



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0638; FRL-9960-02-Region 3]

**Determination of Attainment by the Attainment Date for the 2008 Ozone Standard;
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area (the Philadelphia Area) has attained the 2008 ozone national ambient air quality standard (NAAQS) by the July 20, 2016 attainment date. This proposed determination is based on complete, certified, and quality assured ambient air quality monitoring data for the Philadelphia Area for the 2013-2015 monitoring period. This proposed determination does not constitute a redesignation to attainment. This action is being taken under the Clean Air Act (CAA).

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2016-0638 at <https://www.regulations.gov>, or via email to rehn.brian@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or

other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814-2036, or by e-mail at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Requirement – Determination of Attainment by the Attainment Date

Section 181(b)(2) of the CAA requires EPA to determine, within 6 months of an ozone nonattainment area’s attainment date, whether that area attained the ozone standard by that date.

Section 181(b)(2) of the CAA also requires that areas that have not attained the standard by their attainment deadlines be reclassified to either the next higher classification (*e.g.*, marginal to moderate, moderate to serious, etc.) or to the classifications applicable to the areas’ design values in Table 1 of 40 CFR 51.1103. CAA section 181(a)(5) provides a mechanism by which the EPA Administrator may grant a 1-year extension of an area’s attainment deadline, provided that the relevant states meet certain criteria.

B. The Philadelphia Area and its Attainment Date

On July 18, 1997 at 62 FR 38855, EPA promulgated a revised ozone NAAQS of 0.08 parts per million (ppm), averaged over eight hours. This standard was determined to be more protective of public health than the previous 1979 1-hour ozone standard. In 2008, EPA revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm (the 2008 ozone NAAQS). *See* 73 FR 16436 (March 27, 2008). In a May 21, 2012 final rule, the Philadelphia Area was designated as marginal nonattainment for the more stringent 2008 ozone NAAQS, effective on July 20, 2012. 77 FR 30088, 30143. The Philadelphia Area consists of Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania; Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem Counties in New Jersey; Cecil County, Maryland; and New Castle County in Delaware. *See* 40 CFR 81.331, 81.339, 81.321, and 81.308.¹

In a separate rulemaking action, also published on May 21, 2012 and effective on July 20, 2012, EPA established the air quality thresholds that define the classifications assigned to all nonattainment areas for the 2008 ozone NAAQS (the Classifications Rule). *See* 77 FR 30160. This rule also established December 31 of each relevant calendar year as the attainment date for all nonattainment area classification categories. Section 181 of the CAA provides that the attainment deadline for ozone nonattainment areas is “as expeditiously as practicable” but no later than the prescribed dates provided in Table 1 of that section. In the Classifications Rule, EPA translated the deadlines in Table 1 of CAA section 181 for purposes of the 2008 standard by measuring those deadlines from the effective date of the new designations, but extended those

¹ In 2015, EPA revised the 8-hour ozone NAAQS from 0.075 ppm to 0.070 ppm (the 2015 ozone NAAQS). *See* 80 FR 65292 (October 26, 2015). The initial area designations for the 2015 ozone NAAQS are required by October 2017. Those designations will be based on ambient air quality monitoring data for the 2014-2016 monitoring period. This proposed rulemaking action does not address the 2015 ozone NAAQS.

deadlines by several months to December 31 of the corresponding calendar year. Pursuant to a challenge of EPA's interpretation of the attainment deadlines, on December 23, 2014, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision rejecting, among other things, the Classifications Rule's attainment deadlines for the 2008 ozone nonattainment areas. *NRDC v. EPA*, 777 F.3d 456, 464– 69 (D.C. Cir. 2014). The D.C. Circuit ruled that EPA did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. Accordingly, as part of the final rule, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan (SIP) Requirements," for the 2008 ozone NAAQS (80 FR 12264, March 6, 2015) (hereinafter, SIP Requirements Rule), EPA modified the maximum attainment dates for all nonattainment areas for the 2008 ozone NAAQS, consistent with the D.C. Circuit's decision. The SIP Requirements Rule established a maximum deadline for marginal nonattainment areas of three years from the effective date of designation, or July 20, 2015, to attain the 2008 ozone NAAQS. *See* 80 FR at 12268; 40 CFR 51.1103.

