

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2011-0960; FRL-9688-4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Determination of Attainment of the 1997 Ozone Standard for the Western Massachusetts Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is making two separate and independent determinations. First, EPA is making a final determination that the Springfield (Western Massachusetts) moderate 1997 8-hour ozone nonattainment area has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon complete, quality-assured, 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. In addition, complete, quality-assured, certified ambient air monitoring data for 2011 indicate that the area continues to attain the standard. Under the provisions of EPA's ozone implementation rule, 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 1997 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 ozone NAAQS. In addition, EPA is determining that this area attained the 1997 ozone NAAQS as of June 15, 2010, its applicable attainment date.

DATES: *Effective Date:* This rule is effective on July 19, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2011-0960. All documents in the docket are listed on the www.regulations.gov Web site. 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 through www.regulations.gov or in hard copy at the Office of Ecosystem Protection, U.S.

Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, 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, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, telephone number (617) 918-1664, fax number (617) 918-0664, email 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 actions is EPA taking?
- II. What is the background for these actions?
- III. What is the effect of these actions?
- IV. Final Actions
- V. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA is making two separate and independent determinations. First, EPA is determining that the Springfield (Western Massachusetts) moderate 8-hour ozone nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. In addition, complete, quality-assured, certified ambient air monitoring data for 2011¹

¹ The data capture for the Adams ozone monitor for 2011 was below EPA data capture requirements for the 1997 8-hour ozone NAAQS. In addition the 3-year period between 2009 and 2011 had low data capture. The Adams monitor is a mountain top monitor and the road to the site was not accessible until early May in both 2010 and 2011, due to snow and ice. The Massachusetts Department of Environmental Protection recently performed a missing data analysis for this site in accordance with the regulatory requirements of 40 CFR Part 50, Appendix I, for both 2010 and 2011. The Massachusetts missing data analysis used a combination of meteorology and air quality data for ozone monitors near the Adams site for the missing days to decisively conclude that on the days with missing ozone data, the ozone levels, if captured, would have been below both the 1997 8-hour ozone NAAQS and the 2008 8-hour ozone NAAQS. Thus, by rule, these days can be counted for the purpose

indicate that the area continues to attain the standard. Second, EPA is determining, under section 181(b)(2)(A) of the Clean Air Act (CAA), that this area attained the 1997 8-hour ozone NAAQS by its applicable attainment date (June 15, 2010).

II. What is the background for these actions?

On January 23, 2012 (77 FR 3220), EPA published in the **Federal Register** a Notice of Proposed Rulemaking (NPR) proposing the determinations that are the subject of this final rulemaking action. The rationale and bases for EPA's actions are set forth in the January 23, 2012 NPR, and need not be restated here. EPA received no comments on the NPR.

III. What is the effect of these actions?

Under the provisions of EPA's ozone implementation rule (see 40 CFR Section 51.918), a determination that the area is attaining the standard suspends the requirements for the Western Massachusetts 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 1997 8-hour ozone NAAQS for so long as the area continues to attain the 1997 ozone NAAQS.

This action does not constitute a redesignation to attainment under CAA section 107(d)(3), because EPA has not yet approved a maintenance plan for the area, as required under section 175A of the CAA, nor made a determination that the area has met the other requirements for redesignation. The classification and designation status of the area remains moderate nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment. If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 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. In addition, in accordance with CAA section 181(b)(2)(A), EPA is determining that the Western Massachusetts 1997 8-hour ozone nonattainment area attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010. The

of meeting the data completeness requirement. The missing data analysis for this site was approved by EPA on April 27, 2012. The approval letter is in the Docket for this action.

effect of this determination of attainment by the area's attainment date is to discharge EPA's obligation under section 181(b)(2)(A), and to establish that, in accordance with that section, the area will not be reclassified for failure to attain by its applicable attainment date.

IV. Final Actions

EPA is making two separate and independent determinations. First, EPA is determining that the Western Massachusetts 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard based on complete, quality-assured and certified ozone monitoring data from 2007–2009 and from 2008–2010. In addition, complete, quality-assured, certified ambient air monitoring data for 2011 indicate the area continues to attain the standard. As provided in 40 CFR 51.918, this determination suspends the requirements for Massachusetts to submit an attainment demonstration, a reasonable further progress plan, contingency measures under section 172(c)(9), and any other planning SIP related to attainment of the 1997 8-hour ozone NAAQS for this area, for so long as the area continues to attain the 1997 ozone standard. Furthermore, pursuant to CAA section 181(b)(2)(A) EPA is determining that the Western Massachusetts 8-hour ozone nonattainment area attained the 1997 8-hour ozone NAAQS by its applicable attainment date (June 15, 2010).

IV. Statutory and Executive Order Reviews

These actions make determinations of attainment based on air quality, result in the suspension of certain Federal requirements, and/or would not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not “significant regulatory actions” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 20, 2012.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a

petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 6, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, 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 *et seq.*

Subpart W—Massachusetts

- 2. Section 52.1129 is amended by adding paragraph (h) to read as follows:

§ 52.1129 Control strategy: Ozone.

* * * * *

(h) Determinations of Attainment: Effective July 19, 2012.

(1) Determination of Attainment. EPA is determining that the Springfield (Western Massachusetts) 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), this determination suspends 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 for as long as the area continues to attain the 1997 8-hour ozone standard. If EPA determines, after notice-and comment rulemaking, that the Western Massachusetts area no longer meets the 1997 ozone NAAQS, this determination shall be withdrawn.

(2) Determination of Attainment by the Area's Attainment Date. EPA has determined that the Springfield (Western Massachusetts) 8-hour ozone nonattainment area met the applicable June 15, 2010 attainment deadline for the 1997 8-hour ozone standard.

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