

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R03-OAR-2008-0109; FRL-8559-4]

#### Determination of Attainment for the Ozone National Ambient Air Quality Standards for Nonattainment Areas in Delaware, District of Columbia, Maryland, Pennsylvania, and Virginia

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that two severe 1-hour ozone nonattainment areas, Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD and Metropolitan Washington, DC-MD-VA, attained the 1-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of November 15, 2005. EPA also proposes to find that these areas are not subject to the imposition of the penalty fees under section 185 of the Clean Air Act (CAA). This proposal is based on three years of complete, quality-assured ambient air quality monitoring data for 2003 through 2005 ozone seasons. This proposed determination of attainment is not a redesignation to attainment for these severe areas for which air quality monitoring data indicates attainment of the standard. EPA is proposing this action to fulfill obligations to make such determinations under the CAA.

**DATES:** Written comments must be received on or before May 28, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0109 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* [Fernandez.cristina@epa.gov](mailto:Fernandez.cristina@epa.gov)

C. *Mail:* EPA-R03-OAR-2008-0109, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2008-0109. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://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 information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://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 *http://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 *http://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 *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814-2179, or by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us," and "our" refer to EPA.

#### I. What Actions Are EPA Proposing?

EPA is proposing two actions for both the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD 1-hour ozone nonattainment area (hereafter "the Philadelphia area") and the Metropolitan Washington, DC-MD-VA

1-hour ozone nonattainment area (hereafter "the Washington area").

For the Philadelphia area, EPA is proposing to determine that this area attained the 1-hour ozone NAAQS by its attainment date, November 15, 2005. Because EPA is proposing to find that this area has attained the 1-hour ozone NAAQS by its applicable attainment date, we also propose to find that this area is not subject to the imposition of the section 185 penalty fees.

For the Washington area, EPA is proposing to determine that this area attained the 1-hour ozone NAAQS by its attainment date, November 15, 2005. Because EPA is proposing to find that this area has attained the 1-hour ozone NAAQS by its applicable attainment date, we also propose to find that this area is not subject to the imposition of the section 185 penalty fees.

Under Section 181(b)(2) of the CAA, EPA must determine whether ozone nonattainment areas have attained the ozone NAAQS by their attainment date. In the case of the Philadelphia and Washington areas these determinations are based upon air quality monitoring data for the 2003 through 2005 ozone seasons and must be based on the area's design value as of the attainment date.<sup>1</sup>

This proposed determination of attainment is not a redesignation to attainment action for these severe areas. Nor is it a determination as to whether either the Philadelphia area or Washington area has continued to maintain attainment with the NAAQS after November 15, 2005.

#### II. What Is the Background for These Proposed Actions?

##### A. What Are the Geographical Boundaries of the Philadelphia and Washington Areas?

##### 1. What Are the Geographical Boundaries of the Philadelphia Area 1-Hour Severe Ozone Nonattainment Area?

The Philadelphia 1-hour severe ozone nonattainment area consists of: Cecil County, Maryland; Kent and New Castle Counties in Delaware; Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem Counties in New

<sup>1</sup> EPA remains obligated under section 181(b)(2) to determine whether an area attained the 1-hour ozone NAAQS by its attainment date. However, after the revocation of the 1-hour ozone NAAQS, EPA is no longer obligated to reclassify an area to a higher classification for the 1-hour NAAQS based upon a determination that the area failed to attain the 1-hour NAAQS by the area's attainment date for the 1-hour NAAQS. (40 CFR 51.905(e)(2)(i)(B)). Thus even if we make a finding that an area has failed to attain the 1-hour ozone NAAQS by its attainment date, the area would not be reclassified to a higher classification.

Jersey; and, Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania.

## 2. What Are the Geographical Boundaries of the Washington Area 1-hour Severe Ozone Nonattainment Area?

The Washington 1-hour severe ozone nonattainment area consists of the District of Columbia (the District), a Northern Virginia portion (Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park), and Calvert, Charles, Frederick, Montgomery, and Prince George's Counties in Maryland.