In a final rulemaking action published on May 4, 2016, EPA determined that the Philadelphia Area did not attain the 2008 ozone NAAQS by its July 20, 2015 attainment date, based on ambient air quality monitoring data for the 2012 through 2014 monitoring period. In that same action, EPA determined that the Philadelphia Area qualified for a 1-year extension of its attainment date, as provided in section 181(a)(5) of the CAA and interpreted by regulation at 40 CFR 51.1107, and granted the requested extension. EPA established the new attainment date for

the Philadelphia Area as July 20, 2016 to be based on ambient air quality monitoring data for the 2013-2015 monitoring period. *See* 81 FR 26697 (May 4, 2016).²

II. EPA's Analysis of the Relevant Air Quality Data

Under EPA regulations at 40 CFR part 50, appendix P, the 2008 ozone NAAQS is attained at a monitoring site when the three-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm. This three-year average is referred to as the design value. When the design value is less than or equal to 0.075 ppm at each ambient air quality monitoring site within the area, then the area is deemed to be meeting the NAAQS. 40 CFR part 50, appendix P dictates that concentrations shall be reported in ppm to the third decimal place, with additional digits to the right being truncated. Thus, a computed three-year average ozone concentration of 0.0759 ppm or lower would meet the standard, but 0.0760 ppm or higher is over the standard.

EPA's proposed determination of attainment for the Philadelphia Area is based upon data that has been collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS) database. Ambient air quality monitoring data for the three-year period must also meet a data completeness requirement. 40 CFR part 50, appendix P. The ambient air quality monitoring data completeness requirement is met when the three-year average of the percent (%) of required monitoring days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness, as determined according to 40 CFR part 50, appendix P. Tables 1 and 2 show the data completeness and ozone

² On July 5, 2016, the State of Delaware filed a petition for review (the Petition) of that portion of EPA's May 4, 2016 final rule granting the Philadelphia Area a 1-year extension of the 2008 ozone NAAQS attainment date, under CAA § 181(a)(5), 42 U.S.C. §7511(a)(5), from July 20, 2015, to July 20, 2016. The Petition was filed in the U.S. Court of Appeals for the District of Columbia Circuit. *See State of Delaware Department of Natural Resources & Environmental Control v. United States Environmental Protection Agency*, No. 16-1230.

design values, respectively, for each of the 18 monitors in the Philadelphia Area for years 2013 through 2015.

Table 1. 2013-2015 Philadelphia Area Ozone Monitor Data Completeness

State	County	Site ID	% Data Completeness			2013-2015 Average % Completeness	Comment
			2013	2014	2015		
Delaware	New Castle	100031007	97	94	100	97	
		100031010	77	74	91	81	Incomplete ^a
		100031013	91	99	93	94	
		100032004	86	83	87	85	Incomplete ^a
Maryland	Cecil	240150003	98	95	89	94	
New Jersey	Atlantic	340010006	96	99	96	97	
New Jersey	Camden	340070002	100	100	100	100	
New Jersey	Camden	340071001	96	100	97	98	
New Jersey	Cumberland	340110007	99	100	99	99	
New Jersey	Gloucester	340150002	99	84	96	93	
New Jersey	Mercer	340210005	100	100	99	100	
New Jersey	Mercer	340219991	92	100	99	97	
New Jersey	Ocean	340290006	100	100	100	100	
Pennsylvania	Bucks	420170012	100	99	96	98	
Pennsylvania	Chester	420290100	100	94	97	97	
Pennsylvania	Delaware	420450002	100	98	96	98	
Pennsylvania	Montgomery	420910013	100	99	99	99	
Pennsylvania	Philadelphia	421010004	100	98	100	99	
Pennsylvania	Philadelphia	421010024	97	94	100	97	
Pennsylvania	Philadelphia	421010048	6	93	98	66	Site began operation October 2013 ^b
Pennsylvania	Philadelphia	421011002	82			27	Site shut down in July 2013 ^b .

