



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2022-0987; FRL-10551-02-R3]

Air Plan Approval; District of Columbia, Maryland, Virginia; Determination of Attainment by the Attainment Date and Clean Data Determination for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing multiple actions related to the Washington, DC-MD-VA nonattainment area (the Washington Area or the Area) for the 2015 8-hour ozone national ambient air quality standards (2015 ozone NAAQS). First, the EPA is determining that the Washington Area attained the 2015 ozone NAAQS by the applicable attainment date of August 3, 2024. Second, the EPA is determining that the Washington Area has clean data under the EPA's Clean Data Policy. Lastly, the EPA is taking final action on an exceptional events request submitted by the District of Columbia (DC) on March 20, 2024, and concurred on by the EPA on July 17, 2024. This action addresses the EPA's obligation under Clean Air Act (CAA) sections 179(c) and 181(b)(2) to determine whether the Washington Area attained the 2015 ozone NAAQS by the August 3, 2024 attainment date and, as set forth in the EPA's Clean Data Policy, will suspend the obligation of DC, the State of Maryland (MD), and the Commonwealth of Virginia (VA) to submit certain attainment planning requirements for as long as the Washington Area continues to attain the 2015 ozone NAAQS. 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-R03-OAR-2022-0987. All documents in the docket are listed on the *www.regulations.gov* website. 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 through *www.regulations.gov*, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

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SUPPLEMENTARY INFORMATION: This attainment determination and clean data determination (CDD) are based upon quality-assured, quality-controlled, and certified ambient air monitoring data from 2021 to 2023 available in the EPA's Air Quality System (AQS) database. Neither this attainment determination nor CDD redesignates the Washington Area to attainment for the 2015 ozone NAAQS. The Washington Area remains designated nonattainment until such time as DC, MD, and VA submit a request for redesignation pursuant to section 107(d)(3) of the CAA and the EPA determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Washington Area.

I. Background

On October 26, 2015 (80 FR 65292), the EPA promulgated a revised primary and secondary ozone NAAQS to provide requisite increased protection of public health and welfare, respectively. In that action, the EPA strengthened both standards from 0.075 parts per million (ppm) to 0.070 ppm and retained the indicator (ozone), 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, June 4, 2018), the 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 quality-assured, quality-controlled, and certified ambient air monitoring data from calendar years 2014 to 2016. The EPA established the attainment date for Marginal 2015 ozone NAAQS nonattainment areas as 3 years from the effective date of the final designations, meaning the Washington Area had an attainment date of August 3, 2021.²

Effective November 7, 2022 (87 FR 60897), the EPA determined that 22 Marginal areas or portions of areas failed to attain the standard by the applicable Marginal attainment date, including the Washington Area. In that action, the 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. That designation was based on quality-assured, quality-controlled, and certified ambient air monitoring data from calendar years 2018 to 2020. In that same action, the EPA established the Moderate attainment date as August 3, 2024.³

On February 1, 2023 (88 FR 6688), the EPA proposed a CDD for the Washington Area (2023 CDD Proposal) based on quality-assured, quality-controlled, and certified ambient air monitoring data from 2019 to 2021 showing the Area attained the 2015 ozone NAAQS. The EPA did not finalize that action due to a monitored violation of the 2015 ozone NAAQS prior to final approval.⁴ On March 20, 2024, the Department of Energy and Environment (DOEE), on behalf of DC, submitted an exceptional events demonstration to show that the ozone concentration recorded at the McMillan monitor (AQS Site ID #110010043) on June 29, 2023,

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 Code of Federal Regulations (CFR) 81.309, 81.321, and 81.347.

² *See* 83 FR 10376 (March 9, 2018) and 40 CFR 51.1303(a).

³ *See* 87 FR 60897 (November 7, 2022).

⁴ The EPA initially noted this violation based on preliminary data, which was later certified.

which resulted in a violation preventing the EPA from finalizing the 2023 CDD proposal, was influenced by wildfires. The EPA concurred on this request on July 17, 2024.