### B. What Is the History of the Ozone Designations and Classifications and 1-Hour Ozone Requirements for the Philadelphia and Washington 1-Hour Ozone Nonattainment Areas?

When the CAA Amendments were enacted in 1990, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including the Philadelphia and Washington areas, were classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. See, CAA sections 107(d)(1)(C) and 181(a). The Philadelphia 1-hour zone nonattainment area was classified as "severe-15" with a statutory attainment date of November 15, 2005. See, 56 FR 56694, November 6, 1991. The Washington area was designated nonattainment and initially classified "serious" for the 1-hour ozone NAAQS pursuant to section 181(a) of the CAA, but was later reclassified as "severe-15" with a statutory attainment date of November 15, 2005, due to its failure to attain by the November 15, 1999 attainment date for serious areas. See, 56 FR 56694, November 6, 1991 and 68 FR 3410, January 24, 2003.

### C. What Is the History of the 1-Hour Ozone Requirements Under EPA's Anti-Backsliding Rule?

In an April 30, 2004 final rule (69 FR 23858), EPA designated and classified most areas of the country under the 8-hour ozone NAAQS promulgated in 40 CFR 50.10. On April 30, 2004, EPA also issued a final rule (69 FR 23951) entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1" (Phase 1 Rule). Among other matters, this rule revoked the 1-hour ozone NAAQS in the Philadelphia and Washington areas (as well as most other areas of the country), effective June 15, 2005. See, 40 CFR

50.9(b); 69 FR at 23996; and 70 FR 44470, August 3, 2005. This Phase 1 Rule also set forth how anti-backsliding principles will ensure continued progress toward attainment of the 8-hour ozone NAAQS by identifying which 1-hour requirements remain applicable in an area after revocation of the 1-hour ozone NAAQS. Among the requirements not retained were the section 185 requirements for 1-hour severe or extreme nonattainment areas that fail to attain the 1-hour ozone NAAQS by the applicable 1-hour attainment date and the requirement to implement contingency measures for failure to attain the 1-hour ozone NAAQS by the applicable attainment date. See, 69 FR 23951, April 30, 2004, and 70 FR 30592, May 26, 2005.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (the Court) vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). Subsequently, in *South Coast Air Quality Management Dist. v. EPA*, 489 F.3d 1295 (D.C. Cir. 2007), in response to several petitions for rehearing, the Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. With respect to the challenges to the anti-backsliding provisions of the rule, the Court vacated three provisions that would have allowed States to remove from the SIP or to not adopt three 1-hour obligations once the 1-hour ozone NAAQS was revoked: (1) Nonattainment area new source review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 requirement for 1-hour severe or extreme nonattainment areas that fail to attain the 1-hour ozone NAAQS by the 1-hour attainment date; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS or for failure to attain that NAAQS. The Court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

The provisions in 40 CFR 51.905(a)–(c) remain in effect and areas must continue to meet those anti-backsliding requirements. However, the three provisions noted previously, which are specified in 51.905(e), were vacated by the Court. As a result, States must continue to meet the obligations for 1-hour NSR; 1-hour contingency measures; and, for severe and extreme areas, the obligations related to the

section 185 requirement. Currently, EPA is developing two proposed rules to address the Court's vacatur and remand with respect to these three requirements. We will address in this proposed rule how the 1-hour obligations that currently continue to apply under EPA's anti-backsliding rule (as interpreted by the Court) apply where EPA has made a determination that the area attained the 1-hour ozone NAAQS by its attainment date.

### D. What Are the Section 185 Requirements Pertinent to This Proposed Action?

Section 185(a) of the CAA states that for a severe or extreme ozone nonattainment a State must collect fees on certain stationary sources of air pollution if the area "has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date."

