



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0713; FRL- 9652-6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, Maryland, New Jersey, and Pennsylvania; Determinations of Attainment of the 1997 8-Hour Ozone Standard for the Philadelphia-Wilmington-Atlantic City Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making two determinations regarding the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone moderate nonattainment area (the Philadelphia Area). First, EPA is determining that the Philadelphia Area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2008-2010 monitoring period. In accordance with EPA's applicable ozone implementation rule, this clean data determination suspends the requirement for the Philadelphia Area to submit an attainment demonstration, reasonably available control measures (RACM), a reasonable further progress (RFP) plan and contingency measures related to attainment of the 1997 8-hours ozone NAAQS. These requirements shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Second, EPA is determining that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS by its attainment date of June 15, 2011. These actions are being taken under the Clean Air Act (CAA).

DATES: Effective Date: This final rule is effective on [insert date 30 days from date of

publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03- OAR-2011-0713. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., 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 either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning EPA's proposed action related to Delaware, Maryland or Pennsylvania, please contact Maria A. Pino (215) 814-2181, or by e-mail at pino.maria@epa.gov. If you have questions concerning EPA's proposed action related to New Jersey, please contact Paul Truchan (212) 637-3711, or by email at truchan.paul@epa.gov.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this action.

I. Background

II. Summary of Actions

III. Final Action

IV. Statutory and Executive Order Reviews

I. Background

EPA published a notice of proposed rulemaking (NPR) for the States of Delaware, Maryland, and New Jersey and the Commonwealth of Pennsylvania (the States) on December 9, 2011 (76 FR 76929). Pursuant to section 181(b)(2)(A)¹ of the CAA, the December 9, 2011 NPR proposed to determine that the Philadelphia Area attained the 1997 8-hour ozone NAAQS by its attainment date, June 15, 2011. This proposed determination was based upon complete, quality assured, and certified ambient air monitoring data for the 2008-2010 monitoring period that show the Philadelphia Area has monitored attainment of the 1997 8-hour ozone NAAQS during this monitoring period. Preliminary ambient air monitoring data for the 2009-2011 monitoring period is consistent with continued attainment.

The December 9, 2011 NPR also proposed to make a clean data determination that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS. This proposed clean data determination was based upon complete, quality assured, and certified ambient air monitoring data that show the Philadelphia Area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2008-2010 monitoring period. As a result of this determination, the requirement for the Philadelphia Area to submit an attainment demonstration, a RACM analysis, an RFP plan, contingency measures, and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS.

¹ The NPR cited CAA sections 181(b)(2)(A) and 179(c) as giving EPA the statutory authority for determining whether the Philadelphia Area attained the 1997 8-hour ozone NAAQS by its attainment date. In this final notice, EPA is correcting that statement to clarify that here the appropriate statutory authority derives from section 181(b)(2)(A).

In that same December 9, 2011 rulemaking notice, EPA withdrew the May 8, 2009 proposed disapprovals of the attainment demonstrations for the Philadelphia Area, based on the ambient air quality monitoring data demonstrating attainment. The Docket ID Numbers for the proposed disapprovals are EPA-R03-OAR-2008-0930, EPA-R03-OAR-2008-0929, EPA-R02-OAR-2008-0497, and EPA-R03-OAR-2008-0928, respectively. *See* 74 FR 21599, 74 FR 21588, 74 FR 21578, and 74 FR 21604, respectively.

II. Summary of Actions

A. Determination of Attainment by the Attainment Date

Moderate areas are required to attain the 1997 8-hour ozone NAAQS by no later than six years after designation, or June 15, 2010. *See* 40 CFR 51.903. However, the Philadelphia Area qualified for a one-year extension of its attainment date, based on the complete, certified ambient air quality data for the 2009 ozone season. On January 21, 2011, EPA approved a one-year extension of the Philadelphia Area's attainment date, from June 15, 2010 to June 15, 2011. *See* 76 FR 3838 and 76 FR 3840.

EPA is making a determination that the Philadelphia Area has attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2011. As a result of this action, EPA has met its requirement pursuant to CAA 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 by that date. The effect of this final determination of attainment by the area's attainment date is to discharge EPA's obligation under CAA section 181(b)(2)(A)² to establish that, in accordance with CAA section

² In the NPR, EPA stated that its obligations to determine if an area attained the 1997 8-hour NAAQS by its attainment was found under CAA sections 181(b)(2)(A) and 179. EPA notes that for an area such as Philadelphia,

181(b)(2)(A), the area will not be reclassified for failure to attain by its applicable attainment date. This determination of attainment is not equivalent to a redesignation. The States must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

B. Clean Data Determination

EPA is making a clean data determination, finding that the Philadelphia Area is attaining the 1997 8-hour ozone NAAQS. Under the provisions of EPA's ozone implementation rule (*See* 40 CFR 51.918), this clean data determination suspends the CAA requirement for the Philadelphia Area to submit certain planning requirements related to attainment of the 1997 8-hour ozone NAAQS for so long as the area continues to attain the 1997 8-hour ozone NAAQS. This clean data determination is not equivalent to a redesignation. The States must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

The clean data determination suspends the requirements to submit an attainment demonstration, RACM, RFP, contingency measures, and other planning elements related to attainment of the 1997 8-hour ozone NAAQS. This suspension continues until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 8-hour ozone NAAQS. This clean data determination is separate from, and does not influence or otherwise affect, any future designation determination or requirements for the area based on any new or revised ozone NAAQS. This clean data determination remains in effect regardless of whether EPA designates the Philadelphia Area as a nonattainment area for purposes of any new or revised ozone

which is designated moderate nonattainment for the 1997 8-hour ozone standard, the proper citation is CAA section 181(b)(2)(A).

