



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0638; FRL-9969-93-Region 3]

Determination of Attainment by the Attainment Date for the 2008 Ozone Standard; Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a final determination that the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area (the Philadelphia Area) has attained the 2008 ozone national ambient air quality standard (NAAQS) by the July 20, 2016 attainment date. This final determination is based on complete, certified, and quality assured ambient air quality monitoring data for the Philadelphia Area for the 2013-2015 monitoring period. The effect of this determination of attainment (DOA) is that the Philadelphia Area will not be bumped up or reclassified as a moderate nonattainment area. The determination of attainment is not equivalent to a redesignation, and the States in the Philadelphia Area must still meet the statutory requirements for redesignation in order to be redesignated to attainment. This determination is also not a clean data determination. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID EPA-R03-OAR-2016-0638. All documents in the docket are listed on the <http://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 <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814 2036, or by e-mail at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 18, 2017 (82 FR 18268), EPA published a notice of proposed rulemaking (NPR) for the Philadelphia Area. The Philadelphia Area consists of Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania; Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem Counties in New Jersey; Cecil County, Maryland; and New Castle County in Delaware. *See* 40 CFR 81.331, 81.339, 81.321, and 81.308. In the NPR, EPA proposed to determine, in accordance with its statutory obligations under section 181(b)(2)(A) of the CAA and the relevant regulatory provisions (40 CFR 51.1103), that the Philadelphia Area attained the 2008 ozone NAAQS by the applicable extended attainment date of July 20, 2016.¹

¹ In a final rulemaking action published on May 4, 2016, EPA determined that the Philadelphia Area did not attain the 2008 ozone NAAQS by its July 20, 2015 attainment date, based on ambient air quality monitoring data for the 2012-2014 monitoring period. EPA determined that the Philadelphia Area qualified for a 1-year extension of its attainment date, as provided in section 181(a)(5) of the CAA and interpreted by regulation at 40 CFR 51.1107, and granted that extension. EPA established a new attainment date of July 20, 2016, with attainment to be based on ambient air quality monitoring data for the 2013-2015 monitoring period. *See* 81 FR 26697. (May 4, 2016). EPA’s decision to extend the attainment date has been challenged by the State of Delaware in *Delaware v. EPA*, No. 16-

II. EPA's Evaluation

Section 181(b)(2)(A) of the CAA requires that EPA determine whether an area has attained the NAAQS by its attainment date based on complete and certified air quality data from the three full calendar years preceding an area's attainment date. The 2008 ozone NAAQS is 0.075 parts per million (ppm). Consistent with the requirements contained in 40 CFR part 50, Appendix P, which set forth how to compute whether monitoring sites and nonattainment areas are attaining the ozone NAAQS, EPA reviewed the ozone ambient air quality monitoring data for the monitoring period from 2013 through 2015 for the Philadelphia Area, as recorded in the air quality system (AQS) database. State and local agencies responsible for ozone air monitoring networks supplied and quality assured the data. EPA determined that the monitoring sites with valid data had design values equal to or less than 0.075 ppm based on the 2013-2015 monitoring period. Therefore, based on 2013-2015 certified air quality data, EPA concludes that the Philadelphia Area has attained the 2008 ozone NAAQS.

Other specific requirements of this determination of attainment by the attainment date and the rationale for EPA's final action are explained in the NPR and will not be restated here. EPA received comments that are addressed in Section III of this rulemaking action.

III. Public Comments and EPA's Responses

EPA received adverse comments from the Center for Biological Diversity (Center), Sierra Club, and Delaware Department of Natural Resources and Environmental Control (Delaware). The comments are excerpted and/or summarized and addressed in this section:

Comment 1: EPA's regression approach is inconsistent with EPA's Appendix P regulations, and

1230 (D.C. Cir.). That case is currently pending before the Court and has not been decided.

