



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2026-0562; FRL-13213-02-R5]**

**Air Plan Approval; Ohio; Clean Data Determination for the  
Cleveland, Ohio Area for the 2015 Ozone Standard**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is determining under the Clean Air Act (CAA) that the Cleveland, Ohio nonattainment area (hereafter also referred to as "Cleveland area" or "area") has attained the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard). This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2023-2025 design period showing that the Cleveland area achieved attainment of the 2015 ozone NAAQS. This determination relies on an exceptional events request submitted by the Ohio Environmental Protection Agency (Ohio EPA) on December 8, 2025, and concurred on by the EPA on January 12, 2026. The EPA is taking final agency action on Ohio's exceptional events request and the EPA's concurrence. As a result of this determination, the EPA is suspending the requirements for the State to submit an attainment demonstration and associated Reasonable Available Control Measures (RACM), Reasonable Further Progress (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. The EPA proposed to approve this action on February 27, 2026.

**DATES:** This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2026-0562. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI), Proprietary Business Information (PBI), 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 either through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Cecilia Magos, Air and Radiation Division (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number: (312) 886-7336, email address: [magos.cecilia@epa.gov](mailto:magos.cecilia@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean the EPA.

## **I. Background Information.**

The EPA has determined that ground-level ozone is detrimental to human health. On October 1, 2015, the EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm).<sup>1</sup> Under the EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. See 40 CFR 50.19 and appendix U at 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires the EPA to designate as nonattainment any areas that area violating the NAAQS, based on the most recent three years of quality-assured ozone monitoring data. The Cleveland area, consisting of Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit Counties, was designated as a Marginal nonattainment area for the 2015 ozone NAAQS on June 4, 2018, (83 FR 25776) (effective August 3, 2018). On October 7, 2022 (87 FR 60897), the EPA determined that the Cleveland area did not attain the standard by the Marginal attainment date, and the area was reclassified as Moderate by operation of law. More recently, on December 17, 2024 (89 FR 101901), the EPA determined the area did not attain the standard by the Moderate attainment date, and the area was reclassified as

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<sup>1</sup> See 80 FR 65292, (October 26, 2015).

Serious by operation of law.

On February 27, 2026 (91 FR 9800), the EPA proposed to approve a determination under the CAA that the Cleveland area has attained the 2015 ozone NAAQS based upon complete, quality-assured, and certified ambient air monitoring data for the 2023-2025 design period. Such a determination, based upon the EPA's Clean Data Policy, is known informally as a clean data determination (CDD). The EPA's proposed CDD relied upon the EPA's concurrence on an exceptional events request submitted by Ohio EPA on December 8, 2025. The EPA also proposed to take final agency action on Ohio EPA's exceptional events request concurred on by the EPA on January 12, 2026. As a result of this determination and pursuant to 40 CFR 51.1318, the EPA proposed to suspend the requirements for the area to submit attainment demonstrations and 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.

An explanation of CAA requirements, a detailed analysis of the revisions, and the EPA's reasons for proposing approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period for this proposed rule ended on March 30, 2026.

## **II. Response to Comments**

The EPA received one supportive and five adverse comments.

Summaries of the adverse comments and the EPA's responses are provided below. All comments submitted during the public comment period are available in the docket of this action.

**Comment:** Five commenters raised concerns over the suspension of the planning requirements, specifically RACM, RFP, and contingency measures, in the Cleveland area related to the attainment of the 2015 ozone standard. Some commenters note that suspending requirements is a premature action that will not ensure continued progress, can lead to downgrades in air quality in the area, incentivize temporary attainment, or disproportionately affect vulnerable communities. Other commenters also mention planning requirements should remain in place to ensure air quality improvements are permanent and affirm the State's ability to respond to emerging issues.

**Response:** In this rule, the EPA is determining that the Cleveland area has attained the 2015 ozone NAAQS and is suspending requirements for the area to submit attainment demonstrations and the associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to the attainment of the 2015 ozone NAAQS, for as long as the area continues to attain the standard in accordance with the provisions set forth at 40 CFR 51.1318. The commenters raise structural and statutory objections to the Clean Data Policy provisions of 40 CFR 51.1318.<sup>2</sup> These comments

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<sup>2</sup> The EPA initially issued the Clean Data Policy in 1995, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard." Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995. For purposes of the 1997 ozone NAAQS, we codified

are not relevant to the EPA's determination of attainment with respect to the Cleveland area, and should more properly have been raised in the context of the 2015 Ozone NAAQS Implementation Rule containing that provision.<sup>3</sup>

The 2015 Ozone NAAQS Implementation Rule was promulgated through notice and comment rulemaking and subject to the judicial review provisions of section 307(b) of the CAA. The commenters did not submit comments regarding the provisions of 40 CFR 51.1318 during the comment period for the 2015 Ozone NAAQS Implementation rule. Therefore, these comments fall outside the scope of this action. The EPA does acknowledge, as codified at 40 CFR 51.1318, that State planning SIPs related to the attainment of the ozone NAAQS for which the determination has been made may be required in the event that "the EPA determines that the area has violated that NAAQS."

**Comment:** One commenter stated that the EPA should provide more transparent data and not fully rely on wildfire data in making determinations of attainment since it does not accurately reflect the air quality experienced by residents in the Cleveland area. Similarly, another commenter encouraged the EPA to more fully consider the lived experiences of local communities rather than the technical adjustment of the data excluded per the exceptional events demonstration when determining attainment of the standard.

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that policy at 40 CFR 51.918. This codified policy was upheld by the D.C. Circuit in *NRDC v. EPA*, 571 F.3d 1245 (D.C. 2009).

