



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2018-0422; FRL-9984-81-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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing 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 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: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2018-0422. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., 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 electronically through <http://www.regulations.gov>.

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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).¹ 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

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

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

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

² 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).

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.

II. EPA's Evaluation

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).

As was discussed in EPA's July 20, 2018 (83 FR 34506) proposal, 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. 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.

III. Comments Received in Response to EPA's Proposed Action

On July 20, 2018 (83 FR 34506), EPA proposed to make a determination that the Jamestown Area has attained the 2008 8-hour ozone NAAQS. In response to EPA's July 20, 2018 proposed determination for the Jamestown Area, EPA received several comments from the public during the 30-day public comment period. After reviewing the comments, EPA has determined that most of the comments are outside the scope of our proposed action or fail to identify any material issue necessitating a response. The comments do not raise issues germane to EPA's proposed action. For this reason, EPA will not provide a specific response to those comments. Those comments may be viewed under Docket ID Number EPA-R02-OAR-2018-0422 on the <http://www.regulations.gov> website. EPA did however receive one comment that is germane to EPA's proposed action.

Comment: Please consider keeping plans in place to monitor and follow up with the ozone level in Jamestown. Keeping a close eye on data and holding people accountable for meeting a standard of 0.075 ppm ozone may be more likely to continue the downward trend in ozone than if we just stop communicating with local leadership on this issue.

Response: This 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. While this determination of attainment for the Jamestown Area suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the CAA, it does not suspend or rescind the requirements of CAA sections 110(a)(2)(B) and (I) for monitoring and implementing the various ozone related emissions reduction control strategies that have been adopted by New York State and approved by EPA over the years. Therefore, the New York State Department of Environmental Conservation (NYSDEC) and EPA will continue to assess the ozone ambient air monitoring data for the Jamestown monitor in Chautauqua County. If certified air quality data indicates issues with continuing attainment of the 2008 ozone NAAQS, the EPA will, to the extent necessary, work with NYSDEC and use appropriate CAA authorities to address those air quality issues.

IV. Final Action

EPA is finalizing a determination that the Jamestown Area has attained the 2008 8-hour ozone NAAQS. This 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, EPA's determination that this area has attained the 8-hour ozone standard suspends the requirements under CAA section 182(b)(1) for submission of a reasonable further progress plan and ozone attainment demonstration. In addition, this final determination means 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 does not constitute a redesignation of the Jamestown Area to attainment for the 2008 8-hour ozone NAAQS under CAA section 107(d)(3). This 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.

V. Statutory and Executive Order Reviews

This action finalizes an attainment determination based on air quality data, resulting in the suspension of certain Federal requirements. The action 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 this action is not significant 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 attainment determination does not 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).

The Congressional Review Act, 5 U.S.C. section 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 this action 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).

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 **[insert date 60 days**

after date of publication in the Federal Register]. 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 action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

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.

Dated: September 19, 2018. Peter D. Lopez,
Regional Administrator,
Region 2.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart HH—New York

2. In §52.1683, add paragraph (q) to read as follows:

§52.1683 Control strategy: Ozone.

* * * * *

(q) EPA is determining that the Jamestown marginal nonattainment area (consisting of Chautauqua County) has attained the 2008 8-hour ozone national ambient air quality standard (NAAQS). This 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. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), this determination suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act for this area as long as the area does not monitor any violations of the 8-hour ozone standard. If a violation of the ozone NAAQS is monitored in this area, this determination shall no longer apply.