EPA's reliance on the regression analysis is unlawful and arbitrary. For one of the two monitors (Brandywine), EPA relies on a regression analysis to predict the missing ozone concentration measurements and, as a result, purportedly achieves the requisite data completeness at that monitor. See U.S. EPA Region 3, Delaware Brandywine/Martin Luther King Monitors Data Substitution Analysis TSD 2013-2015 Ozone (Dec. 2016) (TSD), at p. 7. Appendix P is quite clear, however, that "[w]hen computing whether the minimum data completeness requirements have been met, meteorological or ambient data may be sufficient to demonstrate that meteorological conditions on missing days were not conducive to concentrations above the level of the standard." 40 CFR part 50, Appendix P section 2.3(b) (emphasis added). EPA's regression analysis does not purport to make any demonstrations regarding meteorological conditions, nor can it, as the analysis is based purely on ozone monitor readings.

Response 1: Commenters read 40 CFR part 50, Appendix P, section 2.3(b) too narrowly, and ignore the last sentence of that section, which states that "Missing days assumed less than [sic] the level of the standard are counted for the purpose of meeting the data completeness requirement." EPA interprets this regulation to allow for reasonable, rational assumptions using available data, whether meteorological or ambient, to determine whether, on days where an ozone monitor is missing data, it is unlikely that the actual ozone levels would exceed the NAAQS. For this determination, EPA used three different methods to determine whether data from days that the relevant ozone monitors were missing data were rationally assumed to be less than the level of the NAAQS, and therefore could be counted toward the data completeness requirement. These methods are: 1) analysis of temperature; 2) regression analysis; and 3) data substitution. First, EPA conducted an analysis that compared temperature (a meteorological condition) at the Wilmington Delaware National Airport (ILG) to measured ozone readings from

2010 through 2015 at the 18 ozone monitors in the Philadelphia Area (*See* Table 4 of the technical support document (TSD) at page 4). The highest daily 8-hour ozone readings from those 18 Philadelphia Area ozone monitors on *all* days (not just missing days) was compared to the maximum daily temperatures at the Wilmington Airport on the corresponding days. The results of this analysis, presented in Figure 1 on page 6 of the TSD, shows that from 2010 through 2015, none of the 18 monitors recorded an 8-hour ozone level above 0.075 ppm when the temperature at Wilmington Airport was at or below 77 degrees Fahrenheit (°F). This analysis identified 18 days in 2013, 30 days in 2014, and 27 days in 2015 with missing ozone readings that could reasonably be assumed to be below the 0.075 ppm threshold at the Martin Luther King (MLK) monitor (AQS ID 10-003-2004) in Delaware. The temperature-based analysis alone added enough complete days to the MLK monitor to meet the data completeness threshold. For the Brandywine monitor (AQS ID 10-003-1010), the temperature-based analysis identified 22 days during 2013, 9 days during 2014, and 8 days during 2015 that could reasonably be assumed to be below a 0.075 ppm ozone reading. However, the temperature analysis did not add enough complete days to the Brandywine monitor to meet the Appendix P data completeness level because there was an insufficient number of days below 77 °F at the Wilmington Airport in which the Brandywine monitor was missing data. Therefore, EPA performed a regression analysis in order to fill in the remaining data gap as well as to validate the data results (for both monitors) obtained from the analysis of temperature method.

This regression analysis relied on ambient data – measured ozone levels at a nearby certified ozone monitor – to predict ozone levels at monitors with missing data. This type of analysis is only appropriate where readings from a nearby certified ozone monitor closely correlate with readings from the monitors with missing data. In this case, EPA examined the two other air

quality monitors located in the same county as the Brandywine and MLK monitors, compared recorded ozone readings of all four monitors on days and found that the Bellefonte2 monitor (AQS ID 10-003-1013), which is located five miles from both Brandywine and MLK, correlated most closely with those monitors. As explained in more detail in the TSD, the Bellefonte2 monitor is strongly correlated with both the Brandywine and MLK monitors (TSD at pp. 8-10). Using this information, EPA determined a separate linear regression equation for each of the Brandywine and MLK monitors. These two equations allowed calculation of predicted ozone readings for the Brandywine or MLK monitor on days when those monitors were missing data by using actual ozone readings from the Bellefonte2 monitor (TSD at p.11) in the equation. The values calculated using the linear regression equations for the MLK and Brandywine monitors are shaded green in Table 6 of the TSD on pages 11-16. EPA took a conservative approach and added, as complete days, only those days at the Brandywine monitor where the predicted ozone value was less than 0.060 ppm. That is, EPA only employed the regression analysis method to add days toward the data completeness requirement for the Brandywine monitor where EPA's predicted ozone value was well below the level of the NAAQS. The days added as "complete" days to the Brandywine monitor via this method (linear regression equation showing less than 0.060 ppm ozone) are represented by the numeral "2" in Table 9 of the TSD. The regression analysis added 8 complete days in 2013 and 16 complete days in 2014 to the Brandywine monitor (TSD, p.16) and also validated and confirmed EPA's conclusions from its temperature method analysis at this monitor. Since the analysis of temperature method provided sufficient complete data for the MLK monitor, EPA performed a similar regression analysis for the MLK monitor only for the purpose of confirming and validating its conclusions drawn from the temperature analysis. Both the temperature analysis and regression methods produced the same

