



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2018-0422; FRL-9981-04-Region 2]

### **Approval and Promulgation of Air Quality Implementation Plans; New York; Determination of Attainment of the 2008 8-Hour Ozone National Ambient Air Quality Standard for the Jamestown, New York Marginal Nonattainment Area**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to make a determination that the Jamestown, New York Marginal Nonattainment Area (Jamestown Area or Area) has attained the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). This proposed determination is based upon complete, quality-assured, and certified ambient air monitoring data that shows the Area has monitored attainment of the 2008 8-hour ozone NAAQS for both the 2012-2014 and 2015-2017 monitoring periods. This action does not constitute a redesignation to attainment. The Jamestown Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA determines that the Jamestown Area meets the Clean Air Act (CAA) requirements for redesignation to attainment, including an approved maintenance plan. This action is being taken under the 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 Number **EPA-R02-OAR-2018-0422** at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from Regulations.gov. The 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. The 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber, (212) 637-3381, or by email at [wieber.kirk@epa.gov](mailto:wieber.kirk@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average

concentration, averaged over three years) to provide increased protection of public health and the environment. 73 FR 16436 (March 27, 2008).<sup>1</sup> The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. On May 21, 2012 (77 FR 30088), effective July 20, 2012, EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008-2010) of air monitoring data. The Jamestown Area (specifically, Chautauqua County) was designated as a marginal ozone nonattainment area. See 40 CFR 81.333.

Marginal areas designated in the May 21, 2012 rule are required to attain the 2008 8-hour ozone NAAQS by the applicable deadline of July 20, 2015. See 40 CFR 51.903. On May 4, 2016, EPA determined that complete, quality-assured, and certified air quality monitoring data from the 2012-2014 monitoring period indicated that the Jamestown Area attained the 2008 8-hour ozone NAAQS by that attainment date. See 81 FR 26697.

Under the provisions of EPA's ozone implementation rule (40 CFR 51.918), if EPA also issues a determination (as it is proposing to do here) that an area is attaining the relevant standard through a rulemaking that includes public notice and comment (known informally as a Clean Data Determination), the requirements for a State to submit certain required planning SIPs related to attainment of the eight-hour NAAQS, such as attainment demonstrations, reasonable further

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<sup>1</sup> For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, appendix I.

progress plans and contingency measures, shall be suspended. EPA's action only suspends the requirements to submit the SIP revisions discussed above.<sup>2</sup>

This suspension remains in effect until such time, if ever, 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 2008 8-hour ozone NAAQS. Although these requirements are suspended, if the State provides these submissions to EPA for review and approval at any time, EPA is not precluded from acting upon them. The determination of attainment is not equivalent to a redesignation under section 107(d)(3) of the CAA. The designation status of the Jamestown Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

Additionally, the determination of attainment is separate from, and does not influence or otherwise affect, any future designation determination or requirements for the Jamestown Area based on any new or revised ozone NAAQS, and it remains in effect regardless of whether EPA designates this Area as a nonattainment area for purposes of any new or revised ozone NAAQS.

## **II. EPA's Evaluation**

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<sup>2</sup> For more information on the EPA's Clean Data Policy, see <https://www.epa.gov/ozone-pollution/redesignation-and-clean-data-policy-cdp> for documents such as the Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" (May 10, 1995).

For ozone, an area may be considered to be attaining the 2008 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR part 50, based on three complete, consecutive calendar years of quality-assured ambient air monitoring data. Under EPA regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.075 ppm. See 40 CFR part 50, appendix P. This 3-year average is referred to as the design value. When the design value is less than or equal to 0.075 ppm at each monitor within the area, then the area is attaining the NAAQS. Also, the data meets the regulatory completeness requirement when the average percent of days with valid ambient monitoring data is greater than or equal to 90 percent (%), and no single year has less than 75% data completeness as determined in appendix P of 40 CFR part 50. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS).

EPA has reviewed the complete, quality-assured, and certified ozone ambient air monitoring data for the monitoring periods for both 2012-2014 and 2015-2017 for the Jamestown Area. For both monitoring periods, the design values for the Jamestown monitor in Chautauqua County are less than or equal to 0.075 ppm, and the monitor meets the data completeness requirements (see Table 1). Based on the 2012-2014 data from the AQS database and consistent with the requirements contained in 40 CFR part 50, EPA has concluded that this Area attained the 2008 8-hour ozone NAAQS. In addition, complete, quality-assured, and certified data through the 2017 ozone season demonstrate that the area continues to attain the standard.

Table 1

Jamestown Area 2008 8-Hour Ozone Design Values

County	Site ID	2012-2014 Design Value (ppm)	2012-2014 Average Percent Data Completeness	2015-2017 Design Value (ppm)	2015-2017 Average Percent Data Completeness
Chautauqua	36-013-0006	0.071	97	0.068	96

The data in Table 1 are available in EPA's AQS database. The AQS report with this data is available in the docket for this rulemaking under docket number EPA-R02-OAR-2018-0422 and available online at [www.regulations.gov](http://www.regulations.gov), docket number EPA-R02-OAR-2018-0422.

### III. Proposed Action

EPA is proposing to make a determination that the Jamestown Area has attained the 2008 8-hour ozone NAAQS. This proposed determination (informally known as a Clean Data Determination) is based upon complete, quality assured, and certified ambient air monitoring data that show the Jamestown Area has monitored attainment of the 2008 8-hour ozone NAAQS for the 2012-2014 and 2015-2017 monitoring periods. Complete and quality assured and certified data for these periods demonstrate that the area continues to attain the standard during both time periods. As provided in 40 CFR 51.918, if EPA's determination that this area has attained the 8-hour ozone standard is made final, it would suspend the requirements under CAA section 182(b)(1) for submission of a reasonable further progress plan and ozone attainment demonstration. In addition, such a final determination would mean the requirements of CAA section 172(c)(9) concerning submission of contingency measures and any other planning SIP relating to attainment of the 2008 8-hour ozone NAAQS shall be suspended for so long as the Jamestown Area continues to attain the 2008 8-hour ozone NAAQS. Although these requirements would be

suspended, EPA would not be precluded from acting upon these elements at any time if submitted to EPA for review and approval.

Finalizing this determination would not constitute a redesignation of the Jamestown Area to attainment for the 2008 8-hour ozone NAAQS under CAA section 107(d)(3). This proposed determination of attainment also does not involve approving any maintenance plan for the Jamestown Area and does not determine that the Jamestown Area has met all the requirements for redesignation under the CAA, including that the attainment be due to permanent and enforceable measures. Therefore, the designation status of the Jamestown Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA takes final rulemaking action to determine that such Area meets the CAA requirements for redesignation to attainment. 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 action proposes to make an attainment determination 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 action:

- 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- 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, the SIP is not approved to apply on any Indian reservation land 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Volatile organic compounds.

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

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Dated: July 3, 2018.

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Peter D. Lopez,  
Regional Administrator,  
Region 2

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