Notes:

a. Monitoring data at these sites does not meet completeness criteria set forth in 40 CFR part 50 Appendix P, section 2.3(b).

b. The monitoring site shutdowns and startups are included in the City of the Philadelphia's Air Management Services (AMS) July 2013 Annual Network Plan. AMS submitted the monitoring plan to EPA on July 1, 2013, and EPA approved it on December 10, 2013.

As shown in Table 1, two monitoring sites in Philadelphia County do not meet the completeness criteria set out in 40 CFR part 50, appendix P. However, the reasons for the completeness issues were the shutdown of one monitor and startup of another monitor that were approved by EPA in the City of Philadelphia's AMS July 2013 Annual Network Plan. Because three years of complete data is not possible at these monitoring sites, EPA does not look for valid design values at these sites.

Table 1 also shows that two monitors in New Castle County, Delaware, AQS ID # 100031010 (also known as the "Brandywine" monitor), and AQS ID # 100032004 (also known as the "MLK" monitor), which are maintained by the Delaware Department of Natural Resources and Environmental Control (DNREC), had insufficient data in the 2013 through 2015 period to meet the data completeness requirements in 40 CFR part 50, appendix P. As stated previously, the three-year average of the percent of required monitoring days with valid ambient monitoring data must be greater than 90%, with no single year having less than 75% data completeness. The ozone season for the Philadelphia Area³ runs from April 1 through October 31. Therefore, a complete ozone season for this area contains 214 possible monitoring days, with at least 160 days of valid ozone season ambient monitoring data needed to meet the 75% data completeness requirement. Because of missed monitoring days at the Brandywine and MLK monitors (AQS ID # 100031010 and # 100032004), the design value for these two monitors would not be considered valid without further measures being taken to meet the data completeness requirements for these two monitors. Therefore, EPA conducted an analysis of the meteorological data and a regression analysis in order to meet the data completeness requirements for the Brandywine and MLK monitors. EPA also conducted a substitution

³ 40 CFR part 58, appendix D specifies the applicable "ozone season" for the Philadelphia Area.

analysis as a check on the validity of the meteorological analysis and regression analysis. Using these methods, EPA was able to “add” enough ozone season days for each of the two monitors to meet the data completeness requirements of 40 CFR part 50, appendix P. Further detail on the missing monitor data at these two Delaware monitors and on the data completeness analysis undertaken by EPA for those monitors is provided in the January 10, 2017 Technical Support Document (TSD) prepared by EPA. This TSD is included in the docket for this rulemaking (EPA-R03-OAR-2016-0638) and is also available online at www.regulations.gov.

After ensuring data completeness for those two Delaware monitors (AQS ID # 100031010 and # 100032004), EPA reviewed the ozone ambient air quality monitoring data for the monitoring period from 2013 through 2015 for all the monitors in the Philadelphia Area, as recorded in the AQS database, in accordance with the requirements of 40 CFR part 50. As shown in Table 2, below, all 2013-2015 design values are less than or equal to 0.075 ppm. Therefore, EPA concludes the Philadelphia Area has attained the 2008 ozone NAAQS by July 20, 2016 based upon monitored ozone data for the 2013 through 2015 period in accordance with requirements in 40 CFR part 50.