NAAQS.

Although these requirements are suspended, EPA is not precluded from acting upon these elements. The States of Delaware and Maryland, and the Commonwealth of Pennsylvania submitted these SIP elements for their portions of the Philadelphia Area to EPA for review and approval in June 2007. The State of New Jersey submitted these SIP elements for its portion of the Philadelphia Area to EPA for review and approval in October 2007. EPA approved each state's RFP plans, RFP contingency measures, and RACM analyses for the Philadelphia Area in separate rulemaking actions. Therefore, these requirements have been fulfilled. EPA approved the RFP plans, RFP contingency measures, and RACM analyses from Delaware, Maryland, New Jersey, and Pennsylvania on April 8, 2010, June 11, 2010, May 15, 2009, and February 7, 2011, respectively. *See* 75 FR 17863, 75 FR 33172, 74 FR 22837, and 76 FR 6559.

C. Ambient Air Quality Monitoring Data

Complete, quality assured, certified 8-hour ozone air quality monitoring data for 2008 through 2010 show that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS. Additional information on air quality data for the Philadelphia Area can be found in the Technical Support Document (TSD) prepared for this action. The TSD can be viewed at <http://www.regulations.gov>. The rationale for EPA's proposed action is explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is making two determinations regarding the Philadelphia Area. First, EPA is making a

clean data determination, finding that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS. This clean data determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2008-2010 monitoring period. This clean data determination suspends the requirements for the Philadelphia Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hours ozone NAAQS for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Second, pursuant to section 181(b)(2)(A) of the CAA, EPA is making a determination that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS by its attainment date, June 15, 2011.

IV. Statutory and Executive Order Reviews

A. General Requirements

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, 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);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule 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 state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

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 from date of publication of this document 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 determination that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS 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, Ozone, Reporting and recordkeeping requirements.

Dated: February 22, 2012

Signed: W. C. Early, Acting
Regional Administrator,
Region III.

Dated: March 6, 2012

Signed: Judith A. Enck
Regional Administrator,
Region II.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

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

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

Subpart I — Delaware

2. Section 52.425 is added to read as follows:

§ 52.425 Determinations of attainment.

Based upon EPA's review of the air quality data for the 3-year period 2008 to 2010, EPA determined that Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone moderate nonattainment area (the Philadelphia Area) attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of June 15, 2011. Therefore, EPA has met the requirement pursuant to CAA 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 Philadelphia Area nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

3. Section 52.426 is amended by adding paragraph (i) to read as follows:

§ 52.426 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(i) Determination of attainment. EPA has determined, as of [Insert date of publication in the Federal Register], that based on 2008 to 2010 ambient air quality data, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone moderate nonattainment area has attained the 1997 8-hour ozone NAAQS. This determination, in accordance with 40 CFR 51.918, 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 1997 annual 8-hour ozone NAAQS.

Subpart V- Maryland

4. Section 52.1076 is amended by adding paragraph (x) to read as follows:

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

* * * * *

(x) Determination of attainment. EPA has determined, as of [Insert date of publication in the Federal Register], that based on 2008 to 2010 ambient air quality data, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone moderate nonattainment area has attained the 1997 8-hour ozone NAAQS. This determination, in accordance with 40 CFR 51.918, 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 1997 annual 8-hour ozone NAAQS.

5. Section 52.1082 is amended by adding paragraph (d) to read as follows:

§ 52.1082 Determinations of attainment.

* * * * *

(d) Based upon EPA's review of the air quality data for the 3-year period 2008 to 2010, EPA

determined that Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone moderate nonattainment area (the Philadelphia Area) attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of June 15, 2011. Therefore, EPA has met the requirement pursuant to CAA 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 Philadelphia Area nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

Subpart FF—New Jersey

6. Section 52.1576 is added to read as follows:

§ 52.1576 Determinations of attainment.

Based upon EPA's review of the air quality data for the 3-year period 2008 to 2010, EPA determined that Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone moderate nonattainment area (the Philadelphia Area) attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of June 15, 2011. Therefore, EPA has met the requirement pursuant to CAA 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 Philadelphia Area nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

7. Section 52.1582 is amended by adding paragraph (n) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone

* * * * *

(n) Attainment determination. EPA has determined, as of [Insert date of publication in the Federal Register], that based on 2008 to 2010 ambient air quality data, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone moderate nonattainment area has attained the 1997 8-hour ozone NAAQS. This determination, in accordance with 40 CFR 51.918, 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 1997 annual 8-hour ozone NAAQS.

Subpart NN—Pennsylvania

8. Section 52.2037 is amended by adding paragraph (r) to read as follows:

§ 52.2037 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(r) Determination of attainment. EPA has determined, as of [Insert date of publication in the Federal Register], that based on 2008 to 2010 ambient air quality data, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone moderate nonattainment area has attained the 1997 8-hour ozone NAAQS. This determination, in accordance with 40 CFR 51.918, 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 1997 annual 8-hour ozone NAAQS.

9. Section 52.2056 is amended by adding paragraph (f) to read as follows:

§ 52.2056 Determinations of attainment.

* * * * *

(f) Based upon EPA's review of the air quality data for the 3-year period 2008 to 2010, EPA determined that Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone moderate nonattainment area (the Philadelphia Area) attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of June 15, 2011. Therefore, EPA has met the requirement pursuant to CAA 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 Philadelphia Area nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 181(b)(2)(A).

[FR Doc. 2012-7196 Filed 03/23/2012 at 8:45 am; Publication Date: 03/26/2012]