### E. What Are the Data Rounding Conventions for the 1-Hour Ozone NAAQS?

Although the 1-hour ozone NAAQS as promulgated in 40 CFR 50.9 includes no discussion of specific data handling conventions, our publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 parts per million (ppm). 40 CFR 50.9(a) states that: "The level of the national 1-hour primary and secondary ambient air quality standards for ozone \* \* \* is 0.12 parts per million. \* \* \*. The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations Pennsylvania 0.12 parts per million \* \* \* is equal to or less than 1, as determined by appendix H to this part."

We have clearly communicated the data handling conventions for the 1-hour ozone NAAQS in guidance documents. As early as 1979, EPA issued guidance that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded. The stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. See,

“Guideline for the Interpretation of Ozone Air Quality Standards,” EPA–450/4–79–003, OAQPS No. 1.2–108, January 1979. EPA has consistently applied the rounding convention in this 1979 guideline. For example, *see*, 68 FR 19106 at 19111, April 17, 2003; 68 FR 62041 at 62043, October 31, 2003; and, 69 FR 21717 at 21719, April 22, 2004.

*F. How Do We Make Attainment Determinations?*

Section 181(b)(2)(A) requires the Administrator to determine after the attainment date whether ozone nonattainment areas have attained the NAAQS. This provision states: “Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area’s design value (as of the attainment date), whether the area attained the standard by the date.” Although section 181(b)(2)(A) states that the determination of attainment status be based on the area’s “design value,” EPA interprets this provision generally to refer to EPA’s methodology for determining attainment status. That is, EPA determines attainment status under the 1-hour ozone NAAQS on the basis of the annual average number of expected exceedances of the NAAQS over the 3-year period up to, and including, the attainment date. *See*, 60 FR 3349, January 17, 1995. *See, also*, “General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13498 at 13506, April 16, 1992 (the “General Preamble”).

We will determine whether an area’s air quality is meeting the NAAQS for purposes of sections 181(b)(2) based upon data that has been collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA’s Air Quality System (AQS) database, (formerly known as the Aerometric Information Retrieval System (AIRS)).

The 1-hour ozone NAAQS is 0.12 ppm, not to be exceeded on average more than 1 day per year averaged over any 3-year period. *See*, 40 CFR 50.9 and appendix H to 40 CFR part 50. To account for missing data, the procedures found in appendix H to 40 CFR part 50 are used to adjust the actual number of monitored exceedances of the standard to yield the annual number of expected exceedances (“expected exceedance days”) at an air quality monitoring site. Under our policies, we determine if an area has attained the 1-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (i.e., “average number of expected exceedance days”) during the applicable 3-year period. *See*, generally the General Preamble, 57 FR at 13506, April 16, 1992 and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; “Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,” February 3, 1994. While the latter is explicitly applicable only to marginal areas, the general procedures for evaluating attainment in terms of the average number of expected exceedance days during the applicable 3-year period in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same CAA requirements in section 181(b)(2).

As noted previously, the applicable attainment date under the 1-hour ozone NAAQS for both the Philadelphia and Washington areas was November 15, 2005. Under these requirements, for severe ozone nonattainment areas with a statutory attainment date of November 15, 2005, we have based our proposed determination of attainment of the 1-hour ozone NAAQS by the applicable attainment date on the average number of expected exceedance days per year for the period 2003 through 2005 to

determine whether the area met its applicable attainment date under section 181 of the CAA. We have reviewed this data to determine the area’s air quality status in accordance with 40 CFR 50.9, and EPA policy guidance as discussed in the preceding paragraphs and in the previous discussion on rounding conventions elsewhere in the is document.

**III. What Is the Basis for EPA’s Proposed Determinations of Attainment Under Section 181?**

*A. How Did We Determine That the Philadelphia and Washington Areas Attained the 1-Hour Ozone NAAQS by the Applicable Attainment Date?*

From 2003 through 2005, ambient air quality for ozone was monitored on a continuous basis at 18 monitoring sites within the Philadelphia area and at 17 monitoring sites in the Washington area. As noted previously, the applicable attainment date for both the Philadelphia and Washington severe 1-hour ozone nonattainment areas was November 15, 2005. We are evaluating attainment based on the data from 2003 through 2005.

