



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0369; FRL-9960-03-Region 3]

**Determination of Attainment by the Attainment Date for the 2008 Ozone Standard;
District of Columbia, Maryland, and Virginia; Washington, DC-MD-VA Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Washington, DC-MD-VA marginal ozone nonattainment area (the Washington 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 Washington Area for the 2013 through 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-2016-0369 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: Gavin Huang, (215) 814-2042, or by e-mail at huang.gavin@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 Washington 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 Washington Area was designated as marginal nonattainment for the more stringent 2008 ozone NAAQS, effective on July 20, 2012. 77 FR 30088. The Washington Area consists of the Counties of Calvert, Charles, Frederick, Montgomery, and Prince George's in Maryland; the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park Cities in Virginia; and the entirety of the District of Columbia. *See* 40 CFR 81.309, 81.321, and 81.347.

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 rulemaking 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 that are 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 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, finding that EPA did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC v. EPA*, 777 F.3d 456, 464–69 (D.C. Cir. 2014). 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 Washington Area did not attain the 2008 ozone NAAQS by its July 20, 2015 attainment date, based on ambient air quality monitoring data for the 2012-2014 monitoring period. In that same action, EPA determined that the Washington 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. With that final rulemaking action, the new attainment date for the Washington Area is July 20, 2016. *See* 81 FR 26697 (May 4, 2016).

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 designated nonattainment area, then the area is deemed to be meeting the NAAQS. The rounding convention under 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 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 meet a data completeness requirement. 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 design values, respectively, for each monitor in the Washington Area for the years 2013-2015.

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

County, State	Site ID	% Data Completeness			2013-2015 Average % Completeness	Comment
		2013	2014	2015		
District of Columbia	110010041	99	0	0	33	Construction caused temporary site shut down in 2014. ^a

	110010043	99	99	99	99	
	110010050	78 ^d	100	99	92 ^d	The site began operating in January 2013. It was shut down from July to November 2013 due to building repairs. ^b
Calvert, MD	240090011	99	100	96	98	
Charles, MD	240170010	90	97	98	95	
Frederick, MD	240210037	97	96	97	96	
Montgomery, MD	240313001	98	99	99	99	
Prince George's, MD	240330030	100	99	95	98	
	240338003	100	98	99	99	
	240339991	99 ^e	100 ^e	100 ^e	99 ^e	Clean Air Status and Trends Network (CASTNET) monitor. ^c
Arlington, VA	510130020	94	100	99	98	
Fairfax, VA	510590030	99	91	97	96	
Loudoun, VA	511071005	100	99	93	97	
Prince William, VA	511530009	100	100	99	100	

Notes:

- a. The temporary shutdown was included in the District of Columbia Department of Energy & Environment (DC DOEE) July 2015 Annual Network Plan, which was submitted to EPA on June 25, 2015 and approved by EPA on November 12, 2015.
- b. The temporary shutdown was not included in the DC DOEE's Annual Network Plan.
- c. EPA's Clean Air Markets Division (CAMD) operates this CASTNET monitor.
- d. Completeness value after substitution analysis. The 2013 data was previously incomplete due to a temporary shutdown. The details of the analysis conducted by DC DOEE and EPA's approval letter of the substitution analysis are available online at <https://www.regulations.gov>, Docket number EPA-R03-OAR-2016-0369.
- e. Completeness value after substitution analysis. The data was previously incomplete due to malfunctions. The details of the analysis conducted by CAMD and EPA's approval letter of the substitution analysis are available online at <https://www.regulations.gov>, Docket number EPA-R03-OAR-2016-0369.

As shown in Table 1, several monitoring sites did not meet the completeness criteria set out in 40 CFR part 50, appendix P. For monitor 110010041 in the District of Columbia, the reason for the completeness issue was a monitor shutdown, approved into DC DOEE's annual network monitoring plan. Because three years of complete data is not possible at this monitoring site, EPA does not look for valid design values there in determining attainment with the NAAQS.

For monitor 110010050 in the District of Columbia, the temporary shutdown due to construction was not approved into the associated monitoring plan. For EPA’s monitor 240339991 in Prince George’s County, Maryland, there were malfunctions that led to completeness issues. In order to obtain a valid design value for these monitors, DC DOEE and EPA’s CAMD conducted completeness demonstrations of “missing days assumed less than the standard” to show that had the monitors been operational on days for which data is missing, the ozone levels recorded would have been below the standard. DC DOEE and EPA performed an analysis of the meteorological data and a regression analysis in order to meet the data completeness requirements for these monitors. EPA also conducted for these two monitors a substitution 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 to the two monitors to meet the data completeness requirements of 40 CFR Part 50, appendix P. The details of these analyses and EPA’s approval letters for both data substitution analyses are available online at <https://www.regulations.gov>, Docket number EPA-R03-OAR-2016-0369.

Consistent with the requirements contained in 40 CFR part 50, appendix P, EPA has reviewed the ozone ambient air quality monitoring data for the monitoring period from 2013 through 2015 for the Washington Area, as recorded in the AQS database. As shown in Table 2, all valid 2013-2015 design values are less than or equal to 0.075 ppm. Therefore, EPA concludes that the Washington Area has attained the 2008 ozone NAAQS, considering 2013-2015 data.

Table 2. 2013-2015 Washington Area 2008 Ozone Design Values (ppm)

County, State	Site ID	4th Highest Daily Max Value			2013-2015 Design Values
		2013	2014	2015	
District of Columbia	110010041	0.062	0.047*	---	---
	110010043	0.066	0.068	0.072	0.068

	110010050	0.066	0.069	0.072	0.069
Calvert, MD	240090011	0.067	0.070	0.067	0.068
Charles, MD	240170010	0.064	0.067	0.068	0.066
Frederick, MD	240210037	0.069	0.063	0.070	0.067
Montgomery, MD	240313001	0.069	0.064	0.072	0.068
Prince George's MD	240330030	0.068	0.065	0.072	0.068
	240338003	0.069	0.069	0.069	0.069
	240339991	0.072	0.069	0.067	0.069
Arlington, VA	510130020	0.067	0.071	0.073	0.070
Fairfax, VA	510590030	0.067	0.065	0.072	0.068
Loudoun, VA	511071005	0.066	0.063	0.071	0.066
Prince William, VA	511530009	0.066	0.062	0.067	0.065

Notes: Only valid design values for monitors meeting the completeness criteria are shown.

*Annual value does not meet completeness criteria.

III. Proposed Action

EPA evaluated ozone data from air quality monitors in the Washington Area in order to determine the Washington Area's attainment status under the 2008 ozone NAAQS. Federal, state, and local agencies responsible for ozone air monitoring networks supplied and quality assured the data. All the monitoring sites with valid data had design values equal to or less than 0.075 ppm based on the 2013 through 2015 monitoring period. Considering that review, EPA has concluded that the Washington 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 Washington 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 the Washington 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 on the 2008 ozone NAAQS based on air quality and, if finalized, would not impose additional requirements. For that reason, this proposed determination of attainment:

- 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).

This SIP, proposing to determine that the Washington Area attained the 2008 ozone NAAQS by its July 20, 2016 attainment date, is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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: February 22, 2017.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

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