



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2025–2532; FRL-13045-02-R3]

Air Plan Approval; Maryland; Clean Data Determination for the Baltimore, MD 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 determining that the Baltimore, Maryland (MD) nonattainment area (the Baltimore Area or the Area) has clean data for the 2015 8-hour ozone national ambient air quality standard (NAAQS or standard). This determination is based upon quality-assured, quality-controlled, and certified ambient air monitoring data for the 2022–2024 design value (DV) period showing that the Baltimore Area attained the 2015 ozone NAAQS, with the exclusion of certain monitoring data impacted by exceptional events. The EPA is taking final agency action on portions of three exceptional event (EE) requests submitted by the Maryland Department of the Environment (MDE) on February 2, 2024, on behalf of MD, and concurred on by the EPA on November 12, 2025. As a result of the clean data determination (CDD), under the EPA’s Clean Data Policy, the EPA is suspending the requirements for the Baltimore Area to submit attainment demonstrations and associated Reasonably Available Control Measures (RACM), Reasonable Further Progress (RFP) plans, contingency measures, and other planning SIPs related to attainment of the 2015 ozone NAAQS, for as long as the Baltimore Area continues to attain the standard.

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-2025–2532. 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.

FOR FURTHER INFORMATION CONTACT: Ian Neiswiter, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2011. Mr. Neiswiter can also be reached via electronic mail at *neiswiter.ian@epa.gov*.

SUPPLEMENTARY INFORMATION: This CDD is based upon quality-assured, quality-controlled, and certified ambient air monitoring data from 2022-2024 available in the EPA’s Air Quality System (AQS) database. This CDD does not redesignate the Baltimore Area to attainment for the 2015 ozone NAAQS. The Baltimore Area remains designated nonattainment until such time as MD submits a request for redesignation pursuant to CAA section 107(d)(3) and the EPA determines that the Baltimore Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Baltimore Area.

I. Background

On October 26, 2015, the EPA promulgated a revised primary and secondary ozone NAAQS to provide requisite increased protection of public health and welfare, respectively.¹ 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, the EPA designated 51 areas throughout the country as nonattainment for the 2015 ozone

¹ See 80 FR 65292 (October 26, 2015).

NAAQS, including the Baltimore Area, which was classified as a Marginal nonattainment area.² This designation was based on quality-assured, quality-controlled, and certified air quality monitoring data from calendar years 2014-2016. The EPA established the attainment date for Marginal 2015 ozone NAAQS nonattainment areas as three years from the effective date of the final designations, meaning the Baltimore Area had an attainment date of August 3, 2021.³

Effective November 7, 2022, the EPA determined that 22 Marginal areas or portions of areas failed to attain the standard by August 3, 2021, the applicable Marginal attainment date, including the Baltimore Area.⁴ As a result of the EPA's November 2022 finding, the Baltimore Area was reclassified by operation of law to Moderate nonattainment for the 2015 ozone NAAQS. That finding was based on quality-assured, quality-controlled, and certified ambient air monitoring data from calendar years 2018-2020. The Moderate area attainment date was August 3, 2024.⁵

On July 18, 2024, MD requested voluntary reclassification under CAA section 181(b)(3) for the Baltimore Area from Moderate to Serious. On August 1, 2024, the EPA approved MD's reclassification request from Moderate to Serious.⁶ The 2015 ozone Serious area attainment date is August 3, 2027.

On February 2, 2024, MDE, on behalf of MD, submitted three EE demonstrations to show that the ozone concentration at certain MD monitors on June 2, June 29-30, and July 17-18, 2023 were influenced by wildfire smoke events originating in Canada and/or the United States. On May 6, 2025, MDE provided additional information for the June 2, 2023 demonstration. On November 12, 2025, the EPA concurred on portions of the June 2, June 29-30, and July 17-18, 2023 EE demonstrations.

² See 83 FR 25776 (June 4, 2018). The Baltimore Area consists of the following counties/cities: Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County, and the City of Baltimore in Maryland. See 40 Code of Federal Regulations (CFR) 81.321.

