60-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2022-0987; FRL-10615-01-R3]

Clean Data Determination; District of Columbia, Maryland, and Virginia; Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard Clean Data Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Washington, District of Columbia-Maryland-Virginia (the Washington Area or the Area) nonattainment area has clean data for the 2015 8-hour ozone national ambient air quality standard (2015 ozone NAAQS). This proposed clean data determination (CDD) under EPA's Clean Data Policy is based upon quality-assured, quality-controlled, and certified ambient air quality monitoring data showing that the area has attained the 2015 ozone NAAQS based on 2019 to 2021 data available in EPA's Air Quality System (AQS) database. If finalized, this proposed CDD would suspend the obligations of the District of Columbia (DC), the State of Maryland (MD) and the Commonwealth of Virginia (VA) to submit certain attainment planning requirements for the nonattainment area for as long as the Area continues to attain the 2015 ozone NAAQS.

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-2022-0987 at www.regulations.gov, or via email to gordon.mike@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 www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Keila M. Pagán-Incle, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103-2852. The telephone number is (215) 814-2926. Ms. Pagán-Incle can also be reached via electronic mail at pagan-incle.keila@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us" or "our" are used, it is intended to refer to the EPA.

Table of Contents

I. Background and Purpose

On October 26, 2015 (80 FR 65291), EPA promulgated a revised primary and secondary

NAAQS for ozone to provide requisite increased protection of public health and welfare, respectively. In that action, EPA strengthened both standards from 0.075 parts per million (ppm) to 0.070 ppm, and retained the indicator (O_3), averaging time (8-hour) and form (annual fourth-highest daily maximum, averaged over three years) of the existing standards. Effective August 3, 2018 (83 FR 25776), EPA designated 52 areas throughout the country as nonattainment for the 2015 ozone NAAQS, including the Washington Area,[1] which was classified as a Marginal nonattainment area. This designation was based on certified air quality monitoring data from calendar years 2014 to 2016. In that action, EPA established the attainment date for Marginal nonattainment areas as three years from the effective date of the final designations. Thus, the attainment date for Marginal nonattainment areas for the 2015 ozone NAAQS was August 3, 2021.[2]

On April 13, 2022 (87 FR 21842), EPA proposed to determine that 24 Marginal areas, including the Washington Area, failed to attain the 2015 ozone NAAQS by their applicable attainment date and the areas were therefore going to be reclassified by operation of law as Moderate nonattainment upon the effective date of the final reclassification notice. On October 7, 2022 (87 FR 60897), EPA published the final action in the *Federal Register* stating that 22 Marginal areas or portions of areas failed to attain the standard by the applicable attainment date, including the Washington Area. In that action, EPA reclassified the Washington Area as Moderate nonattainment for the 2015 ozone NAAQS because it failed to attain the standard by the attainment date of August 3, 2021. This designation was based on quality-assured, quality-controlled, and certified ozone air quality monitoring data from calendar years 2018 to 2020. More recent air quality data from 2019 to 2021 indicates that the Washington Area is now attaining the 2015 ozone standard – the basis for EPA's proposed CDD.

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[1] The Washington Area consists of the following counties/cities: Calvert County, Charles County, Frederick County, Montgomery County, and Prince George's County in Maryland; Alexandria city, Arlington County, Fairfax County, Fairfax city, Falls Church city, Loudoun County, Manassas Park city, Manassas city, Prince William County in Virginia; and all of the District of Columbia. *See* 40 CFR 81.309, 81.321, and 81.347.
[2] *See* 83 FR 25776 (June 4, 2018).

II. EPA Clean Data Policy and Clean Data Determinations

Following enactment of the Clean Air Act (CAA) Amendments of 1990, EPA discussed its interpretation of the requirements for implementing the NAAQS in the "General Preamble for the Implementation of title I of the CAA Amendments of 1990" (General Preamble).[3] In 1995, based on the interpretation of CAA sections 171, 172, and 182 in the General Preamble, EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS.[4] Under the Clean Data Policy, for a nonattainment area that can demonstrate attainment of the standard before implementing CAA nonattainment measures, EPA interprets the requirements of the CAA that are specifically designed to help an area achieve attainment, including attainment demonstrations, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), reasonable further progress (RFP) demonstrations, emissions limitations and control measures as necessary to provide for attainment, and contingency measures, to be suspended for so long as air quality continues to meet the standard.[5]

EPA may issue a CDD under our Clean Data Policy when a nonattainment area is attaining the 2015 ozone NAAQS based on the most recent available data. EPA will determine whether the area has attained the 2015 ozone NAAQS based on available information, including air quality monitoring data for the affected area. If the CDD is made final, then certain attainment plan requirements for the area are suspended for so long as the area continues to attain the NAAQS.