**1. Summary of the Philadelphia Area’s Ozone Data for 2003 to 2005**

During the entire 2003 to 2005 period, 18 ozone monitoring stations in the Philadelphia area were in operation. One other monitor discontinued operations in 2003.<sup>2</sup> Table 1.A summarizes the ozone data collected at the 18 ozone monitoring stations during the 2003 to 2005 period and included in AQS for the Philadelphia area. This data has been quality assured and is recorded in AQS. The Philadelphia area States use the AQS as the permanent database to maintain its data and quality assure the data transfers and content for accuracy. We have used the established rounding conventions set forth in our guidance documents and regulations.

**TABLE 1.A.—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN THE PHILADELPHIA AREA 2003 TO 2005**

Monitor information			Number of expected exceedance days			Average number of expected exceedance days per year
State	Monitor	AQS ID No.	2003	2004	2005	
DE .....	Killens Pond Rd, Kent County .....	100010002	1.0	0.0	0.0	0.3
DE .....	Lums Pond State Park, New Castle County .....	100031007	1.0	0.0	2.0	1.0
DE .....	Brandywine Creek State Park, New Castle County .....	100031010	0.0	0.0	0.0	0.0

<sup>2</sup> This was the monitor located at West Chester University in West Chester, Chester County, Pennsylvania (AQS ID# 420290050). The monitor

had averaged 0.3 exceedances per year over this 3-year period from 2001 to 2003. Therefore, EPA concludes that this monitor was attaining the 1-

hour ozone NAAQS at the time monitoring ceased at this site.

TABLE 1.A.—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN THE PHILADELPHIA AREA 2003 TO 2005—Continued

Monitor information			Number of expected exceedance days			Average number of expected exceedance days per year
State	Monitor	AQS ID No.	2003	2004	2005	
						2003–05
DE	Bellevue State Park, New Castle County	100031013	0.0	0.0	0.0	0.0
MD	Fairhill, Cecil County	240150003	0.0	0.0	2.0	0.7
NJ	Copewood E. Davis Sts, Camden	340070003	0.0	0.0	0.0	0.0
NJ	Ancora State Hospital, Camden County	340071001	2.0	0.0	0.0	0.7
NJ	Lincoln Ave. & Highway 55, Vineland, Cumberland County	340110007	1.0	0.0	1.0	0.7
NJ	Shady Lane Rest Home, Clarksboro, Gloucester County	340150002	2.0	0.0	0.0	0.7
NJ	Rider College, Mercer County	340210005	0.0	0.0	0.0	0.0
PA	Rockview Lane, Bristol, Bucks County	420170012	0.0	0.0	1.0	0.3
PA	New Garden Airport—Toughkenamon, Chester County	420290100	0.0	0.0	1.0	0.3
PA	Front St & Norris St, Chester, Delaware County	420450002	0.0	0.0	1.1	0.4
PA	State Armory, Norristown, Montgomery County	420910013	0.0	0.0	0.0	0.0
PA	1501 E Lycoming Ave AMS Lab, Philadelphia	421010004	0.0	0.0	0.0	0.0
PA	Roxy Water Pump Sta, Philadelphia	421010014	0.0	0.0	0.0	0.0
PA	Grant-Ashton Roads, NE Airport, Philadelphia	421010024	0.0	0.0	2.0	0.7
PA	Amtrak, 5917 Elmwood Avenue, Philadelphia	421010136	0.0	0.0	0.0	0.0

Source: EPA AQS Database.

As shown in Table 1.A, the average number of expected exceedance days per year is less than or equal to 1.0 at all of the sites. Therefore, we propose to find that the Philadelphia area attained the 1-hour ozone NAAQS by November 15, 2005, which was the applicable attainment date under the 1-hour ozone NAAQS for this nonattainment area.

