

The Coast Guard deems it to be in the public's interest to issue a rule without waiting for comment period since high water conditions present an immediate hazard.

### Background and Purpose

The Missouri River from the mouth, mile 0.0, to mile 366.0, has seen a rapid rise in the water level and is above flood stage. This rule is required to protect saturated levees, therefore, all vessels are restricted from the regulated area.

### Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539-3823 for current information.

### Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

### Federalism Assessment

Under the principles and criteria of Executive Order 12612, this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B,

this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

### Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

#### PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T02-029 is added, to read as follows:

#### § 165.T02-029 Safety Zone: Missouri River.

(a) *Location.* The Missouri River between mile 0.0 and 366.0 is established as a safety zone.

(b) *Effective Dates.* This section is effective on May 16, 1995 and will terminate on June 15, 1995, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit vessel entry within the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will authorize entry into and operations within the described zone under certain conditions and limitations as announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: May 16, 1995.

#### S.P. Cooper,

*Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-1-FRL-5216-9]

### Determination of Attainment of Ozone Standard for Lewiston-Auburn and Knox and Lincoln Counties, Maine Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is determining, through direct final procedure, that the Lewiston-Auburn and the Knox and Lincoln Counties moderate ozone nonattainment areas in Maine have attained the National Ambient Air Quality Standard (NAAQS) for ozone. These determinations are based upon three years of complete, quality assured ambient air monitoring data for the years 1992-94 that demonstrate that the ozone NAAQS has been attained in both areas. On the basis of these determinations, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are not applicable to these areas for so long as these areas continue to attain the ozone NAAQS. In the proposed rules section of this **Federal Register**, EPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on this direct final rule, EPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

**DATES:** This action will be effective July 21, 1995 unless notice is received by July 6, 1995 that any person wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the material relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics

Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone: 617-565-3244.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Subpart 2 of Part D of Title I of the Clean Air Act ("CAA") contains various air quality planning and state implementation plan ("SIP") submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding reasonable further progress ("RFP") and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995 from John Seitz to the Regional Air Division Directors, entitled Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard, EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15

percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.<sup>1</sup> If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble to the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR at 13564.)<sup>2</sup>

Second, with respect to the attainment demonstration requirements of section 182(b)(1) an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions \* \* \* as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act." As with the RFP requirements, if an area has in fact monitored attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements

<sup>1</sup> EPA notes that paragraph (1) of subsection 182(b) is entitled "PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS" and that subparagraph (B) of paragraph 182(c)(2) is entitled "REASONABLE FURTHER PROGRESS DEMONSTRATION," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

<sup>2</sup> See also "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress \* \* \* will not apply for redesignations because they only have meaning for areas not attaining the standard") (hereinafter referred to as "September 1992 Calcagni memorandum").

provided by EPA in the General Preamble to Title I, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR at 13564; see also September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to the contingency measure requirements of section 172(c)(9). EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR at 13564; see also September 1992 Calcagni memorandum at page 6.) As the section 172(c)(9) contingency measures are linked with the RFP requirements of section 182(b)(1), the requirement no longer applies once an area has attained the standard.

EPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR Part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations that are being made with this **Federal Register** notice

are not equivalent to the redesignation of the area to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully-approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully-approved maintenance plan.

Furthermore, the determinations made in this notice do not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions if necessary and appropriate to deal with transport situations.

## II. Analysis of Air Quality Data

The EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) for the Lewiston-Auburn ozone nonattainment area and the Knox and Lincoln Counties ozone nonattainment area in the State of Maine from 1992 through the present time. On the basis of that review, EPA has concluded that these areas attained the ozone standard during the 1992-94 period and continues to attain the standard at this time. The ozone air quality data for the Lewiston-Auburn ozone nonattainment area shows no exceedances of the National Ambient Air Quality Standards since 1992. The ozone air quality data for the Knox and Lincoln Counties ozone nonattainment area shows only one exceedance of the National Ambient Air Quality Standards since 1992. Thus, these areas are no longer recording violations of the air quality standard for ozone. A more detailed summary of the ozone monitoring data for these areas is provided in the EPA technical support document dated May 17, 1995.

## III. Final Action

EPA determines that the Lewiston-Auburn ozone nonattainment area and the Knox and Lincoln Counties ozone

nonattainment area have attained the ozone standard and continue to attain the standard at this time. As a consequence of EPA's determination that the Lewiston-Auburn area and the Knox and Lincoln Counties area have attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard.

In addition, Maine currently does not have conforming transportation improvement programs (TIPs) and transportation plans in the areas discussed in this notice. The previous conforming TIPs and plans lapsed because new conformity determinations using EPA's conformity transitional criteria (40 CFR § 51.448) were required within one year of November 15, 1993. Because Maine had not submitted complete 15% plans, it was not able to meet this criteria. Because EPA is determining in this action that the Lewiston-Auburn area and Knox and Lincoln Counties area have attained the ozone standard and therefore are not required to have 15% plans, conformity can be restored once new conformity determinations by the appropriate metropolitan planning organizations and the United States Department of Transportation have been completed using 40 CFR § 51.410. Because 15% plans are no longer required, the state no longer has to meet the requirements of 40 CFR 51.428, 51.430 and 51.432.

EPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in these affected areas. If a violation of the ozone NAAQS is monitored in the Lewiston-Auburn area or the Knox and Lincoln Counties area (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the applicable area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determinations that these areas in Maine have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) do not presently apply, the sanctions clock for these two areas started by EPA on January 26,

1994 for the failure to submit a section 182(b)(1) 15 percent plan and associated contingency plan is hereby stopped as the deficiency for which the clock was started no longer exists.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action will become effective on July 21, 1995. However, if the EPA receives adverse comments by July 6, 1995, then the EPA will publish a notice that withdraws the action, and will address those comments in the final rule on the proposed determination of attainment and determination of applicability of RFP and attainment demonstrations which has been proposed for approval in the proposed rules section of this **Federal Register**.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State,

local, or tribal governments in the aggregate.

EPA's final action does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, EPA has determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

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 August 7, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 22, 1995.

**John P. DeVillars,**

*Regional Administrator, Region I.*

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401-7671q.

2. Subpart U is amended by adding § 52.1023 to read as follows:

#### § 52.1023 Control strategy: Ozone.

(a) *Determination.* EPA is determining that, as of July 21, 1995, the Lewiston-Auburn ozone nonattainment area has attained the ozone standard and that the

reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Lewiston-Auburn ozone nonattainment area, these determinations shall no longer apply.

(b) *Determination.* EPA is determining that, as of July 21, 1995, the Knox and Lincoln Counties ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Knox and Lincoln Counties ozone nonattainment area, these determinations shall no longer apply.

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