results at the MLK monitor.

EPA also used a third method – a data substitution analysis – as a further check on the validity of the first two methods on the Brandywine and MLK monitors. When any of the four monitors in New Castle County, Delaware, was missing a valid day of data during the 2013 – 2015 ozone seasons, EPA looked at ambient data in the form of actual recorded ozone values at the other New Castle County monitors and substituted the highest recorded ozone value for the missing value(s) at the other monitor(s). After adding these substituted data values, a 2013-2015 “test design value” was calculated for all four monitors. None of the four monitors’ calculated test design values, including Brandywine and MLK, exceeded the ozone standard of 75 ppb. *See* Table 8, TSD at p. 17.

Comment 2: The monitor data relied upon by EPA do not actually demonstrate that exceedances of the NAAQS will not occur at temperatures below 78 degrees. (Sierra Club, p. 2). For both of the monitors (Brandywine and MLK), EPA relies heavily on a simplistic comparison of monitored ozone values at monitors within the Philadelphia Nonattainment Area and daily high temperature data from the Wilmington Delaware National Airport to purportedly show that meteorological conditions on days with high temperatures of 77 °F or below are not conducive to ozone formation. TSD at p. 3. But EPA’s conclusion regarding the 77 °F temperature threshold is not supported by data upon which EPA relies and is inconsistent with prior statements by the agency regarding the parameters that influence ozone formation. With regard to the data, EPA’s sample of monitor-days is far too small a data set from which to conclude that 77 °F represents a magical limit below which ozone concentrations are assured to be below the NAAQS. Indeed, Figure 1 of the TSD shows that at 78 °F — just one degree above the level at which EPA expresses confidence that no NAAQS violations will occur — the maximum monitored ozone

level in the Philadelphia Nonattainment Area was close to 85 parts per billion, well above the 75 part per billion (ppb) NAAQS. Moreover, Figure 1 also shows that at 68 °F — nine degrees below the temperature threshold identified by EPA — maximum monitored ozone levels in the Philadelphia Nonattainment Area were within one part per billion of the NAAQS.

Response 2: It is not necessary to demonstrate that exceedances of the NAAQS would never occur at temperatures below 78 °F, nor was the purpose of the analysis of temperature method to do so. The methods used to determine data completeness are consistent with 40 CFR Part 50, Appendix P, Section 2.3(b) and are grounded in science. As an example, EPA approved a similar demonstration from Delaware in 2010 for the same Brandywine ozone monitoring site which relied on a similar ozone and temperature comparison. This demonstration was referenced in a clean data determination, which is a different type of rulemaking action that also relies on air quality data, for the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD nonattainment area for the 1997 ozone NAAQS which was finalized in 2012 (77 FR 17341-17343). The Delaware demonstration relied on ambient ozone and temperature data for years 1997-2009, and reached a similar conclusion that ozone levels did not exceed 0.075 ppm in the Philadelphia area on any days where the daily maximum temperature was less than 77 °F. While not necessary for the data completeness determination for this Philadelphia determination of attainment, this example is provided to demonstrate that data completeness procedures conducted by Delaware in the past have arrived at the same conclusion with regard to the use of temperature data thresholds. Thus, EPA does not agree that the 77 °F temperature threshold below which no ozone exceedances have occurred in the Philadelphia Area is not supported by the evidence. The fact that sometimes very high levels of ozone occur at 78 degrees or that sometimes high levels of ozone (yet still below 0.075 ppm) occur at much lower temperatures does not invalidate the 77 °F

threshold in this instance. Also, one measured ozone value above 0.075 ppm does not equal a NAAQS exceedance because of the definition of design value, which is a statistically-based measure of the 4th high over a 3-year period. Regarding the sample size, EPA notes that Delaware's analysis of temperature versus ozone concentrations for the period of 1997 to 2009, when combined with EPA's analysis of temperature versus ozone concentrations for the period of 2010 through 2015, provides nineteen years of data supporting the temperature analysis conclusion. The following sources further discuss the importance of the relationship between temperature and ozone formation as established by both EPA and the scientific literature for decades:

(1) Camalier, L., Cox, W., and Dolwick, P. (2007). The effects of meteorology in urban areas and their use in assessing ozone trends. *Atmospheric Environment*, Volume 41, Issue 33, pages 7127-7137; (2) Cox, W. and Chu, S (1996). Assessment of interannual ozone variation in urban areas from a climatological perspective. *Atmospheric Environment*, Volume 30, Issue 14, pages 2615-2615; (3) US EPA (2016). Trends in Ozone Concentrations Adjusted for Weather Conditions. <https://www.epa.gov/air-trends/trends-ozone-adjusted-weather-conditions>; and; (4) Walcek, C. and Yuan, H. (1995). Calculated influence of temperature-related factors on ozone formation rates in the Lower Troposphere. *Journal of Applied Meteorology*, Volume 34, pages 1056-1069.

Comment 3: EPA's proposed attainment determination is not protective of public health because monitoring data from the 2016 ozone season no longer supports a finding that the Philadelphia Area is meeting the 2008 ozone NAAQS.

Response 3: To determine whether an area attained by the 2008 ozone NAAQS attainment date

of July 20, 2016, EPA is required to rely on the three previous full years of data, which is 2013-2015. CAA section 181(b)(2)(A); 40 C.F.R. Part 50, Appendix P, section 2.3(b). Any data occurring in calendar year 2016 cannot be used in this determination because July 20, 2016 is in the middle of the 2016 ozone season and would produce only incomplete non-quality assured, and uncertified data, as of the July 2016 attainment date. The statutory provision governing the type of determination of attainment EPA is finalizing today is very clear: “the Administrator shall determine, *based on the area’s design value (as of the attainment date)*, whether the area attained the standard by that date.” CAA section 181(b)(2)(A) (emphasis added). When making determinations of attainment by the attainment deadline, EPA has consistently applied this unambiguous language as restricting its analysis to the years of data that constitute the basis for an area’s design value as of the specific attainment deadline. EPA’s regulations at 40 CFR part 50, Appendix P further clarify that the design value be derived from “three consecutive, *complete calendar years* of air quality monitoring data.” 40 CFR part 50, Appendix P, section 2.3(b) (emphasis added). The commenter’s request that EPA use non-quality assured, uncertified, incomplete calendar year 2016 data for this section 181(b)(2) determination is not permitted under the statute and regulations.

Comment 4: EPA illegally extended the attainment date deadline.

Response 4: As noted in the proposed rule (82 FR 18269, fn 2), the issue of whether EPA “illegally” extended the attainment date deadline from July 20, 2015 to July 20, 2016 is the subject of a petition for review filed by the State of Delaware on July 5, 2016 in the U.S. Court of Appeals for the District of Columbia Circuit. The petition has been fully briefed, and oral argument was held on October 5, 2017. State of Delaware Department of Natural Resources & Environmental Control v. U.S. Environmental Protection Agency, No. 16-1230. The final rule

extending the Philadelphia Area's attainment date is therefore legally effective at this time and outside the scope of this rulemaking.

Comment 5: The CAA requires that a finding of attainment be made only when all measures needed for attainment have been implemented, and the current air quality meets the standard.

Response 5: Commenters are incorrect regarding the CAA's requirements for a section 181(b)(2) determination of attainment by the attainment date. Nowhere in that provision does the CAA require that such a finding can only be made "when all measures needed for attainment have been implemented" and "current air quality meets the standard." Demonstrations of attainment of the 2008 ozone NAAQS by the attainment date require using the three calendar years of certified air quality data preceding the attainment date, which is 2013-2015.

