ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52


Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Determinations of Attainment of the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Washington, DC–MD–VA 8-Hour Ozone Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two determinations regarding the Washington, DC–MD–VA moderate 8-hour ozone nonattainment area (the Washington Area). First, EPA is proposing to make a determination that the Washington Area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This proposed determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. If this proposal becomes final, the requirement for this area to submit an attainment demonstration, reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures related to attainment of the 1997 8-hours ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted to EPA for review and approval. Second, EPA is also proposing to determine that the Washington Area has attained the 1997 8-hour ozone NAAQS by its attainment date of June 15, 2010. These actions are being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 20, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0986 by one of the following methods:


B. E-mail: fernandez.cristina@epa.gov.


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 No. EPA–R03–OAR–2010–0986. 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.
SUPPLEMENTARY INFORMATION: For detailed information regarding this proposal, EPA prepared a Technical Support Document (TSD). The TSD can be viewed at www.regulations.gov.

I. What is EPA proposing?

Pursuant to sections 181(b)(2)(A) and 179(c) of the CAA, EPA is proposing to determine that the Washington Area attained the 1997 8-hour ozone NAAQS by its attainment date, June 15, 2010. This proposed determination is based upon complete, quality assured, and certified ambient air monitoring data for the 2007–2009 monitoring period that show the area has monitored attainment of the 1997 8-hour ozone NAAQS during this monitoring period.

Complete, quality assured, and certified ambient air monitoring data for the 2008–2010 monitoring period shows continued attainment.

EPA is also proposing to make a determination that the Washington Area has attained the 1997 8-hour ozone NAAQS. This proposed determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. Once this proposal is final, the requirement for this area to submit an attainment demonstration, reasonably available control measures, a reasonable further progress plan, and contingency measures related to attainment of the 1997 8-hours ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted to EPA for review and approval. The District of Columbia, the State of Maryland, and the Commonwealth of Virginia submitted these SIP elements for the Washington Area to EPA for review and approval in June 2007.

II. What is the background for these actions?

A. The Washington Area

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Washington Area. The Washington Area includes the District of Columbia; Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia; and Calvert, Charles, Frederick, Montgomery, and Prince George’s Counties in Maryland. The Washington Area was classified as a moderate nonattainment area. See, 40 CFR 81.309, 81.321 and 81.347. Moderate areas are required to attain the 1997 8-hour ozone NAAQS by no later than six years after designation, or June 15, 2010. See, 40 CFR 51.903.
requirement pursuant to CAA sections 181(b)(2)(A) and 179(c) to determine, based on the area’s air quality as of the attainment date, whether the area attained the standard by that date. The effect of a final determination of attainment by the area’s attainment date will be to discharge EPA’s obligation under CAA sections 181(b)(2)(A) and 179, and to establish that, in accordance with CAA section 181(b)(2)(A), the area will not be reclassified for failure to attain by its applicable attainment date.

B. Clean Data Determination

EPA is proposing to determine that the Washington Area is attaining the 1997 8-hour ozone NAAQS. Once EPA finalizes this determination of attainment, the CAA requirement for the Washington Area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS would be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS.

The determination of attainment will:

1. Suspend the requirements to submit an attainment demonstration, RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS; 2. Continue until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 8-hour ozone NAAQS;

3. Be separate from, and not influence or otherwise affect, any future designation determination or requirements for the area based on any new or revised ozone NAAQS; and

4. Remain in effect regardless of whether EPA designates this area as a nonattainment area for purposes of any new or revised ozone NAAQS.

Although these requirements are suspended, EPA is not precluded from acting upon these elements, which were submitted to EPA in June 2007.

IV. What is EPA’s analysis of the relevant air quality data?

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the complete, quality assured and certified ozone ambient air monitoring data for the monitoring periods 2007–2009 and 2008–2010 for the Washington Area, as recorded in the EPA Air Quality System (AQS) database. On the basis of that review, EPA has concluded that this area attained the 1997 8-hour ozone NAAQS based on data for the 2007–2009 ozone seasons, and continues to attain based on data for the 2008–2010 ozone seasons.

A. Data Requirements

Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained at a site 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 at each monitoring site within the area, then the area is meeting the NAAQS.