³ See 83 FR 10376 (March 9, 2018) and 40 CFR 51.1303(a).

⁴ See 87 FR 60897 (October 7, 2022). Because the 2015 primary and secondary NAAQS for ozone are identical, for convenience, the EPA refers to them in the singular as "the 2015 ozone NAAQS" or as "the standard."

⁵ See 87 FR 60897 (October 7, 2022).

⁶ See 89 FR 62663 (August 1, 2024).

On January 23, 2026, the EPA published a notice of proposed rulemaking (NPRM), which proposed to determine that the Baltimore Area has attained the 2015 ozone NAAQS, based upon quality-assured, quality-controlled and certified ambient air monitoring data for the 2022-2024 DV period, which pursuant to the EPA's concurrence on portions of the three MDE EE demonstrations now excludes exceptional event-influenced monitor days.⁷ Such a determination, based upon the EPA's Clean Data Policy and 40 CFR 51.1318, is known informally as a CDD (for Clean Data Determination). In that action, the EPA noted that, if the CDD is finalized, the requirements for the Baltimore 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, would be suspended for so long as the Baltimore Area continues to attain the 2015 ozone NAAQS. The EPA also explained that the CDD does not constitute a redesignation to attainment, and that the Baltimore Area will remain designated nonattainment for the 2015 ozone NAAQS until such time as MD submits a request for redesignation pursuant to CAA section 107(d)(3) and the EPA determines that the Baltimore Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Baltimore Area.

The EPA's proposed CDD relied upon the EPA's concurrence on portions of the EE demonstrations submitted by MDE on February 2, 2024. In the January 23, 2026 NPRM, the EPA also proposed to take final agency action on the exceptional events concurrences, which removed the event-influenced data from the DV. The NPRM opened an opportunity for public comment on the EPA's concurrences.

II. Summary of the EPA Analysis

As detailed in the NPRM, the EPA has reviewed the 2022-2024 quality-assured, quality-controlled, and certified ambient air quality monitoring data for ozone for the Baltimore Area,

⁷ See 91 FR 2887 (January 23, 2026).

which as noted, excludes exceptional event-influenced monitor days.⁸ Preliminary data for 2025, that has now since been certified by Maryland and concurred on by the EPA, was also reviewed. As detailed in the NPRM, the DVs for each monitor within the Baltimore Area are less than or equal to 0.070 ppm, which is the 2015 ozone NAAQS.⁹ All monitors, with the exception of two circumstances described in the NPRM, meet the data completeness requirements.¹⁰ Based on this 2022-2024 data from the EPA's AQS database and consistent with the requirements contained in 40 CFR part 50, the EPA has concluded that the Baltimore Area attained the 2015 ozone NAAQS. Additionally, the now certified 2025 data indicates that the Baltimore Area continues to attain the standard based on the 2023-2025 DV. Other specific requirements of the CDD and the rationale for the EPA's actions, including the EPA's concurrence on portions of the exceptional events demonstrations, were explained in the NPRM and associated technical support documents (TSDs) included in the docket for this action, and will not be restated here.

III. EPA's Response to Comments Received

The EPA's January 23, 2026 NPRM opened a 30-day public comment period, which closed on February 23, 2026.¹¹ The EPA received one comment. That comment and the EPA's response are discussed below. The comment received and any submitted attachments are included in the docket for this rule, available at, www.regulations.gov, Docket ID Number EPA-R03-OAR-2025-2532.

⁸ See 91 FR 2887 (January 23, 2026).

⁹ 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.

¹⁰ 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. The Glen Burnie monitor (AQS Site ID #24-003-1003 has incomplete data for data year 2024 because operation of the monitor was discontinued in 2024. The Brooklyn Park monitor (AQS Site ID #24-003-1004) has incomplete data for data years 2022 and 2023 because the monitor became operational on April 1, 2024. Further details and explanation are included in the NPRM and will not be restated here.

¹¹ See 91 FR 2887 (January 23, 2026).