Comment 6: Section 181(b)(2) does not restrict EPA to considering only fully certified, quality assured and complete data from 2013-2015, and the resulting 3-year design values calculated from those data. EPA should consider the preliminary 2016 data, and has considered data other than the three years of data prior to the attainment date in past rulemakings, including:

- 1) The January 25, 2012 proposed determination of attainment and clean data determination for the 1997 ozone NAAQS for the New York-New Jersey-Connecticut Nonattainment Area (NY-NJ-CT NAA) at 77 FR 3720; and
- 2) The July 18, 2012 final determination of attainment and clean data determination for the NY-NJ-CT NAA at 77 FR 36163; and
- 3) The May 15, 2014 proposal to rescind the clean data determination for the NY-NJ-CT NAA at 79 FR 27830.

The commenter asserts that these actions “. . . prove[] that EPA has considered uncertified data in proposals involving findings of attainment/clean data determinations.”

Response 6: All of the EPA actions cited by the Commenter support EPA’s use of only the three years of complete, quality-assured and certified ozone monitoring data preceding the attainment date when making this section 181(b)(2) determination of attainment by the attainment date. EPA often makes 181(b)(2) determinations of attainment by the attainment date in the same actions as clean data determinations, but these are two distinct actions with different statutory and regulatory requirements and consequences. Therefore, it is reasonable for EPA to consider air quality monitoring data differently for these two types of actions. EPA’s regulations governing clean data determinations for the various pollutants, including ozone, interpret the CAA as suspending attainment planning requirements for only as long as the area continues to attain the standard. *See, e.g.*, 40 CFR 51.1118. Thus, for a CDD, EPA requires an attaining design value based on three full years of data, and also may consider any additional preliminary data as well. Because the regulatory consequences of a clean data determination depend on continued attaining air quality, review of data until the final rulemaking as well as post-rulemaking review of data is appropriate. By contrast, section 181(b)(2) has the specific statutory consequence of deciding whether or not an area is reclassified to a higher classification. Under the CAA, if an area attains the NAAQS by its statutory attainment date, it cannot be “bumped up” or reclassified, even if it later violates the standard after that date. The Act therefore instructs the EPA to make a determination of an area’s air quality attainment status as of a date certain—the area’s attainment deadline.

The January 25, 2012 proposal cited by Commenter contains both a determination of attainment by the attainment date *and* a clean data determination. The 2012 proposal specifically states that

“EPA proposes to determine, in accordance with section 181(b)(2), that the NY-NJ-CT area attained the 1997 eight-hour ozone standard by the applicable deadline for that standard, June 15, 2010. This proposed determination is based on complete, quality-assured and certified data for 2007-2009.” 77 FR 3720, 3722. In the next paragraph, the proposal states “[i]n addition, EPA is separately and independently proposing to determine that the NY-NJ-CT area is currently attaining the 1997 eight-hour ozone standard, based on complete, quality-assured and certified data for 2008-2010 and preliminary data for 2011 that indicate continued attainment.” *Id.* This second paragraph describes EPA’s clean data determination (CDD), and therefore may consider all data up to the point of the rulemaking, including preliminary data. In this action, EPA is only making a section 181(b)(2) determination of attainment by the attainment date for the Philadelphia Area. If EPA were making a clean data determination for the Philadelphia Area, the preliminary 2016 data could be considered as a supplement.

Similarly, the June 18, 2012² final action for the NY-NJ-CT NAA uses only complete, quality-assured and certified 2007-2009 data for the determination of attainment by the June 15, 2010 attainment date, while using complete, quality-assured and certified 2008-2010 data and preliminary 2011 ozone data in making its clean data determination. *See* 77 FR 36163 (June 18, 2012). EPA’s 2014 action proposing to rescind the 2012 clean data determination for the NY-NJ-CT NAA followed the same practice of considering all recent data. *See* 79 FR 27830, 27832 (May 15, 2014). Thus, these previous actions cited by the comment do not show that EPA uses or considers incomplete, uncertified and preliminary data when making a section 181(b)(2) determinations of attainment by the attainment date. Today’s action is therefore consistent with the other actions cited by the Commenter.

² The comment incorrectly cites July 18, 2012 as the Federal Register date for this final determination. The correct date is June 18, 2012. *See* 77 FR 36163.

Comment 7: DNREC objects to EPA performing the data substitution analysis for the two Delaware monitors without notifying Delaware and giving Delaware an opportunity to review prior to publication.

