



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R01-OAR-2012-0008; A-1-FRL-9621-4]**

**Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Determination of Attainment of the One-Hour Ozone Standard for the Springfield (Western Massachusetts) Nonattainment Area**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to determine that the Springfield (Western Massachusetts), serious one-hour ozone nonattainment area did not meet the applicable deadline of December 31, 2003 for attaining the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. This proposed determination is based upon complete, certified, quality-assured ambient air quality monitoring data for the 2001-2003 monitoring period showing that the area had an expected ozone exceedance rate above the level of the now revoked one-hour ozone NAAQS during that period. Separate from and independent of this proposed determination, EPA is also proposing to determine that the Springfield (Western Massachusetts) serious one-hour ozone nonattainment area currently attains the now revoked one-hour NAAQS for ozone, based upon complete, quality-assured, certified ambient air monitoring data for the 2007-2009 and 2008-2010 monitoring periods. Preliminary one-hour ozone data available for 2011 also show the area continues to meet the one-hour NAAQS for ozone. If EPA finalizes its determination that the area is currently attaining the one-hour standard, the obligation to submit one-hour ozone

contingency measures will be suspended. EPA is proposing these determinations under the Clean Air Act.

**DATES:** Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R01-OAR-2012-0008 by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov)
3. Fax: (617) 918-0047.
4. Mail: "Docket Identification Number EPA-R01-OAR-2012-0008," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912.
5. Hand Delivery or Courier: Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2012-0008. 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](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 through

[www.regulations.gov](http://www.regulations.gov), or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website 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 e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail 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](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, telephone number (617) 918-1664, fax number (617) 918-0664, email [Burkhart.Richard@epa.gov](mailto:Burkhart.Richard@epa.gov) .

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble:

- I. What is EPA Proposing?
  - A. Proposed Determination of Failure to Attain by Applicable Attainment Date
  - B. Proposed Determination of Current Attainment
- II. What is the Background for these Proposed Actions?
  - A. Statutory and Regulatory Background
  - B. Basis and Effect of Proposed Determinations
- III. What are EPA’s Analyses of Data for Purposes of Determining Attainment of the One-Hour Ozone Standard?
  - A. How Does EPA Compute Whether an Area Meets the One-Hour Ozone Standard?
  - B. EPA’s Analyses of the One-Hour Ozone Data for the Springfield (Western Massachusetts) Area
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- V. Statutory and Executive Order Reviews

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

EPA is proposing two separate and independent determinations for the Springfield (Western Massachusetts) one-hour ozone serious nonattainment area (hereafter, “the Western Massachusetts area”).

### **A. Proposed Determination of Failure to Attain by Applicable Attainment Date**

EPA is proposing to determine that the Western Massachusetts area did not attain the one-hour ozone NAAQS by the applicable attainment date, December 31, 2003. This proposed determination is based upon complete, quality-assured and certified air quality monitoring data for the 2001-2003 monitoring period.

### **B. Proposed Determination of Current Attainment**

In addition, EPA is proposing to determine that the Western Massachusetts area is currently attaining the one-hour ozone NAAQS based upon complete, quality-assured and certified ambient air monitoring data for the 2007-2009 and 2008-2010 monitoring periods. If this proposed determination is finalized, any obligations related to one-hour ozone contingency measures in the Western Massachusetts area shall be suspended.

## **II. What is the Background for these Proposed Actions?**

### **A. Statutory and Regulatory Background**

The Western Massachusetts one-hour ozone nonattainment area consists of Berkshire, Franklin, Hampden and Hampshire Counties. EPA designated this area as nonattainment for one-

hour ozone following the enactment of the Clean Air Act (CAA) Amendments of 1990. Most areas of the country that EPA designated nonattainment for the one-hour ozone NAAQS were classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. See CAA sections 107(d)(1)(C) and 181(a). The Western Massachusetts area was classified as serious. The one-hour ozone attainment deadline for the Western Massachusetts serious area was initially set for November 15, 1999, and later was extended to December 31, 2003. See 66 FR 666 (January 3, 2001).

On July 18, 1997 (62 FR 38856), EPA promulgated a new standard for ozone based on an 8-hour average concentration (the "1997 8-hour ozone NAAQS"). EPA designated and classified most areas of the country under the eight-hour ozone NAAQS in an April 30, 2004 final rule. See 69 FR 23858. EPA designated Western Massachusetts as nonattainment for the 1997 8-hour ozone NAAQS, and at the time of designation the area did not meet the one-hour ozone standard.