Comment: The commenter acknowledges that the exclusion of monitoring data impacted by wildfire smoke allows the Baltimore Area to attain the 2015 ozone NAAQS but disagrees that this is the correct approach. The commenter states that it is increasingly evident that wildfires are a more ever-present part of the world climate landscape and argues that by excluding exceptional events-impacted monitoring days to issue a CDD, the proposed action “disregard[s] a critical facet of our changing planet affecting our current air quality....” Instead, the commenter urges the EPA to revise the NAAQS to account for extraneous circumstances such as wildfires. The commenter also states that the current rule proposing a CDD should be avoided because localities will be absolved of critical climate initiatives. The commenter argues that CDDs reduce accountability of states to submit implementation plans and “weaken the environmentally conscious posture of state governments.”

Response: The EPA disagrees with the commenter that the exclusion of monitoring data impacted by wildfire smoke to support the issuance of a CDD is not the proper approach. Similarly, the EPA disagrees with the commenter that a CDD should not be issued in this instance. Rather, this action is consistent with statutory authority delineated by Congress, the relevant implementing regulations, and long-established agency policy.

As discussed in detail in the NPRM, in 2005, Congress provided the statutory authority for the exclusion of data influenced by “exceptional events” meeting specific criteria by adding section 319(b) to the CAA and granting the EPA with the authority to propose regulations to review and manage air quality monitoring data influenced by exceptional events, as defined by the CAA. On March 22, 2007, the EPA promulgated the 2007 Exceptional Events Rule in order to implement this 2005 CAA amendment.¹² On October 3, 2016, the EPA promulgated a comprehensive revision to the 2007 Exceptional Events Rule.¹³ The 2016 Exceptional Events Rule revision included the requirement that if a state demonstrates to the Administrator’s

¹² See 72 FR 13560 (March 22, 2007).

¹³ See 81 FR 68216 (October 3, 2016).

satisfaction that emissions from a wildfire smoke event caused a specific air pollution concentration in excess of the NAAQS at a particular air quality monitoring location and otherwise satisfies the requirements of 40 CFR 50.14, the EPA must exclude that data from use in determinations of exceedances and violations.¹⁴

Accordingly, the CAA provides for the exclusion of air quality monitoring data from DV calculations when there are NAAQS exceedances caused by events, such as wildfires, that meet the criteria for an exceptional event identified in CAA section 319(b) and in the EPA's Exceptional Events Rule at 40 CFR 50.1, 50.14, and 51.930. As explained in detail in the NPRM and the three TSDs included in the docket for this action, the EPA found that portions of MDE's June 2, June 29–30, and July 17–18, 2023 demonstrations met the Exceptional Events Rule criteria and determined that monitoring data impacted by wildfire smoke had regulatory significance for purposes of calculating the Baltimore Area's most recent DV (2022–2024 monitoring data).¹⁵ The removal of this exceptional event-impacted data is consistent with the CAA and implementing regulations and provides for a DV that meets the NAAQS.¹⁶

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).¹⁷ 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 in a memorandum issued by John S. Seitz (Seitz Memorandum).¹⁸ The Seitz Memorandum provided that requirements to submit SIP revisions addressing RFP, an attainment demonstration, and

¹⁴ See 40 CFR 50.14(b)(4).

¹⁵ As detailed in the NPRM, the EPA has reviewed the 2022 through 2024 quality-assured, quality-controlled, and certified ambient air quality monitoring data for ozone for the Baltimore Area, consistent with the requirements contained in 40 CFR 50.19(b) and 40 CFR part 50, appendix U, and recorded in the EPA's AQS database.

¹⁶ Under the EPA regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained when the DV does not exceed 0.070 ppm at each monitor site within the nonattainment area. See 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.

¹⁷ See 57 FR 13498, 13564 (April 16, 1992).