On November 15, 2024 (89 FR 90249), the EPA published a notice of proposed rulemaking (2024 NPRM), which proposed to determine that the Washington Area attained the 2015 ozone NAAQS by its August 3, 2024 attainment date. The EPA explained that, if finalized, this action would fulfill the EPA's statutory obligation under CAA sections 179(c) and 181(b)(2) to determine whether the Washington Area attained the 2015 ozone NAAQS by the attainment date.

As provided under the EPA's Clean Data Policy and 40 CFR 51.1318, the EPA also re-proposed a CDD in the 2024 NPRM. The EPA noted that, if this CDD is finalized, the requirements for the Washington Area to submit an attainment demonstration, associated reasonably available control measures (RACM), reasonable further progress (RFP) plan, contingency measures, and any other state implementation plan (SIP) revisions related to the attainment of the 2015 ozone NAAQS, would be suspended for so long as the Washington Area continues to meet the 2015 ozone NAAQS. The EPA also explained that neither the attainment determination nor CDD constitutes a redesignation to attainment, and that the Washington Area will remain designated nonattainment for the 2015 ozone NAAQS until such time as DC, MD, and VA submit a request for redesignation pursuant to section 107(d)(3) of the CAA and the EPA determines that the Washington Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

Lastly, the EPA proposed to take final action on the exceptional events request submitted by DC on March 20, 2024, and concurred on by the EPA on July 17, 2024. The attainment determination and CDD are based upon the EPA's concurrence on the exceptional events demonstration, which removed from the design value (DV) calculation those event-influenced data recorded at the McMillan monitor (AQS Site ID #110010043) on June 29, 2023.

II. The EPA's Evaluation

The EPA has reviewed the complete, quality-assured, quality-controlled, and certified air quality monitoring data for the monitoring period 2021 to 2023 for the Washington Area. The DVs for each monitor within the Washington Area are less than or equal to 0.070 ppm, which is the 2015 ozone NAAQS level. All monitors, with the exception of one circumstance described in the 2024 NPRM,⁵ meet the data completeness requirements (*see* Tables 1 through 3 in this preamble).⁶ Based on this 2021 to 2023 data from the EPA’s AQS database and consistent with the requirements contained in 40 CFR part 50, the EPA has concluded that the Washington Area attained the 2015 ozone NAAQS by the August 3, 2024 attainment date and has clean data for the 2015 ozone NAAQS.

Table 1. Completeness Data Percentage (%) from 2019 to 2023 for the Washington Area

Location	AQS Site ID	2019	2020	2021	2019-2021 Average	2022	2020-2022 Average	2023	2021-2023 Average
District of Columbia	110010041	100	98	98	99	95	97	98	97
District of Columbia	110010043	98	99	99	99	98	99	96	98
District of Columbia	110010050	100	97	99	99	29*	75*	23*	50*
Calvert, MD	240090011	93	96	90	93	97	94	96	94
Charles, MD	240170010	90	96	98	95	100	98	98	99
Frederick, MD	240210037	99	94	98	97	96	96	94	96
Montgomery, MD	240313001	96	97	98	97	98	98	99	98
Prince George’s, MD	240330030	96	97	95	96	89	94	96	93
Prince George’s,	240338003	95	95	98	96	97	97	97	97

⁵ The Takoma Recreation Center monitor (AQS Site ID #110010050) has incomplete data for data years 2022 and 2023 due to building repairs and a burglary incident, respectively. Further details and explanation are included in the 2024 NPRM and will not be restated here.

⁶ Under the EPA regulations at 40 CFR part 50, 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. *See* 40 CFR 50.19(b) and 40 CFR part 50, appendix U. 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. *See* 40 CFR 51.1300(b), which refers to 40 CFR part 50, appendix U. When the DV is less than or equal to 0.070 ppm at each monitor within the area, then the area is attaining the NAAQS. The data completeness requirement is met 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 U 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’s AQS database.