Response 7: EPA is required to make this determination of attainment by the attainment date. This determination of attainment cannot be made without complete air quality data for 2013-2015. Because DNREC did not submit a data substitution analysis for the two Delaware monitors with incomplete data, EPA was required to perform this analysis.

Comment 8: Early 2017 ozone season data show that the Philadelphia Area has already experienced two episodes of nonattaining air quality based on preliminary maximum ozone concentrations of 79 ppb in Delaware and 86 ppb in Philadelphia.

Response 8: EPA's determination of attainment for the 2008 ozone NAAQS for the Philadelphia Area is based on complete, quality assured, and certified data for the 2013-2015 ozone seasons in accordance with section 181(b)(2) of the Act and 40 CFR parts 50, 51 and 58.

Comment 9: EPA's notice did not explain the implications of a finding of attainment in its proposal, and Delaware believes that a finalization of this finding will suspend CAA obligations for the area. Therefore, if EPA makes a final determination of attainment based on the 2013-2015 data, it must immediately make a finding of nonattainment using 2014 – 2016 data.

Response 9: EPA's notice did not explain in detail all the implications of the section 181(b)(2) determination of attainment by the attainment date. One consequence of the determination of attainment by the extended attainment date is that the Philadelphia Area will not be reclassified as a Moderate nonattainment area. *See* CAA section 181(b)(2)(A). However, although the

Philadelphia Area will remain a Marginal nonattainment area, since it is part of the ozone transport region (OTR) it will need to continue to comply with the additional requirements applicable to OTR states, including moderate area requirements. Furthermore, EPA clearly stated in the Summary section of the NPR that this action was not a redesignation of the Philadelphia Area to attainment. EPA also reiterates that this action is also not a clean data determination under 40 CFR 51.1118. A clean data determination, if it were to occur at some future time, would have the effect of suspending any attainment planning requirements. Regarding the commenter's statement that EPA must immediately make a finding of nonattainment (or a nonattainment designation) using the 2014 – 2016 ozone data, such a finding would be meaningless in this context. The Philadelphia Area continues to be designated nonattainment for the 2008 ozone NAAQS, and EPA is not, in this notice, issuing a clean data determination such that the Agency would need to rescind such determination based on more recent air quality data. Given that today's action is not changing the Philadelphia Area's marginal nonattainment designation, the suggestion that the Agency issue a nonattainment designation is inappropriate. If certified air quality data indicates issues with continuing attainment of the 2008 ozone NAAQS, the EPA will work with the relevant states in the Philadelphia Area and, to the extent necessary, use appropriate CAA authorities to address those air quality issues.

Comment 10: EPA should not make a determination of attainment for the 2008 ozone NAAQS when data shows that the 2015 ozone NAAQS of 70 ppm is not currently being met.

Response 10: EPA's determination of attainment for the 2008 ozone NAAQS by the attainment date of July 20, 2016, is statutorily required by section 181(b)(2), and requires that EPA use 2013-2015 ozone air quality data in determining whether the 2008 NAAQS has been met, as of

the July 20, 2016 attainment date for the 2008 ozone NAAQS. The 2015 ozone NAAQS is not germane to the specific question of whether the area attained the 2008 ozone NAAQS by the attainment date.

Comment 11: Delaying the determination of nonattainment for the Philadelphia Area will only delay adoption of needed SIP measures to bring the area into attainment.

Response 11: The determination of attainment by the attainment date under 181(b)(2) does not suspend any state planning requirements that are in place for the 2008 ozone NAAQS. The effect of this action will result in the Philadelphia Area remaining as a marginal nonattainment area for the 2008 ozone NAAQS, and keeping all currently applicable planning requirements in place, including OTR requirements.

Comment 12: The commenter objects to efforts by Pennsylvania Department of Environmental Protection (PADEP) to remove 2016 ozone data based on “exceptional events,” especially if the exceptional event is an increasing number of heat waves caused by global warming.

Response 12: This comment is not germane to this determination of attainment because EPA did not rely on any Pennsylvania ozone monitoring data from 2016 in making its determination of attainment. As required by the CAA and EPA regulations regarding determinations of attainment by the attainment date, EPA used only complete, quality-assured and certified ozone data from calendar years 2013 – 2015.

