

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2008-0069; A-1-FRL-8526-7]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Determination of Attainment of the Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the Boston-Manchester-Portsmouth (SE), New Hampshire moderate 8-hour ozone nonattainment area has attained the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 8-hour ozone NAAQS since the 2002–2004 monitoring period, and continues to monitor attainment of the NAAQS based on 2004–2006 data. In addition, quality controlled and quality assured ozone data for 2007 that are available in the EPA Air Quality System database, but not yet certified, show this area continues to attain the 8-hour ozone NAAQS. If this proposed determination is made final, the requirements for this area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans related to attainment of the 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the ozone NAAQS.

DATES: Written comments must be received on or before March 10, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2008-0069 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: arnold.anne@epa.gov.
3. *Mail*: "Docket Identification Number EPA-R01-OAR-2008-0069," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.
4. *Hand Delivery or Courier*. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One

Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2008-0069. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. 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 in www.regulations.gov or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, 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. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1664, fax number (617) 918–0664, e-mail Burkhart.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 Action Is EPA Taking?
- II. What Is the Effect of This Action?
- III. What Is the Background for This Action?
- IV. What Is EPA's Analysis of the Relevant Air Quality Data?
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is proposing to determine that the Boston-Manchester-Portsmouth (SE), New Hampshire moderate 8-hour ozone nonattainment area has attained the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the ozone NAAQS since the 2002–2004 monitoring period, and monitoring data that continue to show attainment of the NAAQS based on 2004–2006 data. In addition, quality controlled and quality assured ozone data for 2007 that are available in the EPA Air Quality System (AQS) database, but not yet certified, show this area continues to attain the ozone NAAQS.

II. What Is the Effect of This Action?

If this determination is made final, under the provisions of EPA's ozone implementation rule (see 40 CFR Section 51.918), the requirements for the Boston-Manchester-Portsmouth (SE), New Hampshire moderate ozone nonattainment area to submit an attainment demonstration, a reasonable further progress plan, section 172(c)(9) contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment of the 8-hour ozone NAAQS would be suspended for so long as the area continues to attain the ozone NAAQS.

This proposed action, if finalized, would not constitute a redesignation to

attainment under CAA section 107(d)(3), because we would not yet have an approved maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The classification and designation status of the area would remain moderate nonattainment for the 8-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 8-hour ozone standard, the basis for the suspension of these requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

III. What Is the Background for This Action?

On April 30, 2004 (69 FR 23857), EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. Portions of Hillsborough, Merrimack, and Rockingham, and Strafford Counties in New Hampshire were designated as a moderate ozone nonattainment area

(specifically, the Boston-Manchester-Portsmouth (SE), New Hampshire area). The rest of New Hampshire was designated as attainment of the 8-hour ozone NAAQS. (See 40 CFR 81.330.) More recent air quality data, however, indicate that the Boston-Manchester-Portsmouth (SE), New Hampshire area is now attaining the 8-hour ozone standard.

IV. What Is EPA’s Analysis of the Relevant Air Quality Data?

The EPA has reviewed the ambient air monitoring data for ozone, consistent with the requirements contained in 40 CFR Part 50 and recorded in the EPA Air Quality System (AQS) database, for the Boston-Manchester-Portsmouth (SE), New Hampshire ozone nonattainment area, from 2002 through the present time. On the basis of that review, EPA has concluded that this area attained the 8-hour ozone standard at the end of the 2004 ozone season, based on certified 2002–2004 ozone data, and continued to attain the standard through and inclusive of the 2004–2006 ozone seasons. In addition, quality controlled and quality assured ozone data for 2007, that are available in AQS, but not yet certified, show this area continues to attain the 8-hour ozone NAAQS.

Under EPA regulations at 40 CFR Part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 parts per million (ppm) (i.e., 0.084 ppm, based on the rounding convention in 40 CFR part 50, Appendix I). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm (84 parts per billion (ppb)) at each monitor within the area, then the area is meeting the NAAQS. (See 69 FR 23857 (April 30, 2004) for further information.) Also, the data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR Part 50.