¹⁸ 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”).

other related requirements such as contingency measures and other specific ozone-related requirements in CAA 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.¹⁹ 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.²⁰

Thus, the CAA and implementing regulations provide for the exclusion of air quality monitoring data from DV calculations when there are NAAQS exceedances caused by events, such as wildfires, that meet the criteria for an exceptional event identified in the CAA and the associated regulations. Here, the state has submitted, and the EPA has concurred on, EE demonstrations that show certain monitoring data in the Baltimore Area during the 2022-2024 DV period were influenced by an exceptional event as defined by statute and regulation. As a result, the EPA has appropriately excluded that data in its calculation of the 2022-2024 ozone DV. The calculated 2022-2024 DV for each monitor within the Baltimore Area meets the NAAQS, and each monitor has valid data and meets the data completeness requirements (except for two monitors in Anne Arundel County).²¹ Pursuant to regulation and longstanding agency policy that has been consistently upheld in Federal court, a CDD is appropriate in this instance. In addition, as discussed in the NPRM, preliminary data for 2025, that has since been certified by

¹⁹ See 40 CFR 51.918, 40 CFR 51.1118, and 40 CFR 51.1318.

²⁰ 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)).

²¹ As discussed in the NPRM, The Glen Burnie monitor, located in Anne Arundel County, was discontinued in 2024 because the site land was sold, as described in MDE's 2024 Annual Network Plan included in the docket for this action. To replace the Glen Burnie monitor, on April 1, 2024 the Brooklyn Park monitor, also located in Anne Arundel County and approximately 4 miles north of the Glen Burnie site, became operational, as described in MDE's 2025 Annual Network Plan included in the docket for this action. Based on the monitoring history for these sites and proximity to each other, the EPA determined that it is reasonable to conclude that the Glen Burnie and Brooklyn Park sites would not have exceeded the 2015 ozone NAAQS for the 2022–2024 DV.

MD and concurred on by the EPA, indicates that the Baltimore Area continues to attain the standard.

Lastly, the EPA disagrees with the commenter that CDDs reduce accountability of states to submit implementation plans and weaken the “environmentally conscious posture of state governments.” This action implements longstanding agency policy based on the air quality measurements for ground level ozone in the Baltimore 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. If the Baltimore Area falls back into nonattainment, those suspended attainment planning SIPs become immediately due upon a determination by the EPA that the Baltimore Area is no longer attaining the NAAQS. Moreover, MD 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. The commenter’s suggestion that the EPA should revise the NAAQS to better reflect extraneous circumstances such as wildfires is beyond the scope of this action, which is limited to the determination that the Baltimore Area has attained the 2015 ozone NAAQS and a CDD is appropriate, consistent with the CAA, implementing regulations, and agency policy, as described previously.

IV. Final Action

For the reasons discussed in detail in the NPRM and summarized herein, the EPA is taking final action to determine that the Baltimore Area has clean data for the 2015 ozone NAAQS based upon quality-assured, quality-controlled and certified ambient air monitoring data for the 2022-2024 DV period. The EPA is also taking final action on portions of three EE requests submitted by MDE on February 2, 2024, and concurred on by the EPA on November

12, 2025. As a result of the CDD, the EPA is suspending the requirements for the Baltimore Area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 2015 ozone NAAQS, for as long as the Baltimore Area continues to attain the 2015 ozone NAAQS.

This action does not constitute a redesignation of the Baltimore 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 Baltimore Area and does not determine that the Baltimore 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 Baltimore Area will remain nonattainment for the 2015 ozone NAAQS until such time as MD submits a request for redesignation pursuant to CAA section 107(d)(3), the EPA determines that the Baltimore Area meets the CAA requirements for redesignation to attainment, and the EPA takes action to redesignate the Baltimore Area.

V. Statutory and Executive Order Reviews

This rule makes an attainment determination based on ambient air quality data and will result in the suspension of certain Federal requirements and will 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 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 is not a significant regulatory action under Executive Order 12866;
- 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 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 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 dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Amy Van Blarcom-Lackey,
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 V—Maryland

2. Amend § 52.1076 by adding paragraph (jj) to read as follows:

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

* * * * *

(jj) EPA has determined, as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], that based on 2022 to 2024 ambient air quality data, the Baltimore, MD serious 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.

[FR Doc. 2026-10755 Filed: 5/28/2026 8:45 am; Publication Date: 5/29/2026]