



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R01-OAR-2012-0229; A-1-FRL-9744-6]**

**Approval and Promulgation of Air Quality Implementation Plans; New Hampshire;  
Determination of Attainment of the One-hour Ozone Standard for the Portsmouth-Dover-  
Rochester and Manchester Areas**

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

**ACTION:** Final Rule.

**SUMMARY:** The EPA is making four separate and independent air quality determinations for two areas in New Hampshire. First, EPA is determining that the Portsmouth-Dover-Rochester, New Hampshire serious one-hour ozone nonattainment area met the applicable deadline of November 15, 1999, for attaining the revoked one-hour National Ambient Air Quality Standard (NAAQS) for ozone. Second, EPA is determining that the Portsmouth-Dover-Rochester area has attained the one-hour ozone standard since 1999, and continues to attain the standard. Third, with respect to the Manchester, New Hampshire marginal one-hour ozone nonattainment area, EPA is determining that the area attained the one-hour ozone NAAQS by the applicable deadline of November 15, 1993. Fourth, with respect to the Manchester area, EPA is determining that the area has attained the one-hour ozone NAAQS since 1993, and continues to attain the standard.

**DATES:** This 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 Identification No. EPA-R01-OAR-2012-0229. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., 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](http://www.regulations.gov) or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhardt, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, telephone number (617) 918-1664, fax number (617) 918-0664, email Burkhardt.Richard@epa.gov.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What Actions Is EPA Taking?

A. Portsmouth-Dover Rochester Area

B. Manchester Area

II. What Is the Effect of These Actions?

III. Final Actions

IV. Statutory and Executive Order Reviews

**I. What Actions Is EPA Taking?**

**A. Portsmouth-Dover-Rochester Area**

EPA is making two separate and independent final determinations for the Portsmouth-Dover-Rochester serious one-hour ozone nonattainment area (hereafter, “the Portsmouth area”).

EPA is determining that the Portsmouth area attained the revoked one-hour ozone NAAQS by the applicable deadline of November 15, 1999. This determination is based upon complete, quality-assured and certified air quality monitoring data for the 1997-1999 ozone seasons showing that the area had an expected ozone exceedance rate below the level of the now revoked one-hour ozone NAAQS during that period and therefore attained the standard by its applicable deadline. EPA is also determining that the Portsmouth area has attained the standard based on complete, certified and quality-assured ozone monitoring data since 1999, and that it continues to attain the standard

based on the most recent three years of complete, quality-assured and certified ozone monitoring data (2009-2011). In addition, preliminary 2012 ozone data show the area continues to attain.

## **B. Manchester Area**

EPA is making two separate and independent final determinations for the Manchester, NH marginal one-hour ozone nonattainment area. EPA is determining that the Manchester marginal one-hour ozone nonattainment area attained the one-hour ozone NAAQS by the applicable deadline of November 15, 1993. This determination is based upon complete, certified, quality-assured ambient air quality monitoring data for the 1991-1993 ozone seasons showing that the area had an expected ozone exceedance rate below the level of the now revoked one-hour ozone NAAQS during that period, and therefore attained the standard by its applicable deadline. EPA is also determining that the Manchester area has attained the one-hour ozone standard since 1993, and continues to attain the standard based on the most recent three years of complete, quality-assured and certified ozone monitoring data (2009-2011). In addition, preliminary 2012 ozone data show the area continues to attain.

Additional information related to these determinations and the rationale for them are set forth in the Notice of Proposed Rulemaking (NPR) published on July 19, 2012 (77 FR 42470) and will not be restated here. EPA received no comments on the NPR.

## **II. What Is the Effect of These Actions?**

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *SCAQMD v. EPA*, 472 F.3d 882, at 903 (D.C. Cir. 2006). In keeping with this responsibility, EPA has determined that the Portsmouth-Dover-Rochester serious one-hour ozone nonattainment area attained the one-hour ozone standard by the area's applicable attainment date of November 15, 1999. In this context, EPA has also determined that there are no additional obligations under the revoked one-hour ozone standard, including those relating to one-hour ozone contingency measures, for the Portsmouth-Dover-Rochester one-hour ozone nonattainment area. EPA is also determining that the Manchester area attained the one-hour ozone standard by the area's applicable attainment date of November 15, 1993. As a marginal area, Manchester was not subject to any requirement for contingency measures, and EPA has determined that the area has no additional obligations under the revoked one-hour ozone standard.

## **III. Final Actions**

EPA is making four separate and independent determinations. First, EPA is determining that the Portsmouth, NH serious one-hour ozone nonattainment area met the applicable deadline of November 15, 1999, for attaining the one-hour NAAQS for ozone, based on 1997-1999 complete, certified and quality-assured ozone monitoring data. Second, EPA is determining that the Portsmouth, NH area has attained the standard based on complete, certified and quality-assured ozone monitoring data since 1999, and that it continues to attain the standard based on the most

recent three years of complete, quality-assured ozone monitoring data. In addition, preliminary 2012 ozone data show the area continues to attain. Third, EPA is determining that the Manchester, NH marginal ozone nonattainment area met the applicable deadline of November 15, 1993, for attaining the revoked one-hour ozone NAAQS. This determination is based upon complete, certified, quality-assured ambient air quality monitoring data for the 1991-1993 monitoring period showing that the area had an expected ozone exceedance rate below the level of the now revoked one-hour ozone NAAQS during that period and therefore attained the standard by its applicable deadline. Fourth, with respect to the Manchester area, EPA is determining, that the area has attained the one-hour ozone standard since 1993, and continues to attain the standard based on the most recent three years of complete, quality-assured and certified ozone monitoring data. In addition, preliminary 2012 ozone data show the area continues to attain.

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

These actions make determinations of attainment based on air quality, and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);

- do 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);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are 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; and
- do 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, these actions do 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.

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 these actions 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).

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 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 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 dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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Dated: October 15, 2012

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H. Curtis Spalding  
Regional Administrator,  
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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.

## Subpart EE - New Hampshire

2. Section 52.1534 is amended by adding paragraphs (g) and (h) to read as follows:

### § 52.1534 Control strategy: Ozone.

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(g) Determination of Attainment. Effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], EPA is determining that the Portsmouth-Dover-Rochester one-hour ozone nonattainment area met the one-hour ozone standard, by the area's applicable attainment date of November 15, 1999, based on 1997-1999 complete, certified, quality-assured ozone monitoring data at all monitoring sites in the area. Separate from and independent of this determination, EPA is determining that the Portsmouth-Dover-Rochester serious one-hour ozone nonattainment area has attained the one-hour ozone standard since 1999 and continues to attain based on complete, quality-assured data ozone monitoring data through 2011.

(h) Determination of Attainment. Effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], EPA is determining that the Manchester one-hour ozone nonattainment area met the one-hour ozone standard, by the area's applicable attainment date of November 15, 1993, based on 1991-1993 complete, certified, quality-assured ozone monitoring data at all monitoring sites in the area. Separate from and independent of this determination, EPA is determining that the Manchester marginal one-hour ozone nonattainment area has attained the one-hour ozone standard, since 1993, and that it continues to attain based on complete quality-assured ozone monitoring data through 2011.

[FR Doc. 2012-26524 Filed 10/29/2012 at 8:45 am; Publication Date: 10/30/2012]