2. Summary of the Washington Area's Ozone Data for 2003 to 2005

During the entire 2003 to 2005 period, there were 17 ozone monitoring stations in the Washington area were in operation. One other monitor had discontinued operations in 2003.<sup>3</sup> Table 1.B summarizes the ozone data collected at the ozone monitoring stations during

the 2003 to 2005 period and included in AQS for the Washington area. This data has been quality assured and is recorded in AQS. The Washington area States use the AQS as the permanent database to maintain its data and quality assure the data transfers and content for accuracy. We have used the established rounding conventions set forth in our guidance documents and regulations.

TABLE 1.B.—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN THE WASHINGTON AREA 2003 TO 2005

Monitor information			Number of expected exceedance days			Average number of expected exceedance days per year
State	Monitor	AQS ID No.	2003	2004	2005	
						2003–05
DC	Tacoma School, Washington	110010025	0.0	0.0	0.0	0.0
DC	River Terrace, 34th and Dix Streets, NE, Washington	110010041	0.0	0.0	0.0	0.0
DC	McMillan Reservoir, 2500 1st Street, NW, Washington	110010043	0.0	0.0	0.0	0.0
MD	Calvert County	240090011	Note 1	Note 1	0.0	Note 1
MD	Southern Maryland, Charles County	240170010	1.0	0.0	0.0	0.3
MD	Frederick County	240210037	0.0	0.0	0.0	0.0
MD	Rockville, Montgomery County	240313001	1.1	0.0	0.0	0.4
MD	Howard University's Beltsville Laboratory, Beltsville, Prince George's County.	240330030	Note 1	Note 1	0.0	Note 1
MD	P.G. County Equestrian Cntr, Prince George's County	240338003	2.0	0.0	0.0	0.7
VA	18th And Hayes St, Arlington County	510130020	1.0	0.0	0.0	0.3
VA	Cub Run Lee Rd, Chantilly, Fairfax County	510590005	0.0	0.0	0.0	0.0
VA	Mount Vernon, Fairfax County	510590018	2.0	1.0	0.0	1.0
VA	Lee Park, Franconia, Fairfax County	510590030	1.0	1.0	0.0	0.7
VA	6507 Columbia Pike, Annandale, Fairfax County	510591005	1.0	0.0	0.0	0.3
VA	McLean, Fairfax County	510595001	0.0	1.0	0.0	0.3
VA	Ashburn, Loudoun County	511071005	0.0	1.0	0.0	0.3
VA	Long Park, Prince William County	511530009	0.0	0.0	0.0	0.0
VA	Widewater, Stafford County	511790001	0.0	0.0	0.0	0.0

<sup>3</sup> This was the monitor located at the Goddard Space Flight Center in Greenbelt, Prince George's County, Maryland (AQS Id# 240330002). This

monitor had averaged of 0.7 exceedances per year over this 3-year period from 2001 to 2003. Therefore, EPA concludes that this monitor was

attaining the 1-hour ozone NAAQS at the time monitoring ceased at this site.

TABLE 1.B.—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN THE WASHINGTON AREA 2003 TO 2005—Continued

Monitor information			Number of expected exceedance days			Average number of expected exceedance days per year
State	Monitor	AQS ID No.	2003	2004	2005	
VA .....	Alexandria City .....	515100009	0.0	1.0	0.0	2003–05 0.3

Source: EPA AQS Database.

**Notes:** 1. These two additional monitoring sites commenced operations in 2005. Because neither of these two monitoring sites recorded an exceedance of the 1-hour ozone NAAQS in 2005, EPA concludes that these monitors were attaining the 1-hour ozone NAAQS in 2005.

As shown in Table 1.B, the average number of expected exceedance days per year is less than or equal to 1.0 at all of the sites. Therefore, we propose to find that the Washington area attained the 1-hour ozone NAAQS by November 15, 2005, which was the applicable attainment date under the 1-hour ozone NAAQS for this nonattainment area.

**IV. What Would Be the Consequences of This Proposed Action?**

Because the area has attained the 1-hour ozone NAAQS by the applicable attainment date, the area is not subject to the requirement to implement contingency measures for failure to attain the 1-hour ozone NAAQS by its attainment date. Since the area has met its attainment deadline, even if the area subsequently lapses into nonattainment, it would not be required to implement the contingency measures for failure to attain the 1-hour ozone NAAQS by its attainment date.