On April 30, 2004, EPA issued a final rule (69 FR 23951) entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard — Phase 1," referred to as the Phase 1 Rule. Among other matters, this rule revoked the one-hour ozone NAAQS in most areas of the country, effective June 15, 2005. See 40 CFR 50.9(b); 69 FR at 23996; and 70 FR 44470. The Phase 1 Rule also set forth how anti-backsliding principles will ensure continued progress toward attainment of the eight-hour ozone NAAQS by identifying which one-hour requirements remain applicable in an area after revocation of the one-hour ozone NAAQS. Although, EPA revoked the one-hour ozone standard, eight-hour ozone nonattainment areas remain subject to certain one-hour, anti-backsliding requirements based on their one-hour ozone

classification. Initially, in our rules to address the transition from the one-hour to the eight-hour ozone standard, EPA did not include one-hour contingency measures among the measures retained as one-hour ozone anti-backsliding requirements.<sup>1</sup> However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have excluded these requirements (and certain others not relevant here) from its anti-backsliding requirements. See South Coast Air Quality Management District v. EPA, 472 F.3d 882 (D.C. Cir. 2006), rehearing denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review). Thus, the Court vacated the provisions that excluded these requirements. As a result, States must continue to meet the obligations for one-hour ozone NAAQS contingency measures and EPA has issued a proposed rule that would remove the vacated provisions of 40 CFR 51.905(e), and that addresses contingency measures for the one-hour standard. See 74 FR 2936 (January 16, 2009) (proposed rule); and 74 FR 7027 (February 12, 2009) (notice of public hearing and extension of comment period).

## B. Basis and Effect of Proposed Determinations

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour ozone anti-backsliding requirements. See SCAQMD v. EPA, 47 F.3d 882, at 903. In keeping with this responsibility with respect to specific one-hour anti-backsliding measures, such as contingency measures, EPA proposes to determine that Western Massachusetts failed to attain the one-hour ozone standard by its applicable attainment

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<sup>1</sup> Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard--Phase 1, 69 FR 23951 (April 30, 2004).

date. (CAA sections 301(a) and 181(b)(2)). Consistent with 40 CFR 51.905(e)(2) and the South Coast decision, upon revocation of the one-hour ozone NAAQS for an area, EPA is no longer obligated to determine whether an area has attained the one-hour NAAQS, except insofar as it relates to effectuating the anti-backsliding requirements that are specifically retained. EPA's determination here is linked solely to required one-hour anti-backsliding contingency measures. A final determination of failure to attain will not result in reclassification of the area under the revoked one-hour standard, nor is EPA identifying or determining any new one-hour reclassification for the area. EPA is no longer required to reclassify an area to a higher classification for the one-hour ozone NAAQS based upon a determination that the area failed to attain that NAAQS by its attainment date. See 40 CFR 51.905(e)(2)(i)(B). Thus, even if we finalize our proposed determination that the area failed to attain the one-hour ozone NAAQS by its attainment deadline, the area will not be reclassified to a higher classification. Moreover, EPA has previously approved the attainment demonstration and Reasonable Further Progress (RFP) plans for this area, and in doing so noted that although there were no approved state implementation plan contingency measures applicable to the Western Massachusetts area for failure to attain, there were federal measures which the state had not accounted for in its attainment demonstration, and which provided more reductions than necessary to serve the purpose of contingency measures for this area. See 66 FR 666, January 3, 2001. In addition, as explained elsewhere in this notice, EPA is proposing to determine that the Western Massachusetts area is currently attaining the one-hour ozone standard. The area has been in attainment of the revoked standard since 2009. In this context, even if EPA's proposed determination that the area did not attain the standard by the 2003 deadline is finalized, it will not trigger any additional obligations for the area under the one-hour ozone standard. Under EPA's "Clean Data Policy" interpretation, which was first articulated for the one-hour standard and then

codified for the 8-hour ozone standard (40 CFR 51.918),<sup>2</sup> a determination of attainment suspends obligations for attainment-related requirements for that standard, including contingency measures. See, for example, determination of one-hour ozone attainment for Baton Rouge, 75 FR 6570 (February 10, 2010).