MD									
Prince George's, MD	240339991	93	92	96	94	92	93	93	94
Arlington, VA	510130020	99	99	100	99	99	99	99	99
Fairfax, VA	510590030	98	98	99	98	98	98	98	98
Loudoun, VA	511071005	90	99	100	96	100	100	97	99
Prince William, VA	511530009	100	99	96	98	100	98	100	99

* These data are below the data completeness requirement in 40 CFR part 50, appendix

U. See footnote 5 in this preamble for further information.

Table 2. Fourth-highest 8-hour Ozone Average Concentrations (ppm) in the Washington Area in each year from 2019 to 2023

Location	AQS Site ID	2019	2020	2021	2022	2023
District of Columbia	110010041	0.062	0.054	0.064	0.059	0.058
District of Columbia	110010043	0.071	0.063	0.072	0.066	0.072*
District of Columbia	110010050	0.067	0.063	0.069	0.051**	0.046**
Calvert, MD	240090011	0.058	0.054	0.062	0.058	0.066
Charles, MD	240170010	0.061	0.052	0.066	0.061	0.069
Frederick, MD	240210037	0.065	0.063	0.067	0.061	0.074
Montgomery, MD	240313001	0.062	0.059	0.068	0.063	0.068
Prince George's, MD	240330030	0.071	0.064	0.066	0.061	0.070
Prince George's, MD	240338003	0.065	0.060	0.070	0.064	0.073
Prince George's, MD	240339991	0.075	0.065	0.071	0.065	0.072
Arlington, VA	510130020	0.068	0.062	0.070	0.061	0.071
Fairfax, VA	510590030	0.070	0.057	0.068	0.062	0.073
Loudoun, VA	511071005	0.060	0.060	0.066	0.061	0.067
Prince William, VA	511530009	0.060	0.057	0.062	0.058	0.070

* Based on the EPA's concurrence of the March 20, 2024 exceptional events demonstration, this data excludes the exceptional event-influenced monitoring data on June 29, 2023.

** These data do not meet the 75% annual data completeness requirement in appendix U to 40 CFR part 50. See footnote 5 in this preamble for further information.

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

Location	AQS Site ID	2019-2021	2020-2022	2021-2023
District of Columbia	110010041	0.060	0.059	0.060
District of Columbia	110010043	0.068	0.067	0.070*
District of Columbia	110010050	0.066	0.061**	0.055**
Calvert, MD	240090011	0.058	0.058	0.062
Charles, MD	240170010	0.059	0.059	0.065
Frederick, MD	240210037	0.065	0.063	0.067
Montgomery, MD	240313001	0.063	0.063	0.066
Prince George's, MD	240330030	0.067	0.063	0.065
Prince George's, MD	240338003	0.065	0.064	0.069
Prince George's, MD	240339991	0.070	0.067	0.069
Arlington, VA	510130020	0.066	0.064	0.067
Fairfax, VA	510590030	0.065	0.062	0.067
Loudoun, VA	511071005	0.062	0.062	0.064
Prince William, VA	511530009	0.059	0.059	0.063

* Based on the EPA's concurrence of the March 20, 2024 exceptional events demonstration, this design value excludes the exceptional event-influenced monitoring data on June 29, 2023.

** These design values do not meet the 90% 3-year average data completeness requirement in appendix U to 40 CFR part 50. See footnote 5 in this preamble for further information.

The data in Tables 1 through 3 of this document are available in the EPA's AQS database. The AQS report with this data is available in the docket of this rule under docket number EPA-RO3-OAR-2022-0987. Other specific requirements of the determination and the rationale for the EPA's actions, including the EPA's concurrence on the exceptional events demonstration, were explained in the 2024 NPRM, and will not be restated here. Public comments were received on the 2024 NPRM (89 FR 90249, November 15, 2024) and the 2023 CDD Proposal (88 FR 6688, February 1, 2023). Summaries of the comments received on the 2024 NPRM and 2023 CDD Proposal, as well as the EPA's responses, are in section III inf this preamble.

III. The EPA's Response to Comments Received

The EPA's November 15, 2024 NPRM (89 FR 90249) opened a thirty-day public comment period, which closed on December 16, 2024. The EPA received comments from three individual commenters. The EPA is also addressing in this final rule the four comments received on the 2023 CDD Proposal (88 FR 6688, February 1, 2023), which had a thirty-day public comment period that closed on March 3, 2023. All comments received have been placed in the docket for this action.