Furthermore, the suspension of the obligation to submit an attainment plan is only

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[3] 57 FR 13498, 13564 (April 16, 1992).

[4] *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment areas Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995. (1995 John S. Seitz Memo). Further description of EPA's Clean Data Policy can be found in the "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2" (referred to as the Phase 2 Final Rule), (70 FR 71612, November 29, 2005). The Tenth, Seventh, and Ninth Circuit U.S. District Courts have upheld EPA rulemakings applying the Clean Data Policy. *See Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, No. 04–73032 (9th Cir., June 28, 2005) memorandum opinion.

[5] 1995 John S. Seitz memo.

appropriate where the area remains in attainment of the NAAQS. A CDD under the Clean Data Policy does not serve to alter the area's nonattainment designation. CDDs are not redesignations to attainment. For EPA to redesignate an area to attainment the state must submit, and EPA must approve, a redesignation request for the area that meets the requirements of CAA section 107(d)(3).

III. Analysis of Air Quality Data

EPA has reviewed the ambient air monitoring data for ozone, consistent with the requirements contained in 40 Code of Federal Regulations (CFR) part 50 and recorded in EPA's AQS database for the Washington Area from 2019 through 2022. On the basis of that review, EPA has concluded that this Area attained the 2015 ozone NAAQS at the end of the 2021 ozone season, based on certified 2019 to 2021 ozone data. In addition, preliminary ozone data for 2022 that are available in AQS, but not yet certified, is consistent with continued attainment of the 2015 ozone NAAQS.

Under EPA regulations, the 2015 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 0.070 ppm.[6] This 3-year average is referred to as the design value (DV). When calculating the DV, digits to the right of the third decimal place are truncated.[7] When the DV is less than or equal to 0.070 ppm at each monitor within the area, then the area is meeting the NAAQS. In addition, the 2015 ozone DVs are based solely on ozone season data.[8] Ozone season is defined for each state or portion of a state.[9] The ozone season for DC, MD and VA runs from March 1st to October 31st each year.[10] There is also a data completeness requirement that is met when the average percentage of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as

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[6] *See* 40 CFR 50.19(b).
[7] See 40 CFR part 50, appendix P.
[8] *See* 40 CFR 51.1300(b), which refers to 40 CFR part 50, appendix U.
[9] *See* 40 CFR 51.1300(j), which refers to 40 CFR part 58, appendix D, section 4.1, Table D-3.
[10] *Id.*

determined in Appendix I of 40 CFR part 50. The Washington Area has complete data for the years 2018 to 2021, as shown in Table 1 in this document.

Table 1 Completeness Data Percentage (%) from 2018 to 2021 for the Washington Area

Location	AQS Site ID	2018	2019	2020	2021
District of Columbia	110010041	98	100	96	90
District of Columbia	110010043	98	98	96	98
District of Columbia	110010050	100	100	94	98
Calvert, MD	240090011	98	93	97	98
Charles, MD	240170010	95	90	97	96
Frederick, MD	240210037	100	99	95	98
Montgomery, MD	240313001	99	96	92	96
Prince George's, MD	240330030	99	96	99	100
Prince George's, MD	240338003	99	95	98	99
Prince George's, MD	240339991	93	93	98	99
Arlington, VA	510130020	99	99	98	96
Fairfax, VA	510590030	96	98	96	99
Fauquier, VA	510610002	99	95	99	100
Loudoun, VA	511071005	99	90	99	96
Prince William, VA	511530009	99	100	98	99
Stafford, VA	511790001	97	97	96	90

Table 2 in this document shows the fourth-highest maximum 8-hour average ozone concentrations for the Washington Area monitors for the years 2018 to 2022. Table 3 in this document shows the ozone design values for these same monitors based on the following 3-year periods: 2018-2020, 2019-2021 and 2020-2022.