<sup>3</sup> 83 FR 62998, December 6, 2018.

**Response:** Under the Clean Data Policy, the EPA may issue a CDD if a nonattainment area meets the 2015 ozone NAAQS based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. The EPA reviews exceptional events demonstrations on a case-by-case basis using a weight of evidence approach considering the specifics of the individual event. This means the EPA considers all relevant evidence submitted with a demonstration or otherwise known to the EPA and qualitatively "weighs" this evidence based on its relevance to the Exceptional Events Rule criterion being addressed, the degree of certainty, the persuasiveness, and other considerations appropriate to the individual pollutant and the nature and type of event before acting to approve or disapprove an air agency's request to exclude data. The underlying policy behind the Exceptional Events Rule is that there may be external sources of air pollution, such as wildfires, that are not attributable to any activities in the area and are likewise not remediable through the mechanisms being suspended under 40 CFR 51.1318. The EPA acknowledges the experiences of Cleveland area residents alongside long-term overall improvement in ozone air quality trends in the area, while affirming that the technical data exclusions for wildfire impacts were appropriately applied under the Exceptional Events Rule. The factors raised by the commenter about particulate matter fall outside the scope of a CDD for ozone and this action. The EPA's technical support

document and Ohio EPA's exceptional events demonstration data are included in the docket of this action to provide transparency of the EPA's evaluation.

**Comment:** One commenter stated that removing exceptional event data obscures underlying air quality trends.

**Response:** The EPA does not agree with the commenter. According to the EPA's "Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations" and the Exceptional Events Rule, demonstrations must address the technical element that "the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation" supported, in part, by the comparison to historical concentrations and other analyses during the same season.<sup>4</sup> Air agencies must include a comparison of ozone data requested for exclusion with historical concentrations at the air quality monitor and should further support the clear causal relationship criterion by demonstrating that a wildfire's emissions were transported to the monitor, that the emissions from the wildfire influenced the monitored concentrations, and, in some cases, quantifying the contribution of the wildfire's emissions to the monitored ozone exceedance or violation. The data used in the comparison of historical concentrations analysis should focus on concentrations of ozone at the influenced monitor and nearby monitors if appropriate. While

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<sup>4</sup> See 40 CFR 50.14(c) (3) (iv) (B)-(C).

the exceptional event-influenced data is excluded from regulatory calculations under the Exceptional Events Rule, this data is retained and flagged in the Air Quality System for continued non-regulatory use. Ohio EPA's exceptional events demonstration included a comparison of historical concentrations and air quality trends, as required by 40 CFR 50.14(c)(3)(iv)(C) and is included in the docket of this action.<sup>5</sup>

**Comment:** One commenter suggested requiring a more stringent standard of 60 parts per billion in order to suspend planning requirements in areas that have been historically non-compliant, like Cleveland, with significant at-risk populations. The commenter includes references to reports by the American Lung Association, the Asthma and Allergy Foundations of America, and the Ohio Department of Health.

**Response:** Similar to the responses above, the commenter raises structural and statutory objections to the Clean Data Policy provisions of 40 CFR 51.1318 and the 2015 Ozone Implementation Rule. These concerns also fall outside the scope of this action and the EPA's authority.

### **III. Final Action.**

The EPA is making a determination that the Cleveland area is attaining the 2015 ozone NAAQS, based upon complete, quality-assured, and certified ambient air monitoring data for the 2023-2025 design value period, after concurring on the exclusion of certain exceedances due to exceptional events. The EPA is also

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<sup>5</sup> See 91 FR 9800 (February 27, 2026), Cleveland Ozone Exceptional Event Concurrence Technical Support Document

taking final agency action on an exceptional events request submitted by Ohio EPA on December 8, 2025, and concurred on by the EPA on January 12, 2026, based on the EPA's evaluation of the weight of evidence provided in Ohio EPA's exceptional event demonstration. As a result of the CDD, the EPA is suspending the requirements for the area to submit attainment demonstrations and 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 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), the EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C. 553(d) (1).

Section 553(d) (1) of the APA provides that final rules shall not become effective until 30 days after publication in the *Federal Register* "except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Comm'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). When the agency grants or recognizes an exemption or

relieves a restriction, however, affected parties do not need a reasonable time to adjust because the effect is not adverse. The EPA has determined that this rule relieves a restriction because this rule suspends the requirements for the State to submit attainment demonstrations and 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. For this reason, the EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

#### **IV. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- 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);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- 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 CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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).

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 CAA, 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, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Dated:** May 4, 2026.

**Anne Vogel,**  
*Regional Administrator, Region 5.*

For the reasons stated in the preamble, title 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.*

2. In § 52.1870, the table in paragraph (e) is amended by adding a new entry for “2015 Ozone Clean Data Determination” after the entry for “Definition of Air Contaminant” to read as follows:

**§ 52.1870 Identification of plan.**

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(e) \* \* \*

**EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS**

Title	Applicable geographical or non-attainment area	Start date	EPA approval	Comments
2015 Ozone Clean Data Determination	Cleveland area (Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit Counties)	N/A	[INSERT DATE OF PUBLICATION IN THE <i>FEDERAL REGISTER</i> ], 91 FR [INSERT <i>FEDERAL REGISTER</i> PAGE WHERE THE DOCUMENT BEGINS]	EPA’s final determination suspends requirements for Ohio EPA to submit an attainment demonstration and other associated nonattainment planning requirements for the Cleveland area for as long as the area continues to attain the 2015 ozone NAAQS.