The EPA received four comments that are not relevant to this action. In response to the 2023 CDD proposal, one comment addresses the current NAAQS for fine particulate matter (PM_{2.5}) and one is vague and generally supportive of clean air and water. In response to the 2024 NPRM, one comment addresses a rule proposed by the United States Postal Service. Also, in response to the 2024 NPRM, the EPA received a comment expressing concern regarding ongoing issues of air pollution in the Washington Area, including an increasing frequency of forest fires and the effect on air quality and public health. The EPA acknowledges the serious concerns referenced by the commenter, but the comment provides no further explanation or context as to the relevancy to this action. None of these comments provide further explanation or context as to their relevancy to this action. Therefore, the EPA is not responding to these four public comments, as they are not adverse to this action.

This action is confined to the EPA's determination that DC's exceptional events demonstration sufficiently showed that the ozone exceedance recorded at the McMillan monitor (AQS Site ID #110010043) on June 29, 2023, was caused by Canadian wildfires, and that after removing the event-influenced data from the DV, the area met the 2015 ozone NAAQS such that it attained by the attainment date as specified by sections 179(c) and 181(b)(2) and has clean data pursuant to Agency policy.

A summary of the relevant comments and the EPA's responses thereto are listed below.

Comment 1: In response to the 2023 CDD Proposal, the commenter expressed concern about the validity of the data collected for the CDD because the period of data examined (2019-

2021) includes the COVID-19 pandemic which, the commenter contends, caused a drastic reduction in commuter traffic in the Washington Area and misrepresents the actual air pollution in the area moving forward.

Response 1: The EPA disagrees with the commenter's concern about the validity of the data collected and evaluated in the 2023 CDD Proposal. The EPA's determination of attainment with the 2015 ozone NAAQS is based entirely on monitoring data and on our evaluation of that data's compliance with 40 CFR part 50, appendix U. Therefore, reduction in commuter traffic due to the COVID-19 pandemic, which, the commenter suggests, will misrepresent the actual air pollution in the area moving forward, is irrelevant in determining whether an area is attaining a NAAQS. Under the EPA regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration does not exceed 0.070 ppm at each monitor site within the nonattainment area. *See* 40 CFR part 50, appendix U. This 3-year average is the DV. When the DV is less than or equal to 0.070 ppm at each monitor within the area, then the area is attaining the NAAQS. As noted in the 2023 CDD Proposal, the EPA's analysis of monitoring data in the Washington Area for data years 2019 through 2021 supported the determination that the Washington Area attained the 2015 ozone NAAQS. As highlighted in the 2024 NPRM and in the tables above, additional data in 2022 and 2023 continues to support this determination. Additionally, preliminary 2024 ozone data indicate that the Washington Area continues to attain the 2015 ozone NAAQS during the 2022-2024 monitoring period.⁷ As explained in the 2024 NPRM and in section II in this preamble, the data completeness requirements for evaluating monitoring data were met, with the aforementioned exception in the 2024 NPRM.

Regarding the commenter's concern that the COVID-19 pandemic had a drastic reduction in commuter traffic and misrepresents the actual air pollution moving forward, unlike the CAA's

⁷ Preliminary 2024 ozone data for the Washington Area can be viewed at: www.epa.gov/outdoor-air-quality-data/ozone-watch.

redesignation requirement in CAA section 107(d)(3)(E)(iii) that an area's attainment air quality is due to permanent and enforceable measures, the EPA's Clean Data Policy does not require an analogous demonstration. See 40 CFR 51.1318. It is for this reason that the EPA's CDD merely suspends the requirements for an area to submit an attainment demonstration, associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the 2015 ozone NAAQS, for as long as the area continues to attain the 2015 ozone NAAQS, in accordance with provisions set forth at 40 CFR 51.1318.