Table 2 Fourth-highest 8-hour Ozone Average Concentrations (ppm) in the Washington Area from 2018 to 2022

Location	AQS Site ID	2018	2019	2020	2021	2022*
District of Columbia	110010041	0.050	0.062	0.054	0.064	0.059
District of Columbia	110010043	0.073	0.071	0.063	0.072	0.066
District of Columbia	110010050	0.073	0.067	0.063	0.069	0.051
Calvert, MD	240090011	0.067	0.058	0.054	0.062	0.058
Charles, MD	240170010	0.068	0.061	0.052	0.066	0.061
Frederick, MD	240210037	0.067	0.065	0.063	0.067	0.061
Montgomery, MD	240313001	0.069	0.062	0.059	0.068	0.063
Prince George's, MD	240330030	0.070	0.071	0.064	0.066	0.061
Prince George's, MD	240338003	0.070	0.065	0.060	0.070	0.064
Prince George's, MD	240339991	0.073	0.075	0.065	0.071	0.065
Arlington, VA	510130020	0.070	0.068	0.062	0.070	0.061
Fairfax, VA	510590030	0.066	0.070	0.057	0.068	0.062
Fauquier, VA	510610002	0.060	0.055	0.049	0.060	0.056
Loudoun, VA	511071005	0.065	0.060	0.060	0.066	0.061
Prince William, VA	511530009	0.065	0.060	0.057	0.062	0.058
Stafford, VA	511790001	0.064	0.059	0.056	0.062	0.058

* The 2022 data in this column is preliminary and has yet to be certified.

Table 3 Ozone Design Values (ppm) for the Washington Area

Location	AQS Site ID	2018-2020	2019-2021	2020-2022*
District of Columbia	110010041	0.055	0.060	0.059
District of Columbia	110010043	0.069	0.068	0.067
District of Columbia	110010050	0.067	0.066	0.061
Calvert, MD	240090011	0.059	0.058	0.058
Charles, MD	240170010	0.060	0.059	0.060

Frederick, MD	240210037	0.065	0.065	0.064
Montgomery, MD	240313001	0.063	0.063	0.063
Prince George's, MD	240330030	0.068	0.067	0.064
Prince George's, MD	240338003	0.065	0.065	0.065
Prince George's, MD	240339991	0.071	0.070	0.067
Arlington, VA	510130020	0.066	0.066	0.064
Fairfax, VA	510590030	0.064	0.065	0.062
Fauquier, VA	510610002	0.054	0.054	0.055
Loudoun, VA	511071005	0.061	0.062	0.062
Prince William, VA	511530009	0.060	0.059	0.059
Stafford, VA	511790001	0.059	0.059	0.059

* The 2022 data in this column is preliminary and has yet to be certified.

EPA's review of these data indicate that the Washington Area met the attainment standard in 2019-2021 and the preliminary data from 2022 indicates that the DV for the period of 2020-2022 is consistent with continued attainment of the 2015 ozone NAAQS.

IV. Proposed Action

EPA is proposing to determine that the Washington Moderate ozone nonattainment area has attained the 2015 NAAQS for ozone. This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 2015 ozone NAAQS based on 2019 to 2021 data. In addition, preliminary[11] ozone data for 2022 that are available in EPA's AQS database, but not yet certified, is consistent with continued attainment of the 2015 ozone NAAQS. As provided in 40 CFR 51.1318, if EPA finalizes this CDD, it would suspend the requirements for such area to submit attainment demonstrations, associated RACM, including RACT, RFP plans, and contingency measures under CAA section 172(c)(9), and any other

[11] The data in AQS is quality-assured data from the states. States have until May 1st of the calendar year following the year in which the data was collected to make any changes without prior notification to EPA. For the 2022 ozone data, States can make changes until the data is "certified" by the state on or before May 1st, 2023.

planning State Implementation Plan (SIP) revision related to attainment of the 2015 ozone NAAQS for this Area, for so long as the area continues to attain the standard. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** sections of this *Federal Register*.

V. Statutory and Executive Order Reviews

This rulemaking action makes a clean data determination for attainment of the 2015 ozone NAAQS based on air quality and does not impose additional requirements. For that reason, this clean data determination:

- 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 (Pub. L. 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 clean data determination for the Washington Area for the 2015 ozone NAAQS does 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 multi-state area, 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, Ozone, Reporting and recordkeeping requirements.

Adam Ortiz,

Regional Administrator,

Region III.

[FR Doc. 2023-01973 Filed: 1/31/2023 8:45 am; Publication Date: 2/1/2023]