Comment 13: The Center has further concerns about EPA’s approach for meeting data completeness requirements, especially given the exceedances of the 2008 and 2015 NAAQS as noted above. The proposed rule notes that EPA was able to “add” missing data from the

Brandywine and MLK monitors by conducting “an analysis of the meteorological data and a regression analysis” and performed a “substitution analysis as a check on the validity” of that analysis. *See*, 82 FR 18270 (April 18, 2017). It would be more appropriate to require redundancy at monitoring stations prone to malfunctioning as opposed to relying on data substitutions in areas suffering from ozone levels at or above the NAAQS to assure that the most accurate data is collected.

Response 13: Please see the responses to comments 1 and 2 above with regard to the adequacy of the methods used to meet the minimum data completeness requirements at the MLK and Brandywine monitors. As to requiring redundant monitors, the Philadelphia Metropolitan Statistical Area (MSA) is currently meeting monitoring requirements specified in 40 CFR part 58 Appendix D. Appendix D does not require redundant monitoring for ozone. EPA has made recommendations to Delaware Department of Natural Resources and Environmental Control (DNREC) to try to reduce the data loss at the Brandywine air monitoring site. EPA is required to perform technical systems audits on each primary quality assurance organization at a frequency of once every three years. DNREC was audited by EPA Region 3 on May 10-12, 2016. One of the major findings of this audit was the incompleteness issues at the Brandywine site. EPA recommended as corrective action to mitigate potential data loss due to down power lines that DNREC do preemptive tree trimming each year. In addition, EPA recommended having a backup power source at the site. DNREC’s response to EPA’s recommendation was that a back-up power source is not feasible. DNREC will consider purchasing a battery-operated FEM monitor as a back-up in case of sustained power loss at the site, if resources are available.

Comment 14: EPA also received comments that were not germane to this final ruling but referred generally to the support of continuing implementation of air quality standards and

regulations. The comments included support of keeping EPA regulations in place to protect human health and the environment.

Response 14: EPA appreciates the supportive comments, and notes that ozone air quality monitoring will continue and existing air quality standards and regulations will remain in place. This determination of attainment by the attainment date does not reduce or revoke any existing ozone monitoring or control requirements.

IV. Final Action

EPA is making a final determination, in accordance with its obligations under section 181(b)(2)(A) of the CAA and 40 CFR 51.1103, that the Philadelphia Area attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016. This determination of attainment does not constitute a redesignation to attainment, and is also not a clean data determination.

V. Statutory and Executive Order Reviews

A. General Requirements

This rulemaking action finalizes a determination of attainment for the 2008 ozone NAAQS based on air quality and does not impose additional requirements. For that reason, this determination of attainment:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 (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 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 determining that the Philadelphia Area attained the 2008 ozone NAAQS by its July 20, 2016 attainment date 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.

Dated: October 11, 2017.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

List of Subjects in 40 CFR Part 52

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

Dated: October 6, 2017.

Catherine R. McCabe,
Acting Regional Administrator,
Region 2.

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.

Subpart I—Delaware

2. In §52.425, paragraph (d) is added to read as follows:

§52.425 Determinations of attainment.

* * * * *

(d) Based upon EPA’s review of the air quality data for the 3-year period 2013 to 2015, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area has attained the 2008 8-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date of July 20, 2016. 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-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

Subpart V—Maryland

3. In §52.1082, paragraph (j) is added to read as follows:

§52.1082 Determinations of attainment.

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(j) Based upon EPA’s review of the air quality data for the 3-year period 2013 to 2015, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area has attained the 2008 8-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date of July 20, 2016. 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-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

Subpart FF—New Jersey

4. In §52.1576, paragraph (d) is added to read as follows:

§52.1576 Determinations of attainment.

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(d) Based upon EPA’s review of the air quality data for the 3-year period 2013 to 2015, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area has attained the 2008 8-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date of July 20, 2016. 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-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

Subpart NN—Pennsylvania

5. In §52.2056, paragraph (o) is added to read as follows:

§52.2056 Determinations of attainment.

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(o) Based upon EPA's review of the air quality data for the 3-year period 2013 to 2015, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area has attained the 2008 8-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date of July 20, 2016. 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-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone 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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