Following enactment of the CAA Amendments of 1990, the EPA promulgated 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). See 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171, 172, and 182 in the General Preamble, the EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS. See Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard, EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning Standards, May 10, 1995 (Seitz Memorandum). The Seitz Memorandum provided that requirements to submit SIP revisions addressing RFP, an attainment demonstration, and other related requirements such as contingency measures and other specific ozone-related requirements in section 182 would be suspended for as long as the nonattainment area continued to monitor attainment of the NAAQS. The approach set forth in the memorandum was subsequently codified for the 1997, 2008, and 2015 ozone NAAQS. See 40 CFR 51.918, 51.1118, and 51.1318, respectively. The EPA's longstanding Clean Data Policy has been upheld by the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) and all other courts that have considered it. The D.C. Circuit upheld the EPA's rule embodying the Clean Data Policy for the 1997 8-hour ozone standard in *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009). Other courts have reviewed and considered rulemakings applying the EPA's Clean Data Policy and

have consistently upheld them. See e.g., *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)), *Latino Issues Forum v. EPA*, Nos. 06-75831 and 08-71238 (9th Cir. March 2, 2009 (Memorandum Opinion)).

In sum, the EPA reviewed the complete, quality-assured, quality-controlled, and certified ozone ambient air monitoring data for the 2019-2021 monitoring period in the Washington Area as detailed in the 2023 CDD Proposal and included in section II in this preamble. Additionally, the EPA reviewed the complete, quality-assured, quality-controlled, and certified ozone ambient air monitoring data for the 2019-2021, 2020-2022, and 2021-2023 monitoring periods in the Washington Area as detailed in the 2024 NPRM and included in section II in this preamble. The DVs for each monitor for the years 2019-2021, 2020-2022, and 2021-2023 are less than or equal to 0.070 ppm, and all monitors meet the data completeness requirements, with the exception of the one circumstance described in the 2024 NPRM.⁸ The Washington Area has attained the 2015 ozone NAAQS, and did so by the August 3, 2024 attainment date, in accordance with 40 CFR part 50, appendix U, requirements and 40 CFR 51.1318. Thus, the EPA's determination is in accordance with CAA requirements. Again, the EPA's CDD merely suspends the requirements for the Area to submit certain planning SIPs related to attainment of the 2015 ozone NAAQS, for as long as the Area continues to attain the 2015 ozone NAAQS. If the Area violates the NAAQS in the future, these requirements would no longer be suspended and would be due immediately upon the EPA's determination that a violation occurred.

Comment 2: The Virginia Department of Environmental Quality (DEQ) commented on the 2023 CDD Proposal that the EPA should remove the Stafford County (AQS Site ID #511790001) and Fauquier County (AQS Site ID #510610002) ozone monitoring sites from the data tables in the 2023 CDD Proposal because these monitoring sites are outside of the

⁸ See Tables 1 through 3 in this preamble. See footnote 5 in this preamble and the 2024 NPRM regarding the Takoma Recreation Center monitor (AQS Site ID #110010050).

Washington Area, or clearly label these monitors as outside of the Area.

Response 2: The EPA thanks Virginia DEQ for their comment and agrees that the Stafford County and Fauquier County ozone monitoring sites are outside of the Washington Area and should not be included in the Area's determination of attainment for the 2015 ozone NAAQS or CDD. As such, the EPA did not include the Stafford County and Fauquier County ozone monitoring sites, as explained in the 2024 NPRM, when determining that the Washington Area has clean data for the 2015 ozone NAAQS and attained the 2015 ozone NAAQS by the applicable attainment date of August 3, 2024.

Comment 3: One commenter on the 2024 NPRM agrees that the Washington Area has attained the 2015 ozone NAAQS but is apprehensive in supporting the Clean Data Policy procedures because the commenter contends that the present data reveals patterns of increasing ozone that may continue. Additionally, the commenter "believe[s] that the EPA is making a mistake in not considering environmental justice in this ruling," and argues that the Area may experience further increases in ozone emissions due to the suspension of certain attainment plan requirements under the Clean Data Policy.