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.

B. 2007–2009 Ozone Data

Table 1 shows the ozone design values for each monitor in the Washington Area for the years 2007–2009. All 2007–2009 design values are below 0.084 ppm, and all monitors meet the data completeness requirements. Therefore, the Washington Area has attained the 1997 8-hour ozone NAAQS, considering 2007–2009 data.

<table>
<thead>
<tr>
<th>State</th>
<th>County</th>
<th>Monitor ID</th>
<th>2007–2009 Design value (ppm)</th>
<th>2007–2009 Average % data completeness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maryland</td>
<td>Calvert</td>
<td>240090011</td>
<td>0.074</td>
<td>92</td>
</tr>
<tr>
<td></td>
<td>Charles</td>
<td>240170010</td>
<td>0.075</td>
<td>99</td>
</tr>
<tr>
<td></td>
<td>Frederick</td>
<td>240210037</td>
<td>0.076</td>
<td>98</td>
</tr>
<tr>
<td></td>
<td>Montgomery</td>
<td>240313001</td>
<td>0.078</td>
<td>93</td>
</tr>
<tr>
<td></td>
<td>Prince George’s</td>
<td>240330030</td>
<td>0.078</td>
<td>95</td>
</tr>
<tr>
<td></td>
<td>Prince George’s</td>
<td>240330003</td>
<td>0.078</td>
<td>98</td>
</tr>
<tr>
<td>Virginia</td>
<td>Arlington</td>
<td>510130020</td>
<td>0.079</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Fairfax</td>
<td>510590005</td>
<td>0.073</td>
<td>99</td>
</tr>
<tr>
<td></td>
<td>Loudoun</td>
<td>510590018</td>
<td>0.080</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Prince William</td>
<td>510590030</td>
<td>0.080</td>
<td>99</td>
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<tr>
<td></td>
<td>Prince William</td>
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<td>0.078</td>
<td>93</td>
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<td></td>
<td>Prince William</td>
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<td>0.077</td>
<td>100</td>
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<tr>
<td></td>
<td>Alexandria City</td>
<td>511530009</td>
<td>0.071</td>
<td>98</td>
</tr>
</tbody>
</table>

C. 2008–2010 Ozone Data

In 2010, four monitors in Fairfax County, Virginia were shutdown due to lack of funding. Virginia Department of Environmental Quality (VADEQ) worked with EPA prior to the Fairfax County Health Department shutting down these monitors. Because the Washington Area has more ozone monitoring sites than minimally required, and because VADEQ performed an analysis on the sites that were being shutdown showing a strong correlation between the ambient ozone data collected at the Fairfax County
Therefore, EPA will not consider these monitors for comparison to the NAAQS with respect to 2010 data.

Table 2 summarizes the 2008–2010 design values for the Washington Area. All 2008–2010 design values are below 0.084 ppm, and all monitors meet the data completeness requirements.

Therefore, 2006–2010 data indicates that the Washington Area continues to attain the 1997 8-hour ozone NAAQS.

**Table 2–2008–2010 Washington Area 8-Hour Ozone Design Values**

<table>
<thead>
<tr>
<th>State</th>
<th>County</th>
<th>Monitor ID</th>
<th>2008–2010 Design value (ppm)</th>
<th>2008–2010 Average % data completeness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maryland</td>
<td>Calvert</td>
<td>240090011</td>
<td>0.077</td>
<td>93</td>
</tr>
<tr>
<td></td>
<td>Charles</td>
<td>240170010</td>
<td>0.075</td>
<td>99</td>
</tr>
<tr>
<td></td>
<td>Frederick</td>
<td>240210037</td>
<td>0.076</td>
<td>98</td>
</tr>
<tr>
<td></td>
<td>Montgomery</td>
<td>240313001</td>
<td>0.074</td>
<td>93</td>
</tr>
<tr>
<td></td>
<td>Prince George’s</td>
<td>240330030</td>
<td>0.079</td>
<td>93</td>
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<tr>
<td></td>
<td></td>
<td>240338003</td>
<td>0.077</td>
<td>99</td>
</tr>
<tr>
<td>Virginia</td>
<td>Arlington</td>
<td>510130020</td>
<td>0.079</td>
<td>95</td>
</tr>
<tr>
<td></td>
<td>Fairfax</td>
<td>510590030</td>
<td>0.081</td>
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<tr>
<td></td>
<td>Loudoun</td>
<td>511071005</td>
<td>0.075</td>
<td>94</td>
</tr>
<tr>
<td></td>
<td>Prince William</td>
<td>511530009</td>
<td>0.070</td>
<td>94</td>
</tr>
<tr>
<td></td>
<td>Alexandria City</td>
<td>515100009</td>
<td>0.074</td>
<td>91</td>
</tr>
<tr>
<td>District of Columbia</td>
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<td></td>
<td></td>
<td>110010041</td>
<td>0.077</td>
<td>94</td>
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<td></td>
<td>110010043</td>
<td>0.079</td>
<td>95</td>
</tr>
</tbody>
</table>