### **III. What are EPA's Analyses of Data for Purposes of Determining Attainment of the One-Hour Ozone Standard?**

#### **A. How Does EPA Compute Whether an Area Meets the One-Hour Ozone Standard?**

Although the one-hour ozone NAAQS as promulgated in 40 CFR 50.9 does not address specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the one-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 parts per million (ppm). 40 CFR 50.9(a) states that: "The level of the national one-hour primary and secondary ambient air quality standards for ozone ... is 0.12 parts per million. ... The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations of 0.12 parts per million ... is equal to or less than 1, as determined by appendix H to this part." Thus, compliance with the NAAQS is based on comparison of air quality concentrations with the standard and on how many days that standard has been exceeded, adjusted for the number of missing days.

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<sup>2</sup> The U.S. Court of Appeals for the District of Columbia Circuit upheld the provisions of 40 CFR 51.918, which codified the Clean Data Policy. Previously Courts of Appeals for several other Circuits upheld the Clean Data Policy under the one-hour standard. See *NRDC v. EPA*, 571 F.3d 1245 (DC Cir. 2009); *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir.1996); *Sierra Club v. EPA*, 375 F.3d 537(7th Cir. 2004) and *Our Children's EarthFoundation v. EPA*, No. 04-73032 (9thCir. June 28, 2005) (memorandum opinion).

For comparison with the NAAQS, EPA has clearly communicated the data handling conventions for the one-hour ozone NAAQS in guidance documents. As early as 1979, EPA's guidance stated that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded. The stated level of the standard defines the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. See "Guideline for the Interpretation of Ozone Air Quality Standards," EPA-450/4-79-003, OAQPS No. 1.2-108, January 1979. EPA has consistently applied the rounding convention in this 1979 guideline. See 68 FR 19111, April 17, 2003; 68 FR 62043, October 31, 2003; and 69 FR 21719, April 22, 2004. EPA determines attainment status under the one-hour ozone NAAQS on the basis of the annual average number of expected exceedances of the NAAQS over a three-year period. See 60 FR 3349, January 17, 1995 and also the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," at 57 FR 13506, April 16, 1992 ("General Preamble"). EPA's determination is based upon data that have been collected and quality-assured in accordance with 40 CFR 58, and recorded in EPA's Air Quality System (AQS) database. To account for missing data, the procedures found in appendix H to 40 CFR 50 are used to adjust the actual number of monitored exceedances of the standard to yield the annual number of expected exceedances ("expected exceedance days") at an air quality monitoring site. We determine if an area meets the one-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (i.e., "average number of expected exceedance days") during the applicable 3-year period. See the General Preamble, 57 FR 13498, April 16, 1992. The term "exceedance" is used throughout this document to describe a daily maximum ozone measurement that is equal to or exceeds 0.125

ppm which is the level of the one-hour standard after rounding. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of expected exceedances occur at the same monitor. For more information please refer to 40 CFR 50.9, “National one-hour primary and secondary ambient air quality standards for ozone” and “Interpretation of the one-hour Primary and Secondary National Ambient Air Quality Standards for Ozone” (40 CFR part 50, appendix H).

#### B. EPA’s Analyses of the One-Hour Ozone Data for the Springfield (Western Massachusetts) Area

Tables 1, 2 and 3 show one-hour ozone data for the Western Massachusetts area, for each of the three-year periods 2001-2003, 2007-2009, and 2008-2010. The tables show the actual exceedance days, the expected exceedance days, and the 3-year average expected exceedance rate for each monitor in the Western Massachusetts area. The standard for the one-hour ozone NAAQS is 0.12 ppm and attainment is achieved when the number of expected exceedances is 1.0 or less averaged over a three-year period. EPA calculates the expected exceedances based on the number of times a site exceeds the 0.12 ppm standard averaged over a three-year period and then adjusts for missing data. In short, if the three-year average expected exceedances rate is less than or equal to 1.0, the site meets the one-hour ozone NAAQS. If all sites in the area meet the one-hour ozone standard, then the area meets the one-hour NAAQS during that time period.