Response 3: As explained in response to Comment 1, the EPA reviewed the complete, quality-assured, quality-controlled, and certified ozone ambient air monitoring data for the 2019-2021, 2020-2022, and 2021-2023 monitoring periods in the Washington Area as detailed in the 2024 NPRM and included in section II in this preamble. As noted above, preliminary 2024 ozone data indicate that the Washington Area continues to attain the 2015 ozone NAAQS during the 2022-2024 monitoring period.⁹ In accordance with the EPA's regulations and longstanding policy for such determinations and the intent of the CAA, the Washington Area attained and continues to attain the 2015 ozone NAAQS. Unlike the CAA's redesignation requirement in CAA section 107(d)(3)(E)(iii) that an area's attainment air quality is due to permanent and

⁹ Preliminary 2024 ozone data for the Washington Area can be viewed at: www.epa.gov/outdoor-air-quality-data/ozone-watch.

enforceable measures, the EPA's Clean Data Policy does not require an analogous demonstration. See 40 CFR 51.1318. It is for this reason that the EPA's CDD merely suspends the requirements for an area to submit an attainment demonstration, associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the 2015 ozone NAAQS, for as long as the area continues to attain the 2015 ozone NAAQS, in accordance with provisions set forth at 40 CFR 51.1318.

Notably, this action fulfills the EPA's statutorily mandated obligation under CAA sections 179(c)(1) and 181(b)(2)(A), and implements longstanding agency policy based on the air quality measurements for ground level ozone in the Area. Due to the implementation of pollution reduction programs, such air quality measurements have improved significantly over time to meet health-based air quality standards. Furthermore, this action is consistent with Executive Order 14173 of January 21, 2025 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity), and Executive Order 14148 of January 20, 2025 (Initial Rescissions of Harmful Executive Orders and Actions). If the Area falls back into nonattainment, those suspended attainment planning SIPs become immediately due upon a determination by the EPA that the Area is no longer attaining the NAAQS. Moreover, DC, MD, and VA may still submit SIPs in anticipation of this event, and the EPA will be required to act on those SIPs in accordance with CAA section 110(k)(2) and (3). The Clean Data Policy embodies the EPA's longstanding interpretation that certain planning requirements in the CAA no longer have meaning for areas that are attaining the standard because the purpose of these provisions is to help a nonattainment area reach attainment, a goal which will already have been achieved.

As explained in response to Comment 1, the EPA promulgated its interpretation of the requirements for implementing the NAAQS in the General Preamble. In 1995, the EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS. *See* Seitz Memorandum. The approach set forth in the memorandum was subsequently codified for the 1997, 2008, and 2015 ozone NAAQS. See 40 CFR 51.918, 51.1118, and 51.1318, respectively.

The EPA's longstanding Clean Data Policy has been upheld by the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) and all other courts that have considered it.

The EPA acts to protect the public health in accordance with the CAA and its mandates. The EPA's determination of attainment and CDD for the Washington Area is in accordance with our regulations and longstanding policy and is based on monitored ozone data demonstrating attainment of the 2015 ozone NAAQS, which the EPA set at a level to protect the public health. Thus, the EPA's action is in accordance with the CAA, its implementing regulations, and agency policy.

IV. Final Action

For the reasons discussed in detail in the 2024 NPRM and summarized herein, the EPA is taking final action under CAA sections 179(c) and 181(b)(2) to determine that the Washington Area attained the 2015 ozone NAAQS by its August 3, 2024 attainment date. This action fulfills the EPA's statutory obligation under CAA sections 179(c) and 181(b)(2) to determine whether the Washington Area attained the 2015 ozone NAAQS by the attainment date. Additionally, the EPA is taking final action on an exceptional events request submitted by DC on March 20, 2024, and concurred on by the EPA on July 17, 2024.¹⁰ As provided in 40 CFR 51.5138, the EPA is also finalizing the CDD for the Washington Area, and consequently, the requirements for the Washington Area to submit an attainment demonstration, associated RACM, RFP plan, contingency measures, and any other SIP revisions related to the attainment of the 2015 ozone NAAQS, will be suspended for so long as the Washington Area continues to attain the 2015 ozone NAAQS.

This action does not constitute a redesignation of the Washington Area to attainment of the 2015 ozone NAAQS under CAA section 107(d)(3). This action also does not involve approving any maintenance plan for the Washington Area and does not determine that the

¹⁰ Further details on DOEE's analyses and the EPA's concurrence, including the exceptional events initial notification, exceptional events demonstration, and the EPA's response to the initial notification can be found in the docket for this regulatory action.