**D. Conclusion**

EPA’s review of the complete, quality assured and certified ozone ambient air monitoring data for the monitoring periods 2007–2009 and 2008–2010 indicates that the Washington Area has met the 1997 8-hour ozone NAAQS. Additional information on air quality data for the Washington Area can be found in the TSD.

**V. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterpartsm * * *.” The opinion concludes that “[e]regarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1–1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.
VI. Proposed Action

Pursuant to sections 179 and 181(b)(2)(A) of the CAA, EPA is proposing to determine that the Washington Area has attained the 1997 8-hour ozone NAAQS by its moderate area attainment date, June 15, 2010. If EPA finalizes this determination, the requirements to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS will be suspended, as provided in 40 CFR section 51.918, so long as the area continues to attain the 1997 8-hour ozone NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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 Clean Air Act; 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 76299, February 16, 1994).

In addition, these proposed determinations of attainment of the 1997 8-hour ozone NAAQS for the Washington Area do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this proposed action 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 31, 2011.

W.C. Early,
Garvin, Regional Administrator, Region III.
[FR Doc. 2011–24098 Filed 9–19–11; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[http://www.regulations.gov]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina: Redesignation of the Hickory-Morganton-Lenoir 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve SIP revisions submitted on December 18, 2009, and December 22, 2010 (supplemental submission) by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality (DAQ), to support North Carolina’s request to redesignate the Hickory-Morganton-Lenoir fine particulate matter (PM2.5) nonattainment area (hereafter the “Hickory Area” or “Area”) to attainment for the 1997 Annual PM2.5 National Ambient Air Quality Standards (NAAQS). The Hickory Area is comprised of Catawba County in its entirety. EPA is now proposing four separate but related actions. First, EPA is proposing to approve the December 18, 2009, PM2.5 redesignation request, including the December 22, 2010, Motor Vehicle Emission Simulator (MOVES) mobile model supplement for the Hickory Area, provided that EPA takes final action to approve specific provisions of the North Carolina Clean Smokestacks Act (NCCSA). Second, EPA is proposing to approve North Carolina’s 2008 emissions inventory for the Hickory Area under section 172(c)(3) of the Clean Air Act (CAA or Act). Third, subject to the same proviso regarding the NCCSA and final approval of the 2008 emissions inventory, EPA is proposing to approve the 1997 Annual PM2.5 NAAQS maintenance plan for the Hickory Area, including the 2008 baseline emissions inventory, and the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NOx) for the years 2011 and 2021, and the mobile insignificance determination for direct PM2.5 for the Hickory Area. EPA is also describing the status of its transportation conformity adequacy determination for the new 2011 and 2021 MVEBs for NOx that are contained in the 1997 Annual PM2.5 NAAQS maintenance plan for the Hickory Area. Fourth and separate from the action to redesignate the Hickory Area, EPA is proposing to determine that the Area has attained the 1997 annual PM2.5 NAAQS by its applicable attainment date of April 5, 2010. These proposed actions are being taken pursuant to the CAA and its implementing regulations.

DATES: Comments must be received on or before October 20, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–1010, by one of the following methods:

2. E-mail: benjamin.lynorae@epa.gov.
3. Fax: (404) 562–9019.