If a severe or extreme 1-hour ozone nonattainment area attains by its 1-hour ozone attainment date, it would not be required to implement the section 185 penalty fees program. Section 185(a) of the CAA states that a severe or extreme ozone nonattainment must implement a program to impose fees on certain stationary sources of air pollution if the area “has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date.” Consequently, if such an area has attained the standard as of its applicable attainment date, even if it subsequently lapses into nonattainment, the area would not be required to implement the section 185 penalty fees program. Because EPA is proposing to find that the area has attained the 1-hour ozone NAAQS by its applicable attainment date, we also propose to find that the

area is not subject to the imposition of the section 185 penalty fees.

**V. Proposed Actions**

*A. Philadelphia Area*

Based upon EPA’s review of the air quality data for the 3-year period 2003 to 2005, EPA is proposing to determine that the Philadelphia severe 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also proposes to find that this area is not subject to the imposition of the section 185 penalty fees.

*B. Washington Area*

Based upon EPA’s review of the air quality data for the 3-year period 2003 to 2005, EPA is proposing to determine that the Washington severe 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also proposes to find that this area is not subject to the imposition of the section 185 penalty fees.

**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 proposed action merely proposes to find that an area has attained a previously-established NAAQS based on an objective review of measured air quality data and imposes no additional requirements. Accordingly, the Administrator certifies that this proposed 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 does not impose any additional enforceable duties, 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 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), nor will it 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 determine that each of two areas has attained a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve establishment of technical standards, and thus, 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. These proposed rules to determine that the Philadelphia and Washington severe zone nonattainment

areas attained the 1-hour ozone NAAQS and are not required to impose section 185 penalty fees does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

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

Dated: April 15, 2008.

**W.T. Wisniewski,**

*Acting Regional Administrator, Region III.*

[FR Doc. E8-9261 Filed 4-25-08; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

[EPA-HQ-OAR-2008-0260; FRL-8556-6]

RIN 2060-AO57

**Standards of Performance for Coal Preparation Plants**

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to section 111(b)(1)(B) of the Clean Air Act (CAA), EPA has reviewed the emissions limits in the standards of performance for coal preparation plants which were promulgated January 15, 1976. This action presents the results of EPA's review and proposes amendments to limits for coal preparation plants consistent with those results. Specifically, we are proposing to tighten and add additional particulate matter (PM) emissions limits for sources constructed after April 28, 2008. In addition, we are proposing to clarify the procedures used to measure emissions from coal preparation plants and add new monitoring requirements for sources constructed after April 28, 2008.

**DATES:** *Comments.* Comments must be received on or before June 12, 2008. If anyone contacts EPA by May 8, 2008

requesting to speak at a public hearing, EPA will hold a public hearing on May 13, 2008. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before May 28, 2008.

**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0260, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

- *E-mail: a-and-r-docket@epa.gov.*
- *By Facsimile:* (202) 566-1741.
- *Mail:* Air and Radiation Docket, U.S. EPA, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503. EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

- *Hand Delivery:* EPA Docket Center, Docket ID Number EPA-HQ-OAR-2008-0260, EPA West Building, 1301 Constitution Ave., NW., Room 3334, Washington, DC, 20004. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0260. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://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 information that you consider to be CBI or otherwise protected through *regulations.gov* or e-mail. The *http://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 *http://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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243-01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-4003, facsimile number (919) 541-5450, electronic mail (e-mail) address: *fellner.christian@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

*Regulated Entities.* Entities potentially affected by this proposed action include, but are not limited to, the following:

Category	NAICS <sup>1</sup>	Examples of regulated entities
Industry .....	212111	Bituminous Coal and Lignite Surface Mining.
	212112	Bituminous Coal Underground Mining.
	221112	Fossil Fuel Electric Power Generation.
	212113	Anthracite Mining.