Area has attained the 1997 8-hour ozone NAAQS by its moderate area attainment date, June 15, 2010.

The rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

IV. Statutory and Executive Order Reviews

A. General Requirements

This action makes determinations of attainment based on air quality, and result in the suspension of certain federal requirements. This action 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 determination that the Washington Area has attained the 1997 annual PM_{2.5} NAAQS 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 these actions 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2012. 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 determination that the Washington Area has attained the 1997 8-hour ozone NAAQS 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: February 6, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

- 2. In § 52.475, the existing paragraph is designated as (a), and paragraph (b) is added to read as follows:

§ 52.475 Determinations of attainment.

* * * * *

(b) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, Washington, DC-MD-VA moderate nonattainment area has attained the 1997 8-hour ozone NAAQS by the applicable attainment date of June 15, 2010. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Washington, DC-MD-VA moderate nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

- 3. Section 52.476 is amended by adding new paragraph (g) to read as follows:

§ 52.476 Control strategy: ozone.

* * * * *

(g) *Determination of attainment.* EPA has determined, as of February 28, 2012, that based on 2007 to 2009 and 2008 to 2010 ambient air quality data, the Washington, DC-MD-VA moderate nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination, in accordance with 40 CFR 51.918, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable

further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 8-hour ozone NAAQS.

Subpart V—Maryland

- 4. Section 52.1076 is amended by adding new paragraph (w) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(w) *Determination of attainment.* EPA has determined, as of February 28, 2012, that based on 2007 to 2009 and 2008 to 2010 ambient air quality data, the Washington, DC-MD-VA moderate nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination, in accordance with 40 CFR 51.918, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 8-hour ozone NAAQS.

- 5. Section 52.1082 is amended by adding new paragraph (c) to read as follows:

§ 52.1082 Determinations of attainment.

* * * * *

(c) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, Washington, DC-MD-VA moderate nonattainment area has attained the 1997 8-hour ozone NAAQS by the applicable attainment date of June 15, 2010. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Washington, DC-MD-VA moderate nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

Subpart VV—Virginia

- 6. Section 52.2428 is amended by adding paragraph (h) to read as follows:

§ 52.2428 Control strategy: Carbon monoxide and ozone.

* * * * *

(h) *Determination of attainment.* EPA has determined, as of February 28, 2012, that based on 2007 to 2009 and 2008 to 2010 ambient air quality data, the Washington, DC-MD-VA moderate

nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination, in accordance with 40 CFR 51.918, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 8-hour ozone NAAQS.

- 7. In § 52.2430, the existing paragraph is designated as (a), and paragraph (b) is added to read as follows:

§ 52.2430 Determinations of attainment.

* * * * *

(b) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, Washington, DC-MD-VA moderate nonattainment area has attained the 1997 8-hour ozone NAAQS by the applicable attainment date of June 15, 2010. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Washington, DC-MD-VA moderate nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2004-OH-0004; FRL-9635-2]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; New Source Review Rules—Notice of Action Denying Petition for Reconsideration and Request for Administrative Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; action denying petition for reconsideration and request for administrative stay.

SUMMARY: EPA is providing notice that it has responded to a petition for reconsideration and a request for an administrative stay of certain provisions of the final rule titled, "Approval and Promulgation of Air Quality Implementation Plans; Ohio; New Source Review Rules" published February 25, 2010. The Ohio EPA