Washington 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 Washington Area will remain nonattainment for the 2015 ozone NAAQS until such time as DC, MD, and VA submit a request for redesignation pursuant to section 107(d)(3) of the CAA and the EPA determines that the Washington Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Washington Area.

V. Statutory and Executive Order Reviews

This final rule constitutes a determination that the Washington Area has clean data for the 2015 ozone NAAQS and attained the 2015 ozone NAAQS by its attainment date based on air quality monitoring data and does not impose additional requirements. For that reason, this determination:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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); and
- 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 Clean Air Act.

In addition, this action for the Washington Area does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is not approved to apply in Indian country located in the Washington Area, and the EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Catherine A. Libertz,
Acting Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 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 J—District of Columbia

2. Amend § 52.475 by adding paragraph (d) to read as follows:

§ 52.475 Determinations of attainment.

* * * * *

(d) Based upon EPA's review of the ambient air quality data for the 3-year period 2021 to 2023, the Washington, DC-MD-VA moderate nonattainment area for the 2015 8-hour ozone national ambient air quality standards (2015 ozone NAAQS) has attained the 2015 ozone NAAQS by the applicable attainment date of August 3, 2024. Therefore, EPA has met the requirement pursuant to Clean Air Act section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Washington, DC-MD-VA moderate nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

3. Amend § 52.476 by adding paragraph (l) to read as follows:

§ 52.476 Control strategy: ozone.

* * * * *

(l) EPA has determined, as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, that based on 2021 to 2023 ambient air quality data, the Washington, DC-MD-VA moderate nonattainment area for the 2015 8-hour ozone national ambient air quality standards (2015 ozone NAAQS) has attained the 2015 ozone NAAQS. This determination, in accordance with 40 CFR 51.5138, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as

long as this area continues to meet the 2015 ozone NAAQS.

Subpart V—Maryland

4. Amend § 52.1076 by adding paragraph (ii) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(ii) EPA has determined, as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], that based on 2021 to 2023 ambient air quality data, the Washington, DC-MD-VA moderate nonattainment area for the 2015 8-hour ozone national ambient air quality standards (2015 ozone NAAQS) has attained the 2015 ozone NAAQS. This determination, in accordance with 40 CFR 51.5138, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2015 ozone NAAQS.

5. Amend § 52.1082 by adding paragraph (n) to read as follows:

§ 52.1082 Determinations of attainment.

* * * * *

(n) Based upon EPA's review of the ambient air quality data for the 3-year period 2021 to 2023, the Washington, DC-MD-VA moderate nonattainment area for the 2015 8-hour ozone national ambient air quality standards (2015 ozone NAAQS) has attained the 2015 ozone NAAQS by the applicable attainment date of August 3, 2024. Therefore, EPA has met the requirement pursuant to Clean Air Act section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Washington, DC-MD-VA moderate nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

Subpart VV—Virginia

6. Amend § 52.2428 by adding paragraph (o) to read as follows:

§ 52.2428 Control Strategy: Carbon monoxide and ozone.

* * * * *

(o) EPA has determined, as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], that based on 2021 to 2023 ambient air quality data, the Washington, DC-MD-VA moderate nonattainment area for the 2015 8-hour ozone national ambient air quality standards (2015 ozone NAAQS) has attained the 2015 ozone NAAQS. This determination, in accordance with 40 CFR 51.5138, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2015 ozone NAAQS.

7. Amend § 52.2430 by adding paragraph (d) to read as follows:

§ 52.2430 Determinations of attainment.

* * * * *

(d) Based upon EPA's review of the ambient air quality data for the 3-year period 2021 to 2023, the Washington, DC-MD-VA moderate nonattainment area for the 2015 8-hour ozone national ambient air quality standards (2015 ozone NAAQS) has attained the 2015 ozone NAAQS by the applicable attainment date of August 3, 2024. Therefore, EPA has met the requirement pursuant to Clean Air Act section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Washington, DC-MD-VA moderate nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

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