Table 2. 2013-2015 Philadelphia Area 2008 Ozone Design Values

State	County	Site ID	4th Highest Daily Maximum			2013-2015 Design Value (ppm)
			2013	2014	2015	
Delaware	New Castle	100031007	0.062	0.071	0.065	0.066
		100031010	0.063	0.074	0.071	0.069 ^a
		100031013	0.067	0.069	0.069	0.068
		100032004	0.067	0.068	0.072	0.069 ^a
Maryland	Cecil	240150003	0.072	0.074	0.074	0.073
New Jersey	Atlantic	340010006	0.070	0.061	0.068	0.066
New Jersey	Camden	340070002	0.065	0.068	0.079	0.070
New Jersey	Camden	340071001	0.068	0.068	0.072	0.069
New Jersey	Cumberland	340110007	0.061	0.067	0.068	0.065

New Jersey	Gloucester	340150002	0.073	0.070	0.076	0.073
New Jersey	Mercer	340210005	0.070	0.071	0.073	0.071
New Jersey	Mercer	340219991	0.069	0.071	0.075	0.071
New Jersey	Ocean	340290006	0.070	0.072	0.075	0.072
Pennsylvania	Bucks	420170012	0.073	0.071	0.082	0.075
Pennsylvania	Chester	420290100	0.068	0.071	0.068	0.069
Pennsylvania	Delaware	420450002	0.069	0.073	0.074	0.072
Pennsylvania	Montgomery	420910013	0.069	0.072	0.073	0.071
Pennsylvania	Philadelphia	421010004	0.047	0.058	0.057	0.054
Pennsylvania	Philadelphia	421010024	0.068	0.072	0.079	0.073
Pennsylvania	Philadelphia	421010048	0.036	0.068	0.078	-
Pennsylvania	Philadelphia	421011002	0.071	-	-	-

Notes:

a. Monitoring data at these sites did not meet completeness criteria set forth in 40 CFR part 50 Appendix P 2.3(b) prior to EPA undertaking the analyses set forth in the TSD.

EPA acknowledges that preliminary 2014 through 2016 ambient air quality monitoring data, which has not been quality assured or certified, shows potential violations of the 2008 ozone NAAQS in the Philadelphia Area.⁴ However, this does not affect EPA’s proposed determination of attainment by the attainment date for section 181(b)(2) of the CAA. This determination for section 181(b)(2) is an evaluation of the Philadelphia Area’s design value as of its attainment date, July 20, 2016, considering 2013-2015 ozone monitored data, and does not consider air quality monitoring data from any other monitoring period.

III. Proposed Action

EPA evaluated ozone data from air quality monitors in the Philadelphia Area in order to determine the Area’s attainment status under the 2008 ozone NAAQS. State and local agencies

⁴ On January 19, 2017, EPA received an email request from the Pennsylvania Department of Environmental Protection (PADEP) requesting EPA remove certain data from the PADEP Philadelphia monitors based on exceptional events. EPA is considering PADEP’s request related to monitoring data for 2016, but has not taken further action at this time.

responsible for ozone air monitoring networks supplied and quality assured the data. All the monitoring sites in the Philadelphia Area had design values equal to or less than 0.075 ppm based on the 2013 through 2015 monitoring period. Considering that review, EPA concludes that this area attained the 2008 ozone NAAQS based on complete, quality assured and certified data for the 2013 through 2015 ozone seasons. Thus, EPA proposes to determine, in accordance with its statutory obligations under section 181(b)(2)(A) of the CAA, that the Philadelphia Area attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016. EPA's proposed determination is in accordance with applicable regulatory requirements under 81 FR 26697 (with respect to issuance of the 1-year extension of the attainment date for Philadelphia Area) and with the related provisions of the SIP Requirements Rule (40 CFR 51.1103).

This proposed determination of attainment does not constitute a redesignation to attainment. Redesignations require states to meet a number of additional criteria, including EPA approval of a state plan to maintain the air quality standard for 10 years after redesignation. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

This rulemaking action proposes to make a determination of attainment of the 2008 ozone NAAQS based on air quality and, if finalized, would not impose additional requirements. For that reason, this proposed determination of attainment:

- 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);

- 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 (Public Law 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 rulemaking to determine that the Philadelphia Area attained the 2008 ozone NAAQS by its July 20, 2016 attainment date does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this proposed determination of attainment does not apply in Indian country located in the states and because 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, Ozone, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: March 2, 2017.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

Dated: March 1, 2017.

Catherine McCabe,
Acting Regional Administrator,
Region II.

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