Table 1 shows the fourth-highest daily maximum 8-hour average ozone concentrations for the Boston-Manchester-Portsmouth (SE), New Hampshire nonattainment area monitors for the years 2004–2007. Table 2 shows the ozone design values for these same monitors based on the following 3-year periods: 2002–2004; 2003–2005; 2004–2006; and 2005–2007.

TABLE 1.—FOURTH-HIGH 8-HOUR OZONE AVERAGE CONCENTRATIONS (PARTS PER MILLION, PPM) IN THE BOSTON-MANCHESTER-PORTSMOUTH (SE), NEW HAMPSHIRE AREA

Location	AQS site ID	2004	2005	2006	2007
Manchester	330110020	0.071	0.071	0.068	0.074
Nashua	330111011	0.080	0.082	0.073	0.081
Portsmouth	330150014	0.076	0.075	0.073	0.078
Rye	330150016	0.074	0.075	0.076	0.086

TABLE 2.—OZONE DESIGN VALUES (PPM) FOR THE BOSTON-MANCHESTER-PORTSMOUTH (SE), NEW HAMPSHIRE AREA

Location	AQS site ID	2002–2004	2003–2005	2004–2006	2005–2007
Manchester	330110020	0.075	0.070	0.070	0.071
Nashua	330111011	0.084	0.080	0.078	0.078
Portsmouth	330150014	0.079	0.074	0.074	0.075
Rye	330150016	0.078	0.073	0.075	0.079

EPA’s review of these data indicate that the Boston-Manchester-Portsmouth (SE), New Hampshire ozone nonattainment area has met and continues to meet the 8-hour ozone NAAQS. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the

ADDRESSES section of this **Federal Register**.

V. Proposed Action

EPA is proposing to determine that the Boston-Manchester-Portsmouth (SE), New Hampshire 8-hour ozone nonattainment area has attained the 8-hour ozone standard and continues to attain the standard based on data through the 2007 ozone season. As provided in 40 CFR Section 51.918, if EPA finalizes this determination, it would suspend the requirements for

New Hampshire to submit an attainment demonstration, a reasonable further progress plan, and contingency measures under section 172(c)(9), and any other planning SIP related to attainment of the 8-hour ozone NAAQS for this area, for so long as the area continues to attain the standard.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory

action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of

promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act.

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*)

Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 30, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.
[FR Doc. E8–2251 Filed 2–6–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–0023; 1111 FY07 MO–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Bonneville Cutthroat Trout (*Oncorhynchus clarki utah*) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; initiation of status review, and solicitation of new information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the opening of a public comment period regarding the status of the Bonneville cutthroat trout (*Oncorhynchus clarki utah*) throughout its range in the United States. The 12-month finding for this subspecies, published in the **Federal Register** on October 9, 2001, has been withdrawn by the Service (Stansell Memorandum, August 24, 2007) due to the subsequent development of a formal opinion (Department of the Interior, March 16, 2007) regarding the legal

interpretation of the term “significant portion of the range” of a species. The status review will include analysis of whether any significant portion of the range of the Bonneville cutthroat trout warrants listing as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, the Bonneville cutthroat trout throughout its range, or any significant portion of its range.

DATES: To be fully considered for the 12-month finding, comments must be submitted on or before April 7, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R6–ES–2008–0023; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT:

Larry Crist, Field Supervisor, Utah Field Office, U.S. Fish and Wildlife Service, at the above address, or phone (801) 975–3330, ext. 126. Additional information is available at <http://www.fws.gov/mountain-prairie/species/fish/bct/>.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Bonneville cutthroat trout. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We are opening a 60-day comment period to allow all interested parties an opportunity to provide information on the status of the Bonneville cutthroat trout throughout its range, including:

- (1) Information regarding the species’ historical and current population status, distribution, and trends; its biology and ecology; and habitat selection;

- (2) Information on the effects of potential threat factors that are the basis