<b>EPA AQS ID</b>	<b>Site</b>	<b>Year</b>	<b>Actual Exceedance Days over 0.124 ppm</b>	<b>Expected Exceedance Days</b>	<b>3-year Average Expected Exceedance Rate</b>
250034002	Adams	2001	0	0.0	0.0
		2002	0	0.0	
		2003	0	0.0	
250130003	Agawam <sup>3</sup>	2001	0	0.0	--
		2002	2	2.0	
		2003	--	--	
250130008	Chicopee	2001	2	2.0	2.0
		2002	4	4.0	
		2003	0	0.0	
250150103	N. Amherst	2001	1	1.0	0.7
		2002	1	1.0	
		2003	0	0.0	
250154002	Ware	2001	2	2.0	1.3
		2002	2	2.0	
		2003	0	0.0	

<b>EPA AQS ID</b>	<b>Site</b>	<b>Year</b>	<b>Actual Exceedance Days over 0.124 ppm</b>	<b>Expected Exceedance Days</b>	<b>3-year Average Expected Exceedance Rate</b>
250034002	Adams	2007	0	0.0	0.0
		2008	0	0.0	
		2009	0	0.0	
250130008	Chicopee	2007	3	3.0	1.0
		2008	0	0.0	
		2009	0	0.0	
250150103	N. Amherst	2007	0	0.0	0.0
		2008	0	0.0	
		2009	0	0.0	
250154002	Ware	2007	2	2.1	0.7
		2008	0	0.0	
		2009	0	0.0	

<sup>3</sup> Site shutdown in 2002. No expected exceedance rate calculated for 2001-2003.

<b>EPA AQS ID</b>	<b>Site</b>	<b>Year</b>	<b>Actual Exceedance Days over 0.124 ppm</b>	<b>Expected Exceedance Days</b>	<b>3-year Average Expected Exceedance Rate</b>
250034002	Adams	2008	0	0.0	0.0
		2009	0	0.0	
		2010	0	0.0	
250130008	Chicopee	2008	0	0.0	0.0
		2009	0	0.0	
		2010	0	0.0	
250150103	N. Amherst	2008	0	0.0	0.0
		2009	0	0.0	
		2010	0	0.0	
250154002	Ware	2008	0	0.0	0.0
		2009	0	0.0	
		2010	0	0.0	

EPA has reviewed and evaluated these data in order to make two separate proposed determinations. First, EPA addresses whether the Western Massachusetts area attained the one-hour ozone standard by the applicable attainment date. As shown in Table 1, the Western Massachusetts one-hour ozone nonattainment area did not meet its attainment deadline of December 31, 2003, since two ozone monitors in the area had expected exceedance rates above 1.0. However, as Table 2 shows, the area subsequently attained the one-hour ozone standard based on 2007-2009 ozone data, and the area continues to meet the one-hour standard based on complete, quality- assured and certified data for 2008-2010 (Table 3). Preliminary ozone data available for 2011 show that the area continues in attainment of the one-hour ozone standard. Thus, EPA is also proposing to determine that based on complete, quality-assured and certified ozone monitoring data, the Western Massachusetts area has attained and continues to attain the one-hour ozone NAAQS.

#### IV. PROPOSED DETERMINATIONS

For the reasons set forth in this notice, EPA is proposing to determine that the Western Massachusetts one-hour ozone nonattainment area did not meet its applicable one-hour ozone attainment date of December 31, 2003, based on complete, quality-assured and certified ozone monitoring data for 2001-2003.<sup>4</sup> Separate from and independent of this proposed determination, EPA is also proposing to determine that the Western Massachusetts one-hour ozone nonattainment area is currently attaining the one-hour ozone standard, based on , complete, quality-assured and certified ozone monitoring data for the 2007-2009 and 2008-2010 monitoring periods. Preliminary data available for 2011 indicate that the area continues to attain the one-hour NAAQS. If EPA finalizes its proposed determination that the Western Massachusetts area is currently attaining the one-hour ozone standard, any obligation to submit contingency measures for the one-hour ozone standard shall be suspended.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this Federal Register.

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<sup>4</sup> For the reasons set forth above, a final determination that the Western Massachusetts one-hour ozone nonattainment area did not meet its applicable one-hour ozone attainment deadline will not result in reclassification of the area for the one-hour standard, nor in any additional air quality obligations for the area.

## V. Statutory and Executive Order Reviews

These actions propose to make determinations of attainment or nonattainment based on monitored air quality data and do not impose additional requirements beyond those imposed by statute or regulation. For that reason, these proposed actions:

- are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are 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

- do 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 actions 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 11, 2012

H. Curtis Spalding,  
Regional Administrator,  
EPA New England

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