

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-R03-OAR-2011-0681; FRL-9458-9]

### Determination of Nonattainment and Reclassification of the Baltimore 1997 8-Hour Ozone Nonattainment Area; MD

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Baltimore moderate 8-hour ozone nonattainment area (the Baltimore Area) did not attain the 1997 8-hour ozone national ambient air quality standard (NAAQS) by its June 15, 2011, attainment date. The attainment date for moderate ozone nonattainment areas was June 15, 2010. However, the Baltimore Area qualified for a 1-year extension of its attainment date. Therefore, EPA extended the area's attainment date to June 15, 2011. This proposal is based on EPA's review of complete, quality assured, and certified ambient air quality monitoring data for the 2008–2010 monitoring period that are available in the EPA Air Quality System (AQS) database. If EPA finalizes this determination, the Baltimore Area will be reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard. The serious area attainment date for the Baltimore Area would be as expeditiously as practicable, but not later than June 15, 2013. Once reclassified, the State of Maryland must submit State Implementation Plan (SIP) revisions for the Baltimore Area to meet the Clean Air Act (CAA) requirements for serious ozone nonattainment areas. In this action, EPA is also proposing that the State of Maryland submit the necessary SIP revisions to EPA by no later than September 30, 2012. This action is being taken under the CAA.

**DATES:** Written comments must be received on or before October 3, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2011-0681 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-2011-0681, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, 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-2011-0681. 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:** Maria A. Pino, (215) 814-2181, or by e-mail at [pino.maria@epa.gov](mailto:pino.maria@epa.gov).

**SUPPLEMENTARY INFORMATION:** The following outline is provided to aid in locating information in this action.

- I. What action is EPA proposing?
- II. What is the background for this action?
- III. Proposed Action
- IV. Statutory and Executive Order Reviews

#### I. What action is EPA proposing?

EPA is proposing to determine that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. This proposal is based on EPA's review of complete, quality assured, and certified ambient air quality monitoring data for the 2008–2010 monitoring period that are available in AQS. If EPA finalizes this determination, the Baltimore Area will be reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard. The serious area attainment date for the Baltimore Area would be as expeditiously as practicable, but not later than June 15, 2013. (See 40 CFR 51.903.) Once reclassified, the State of Maryland must submit SIP revisions for the Baltimore Area that meet the 1997 8-hour ozone nonattainment requirements for serious areas as required by the CAA. In this action, EPA is also proposing that the State of Maryland submit SIP revisions to EPA by no later than September 30, 2012 for any measures required under the CAA for serious ozone nonattainment areas which have not already been approved into Maryland's SIP for the Baltimore Area.

#### II. What is the background for this action?

##### A. The 1997 8-Hour Ozone NAAQS

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (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 March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. On January 6, 2010, EPA again addressed

this 2008 revised standard and proposed to set the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm. EPA is working to complete reconsideration of the standard and thereafter will proceed with attainment/nonattainment area designations. This proposed rulemaking relates only to a determination of nonattainment for the 1997 8-hour ozone standard and is not affected by the ongoing process of reconsidering the revised 2008 standard. This action addresses only the 1997 8-hour ozone standard of 0.08 ppm, and does not address any subsequently revised 8-hour ozone standard.

#### B. The Baltimore Area

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 Baltimore moderate nonattainment area. This area includes Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, all in Maryland. On March 11, 2011, EPA approved a 1-year extension of the Baltimore Area's attainment date, from June 15, 2010 to June 15, 2011. The extension was based on the complete, certified ambient air quality data for the 2009 ozone season. (See 76 FR 13289.)

On June 4, 2010, EPA approved a Maryland SIP revision to meet the 2002 base year emissions inventory requirement and certain moderate area requirements, including reasonable further progress (RFP), RFP contingency measures, and reasonably available control measure (RACM) for the Baltimore Area. EPA also approved the transportation conformity motor vehicle emissions budgets (MVEBs) associated with the revision. (See 75 FR 31709.)

#### C. Requirement To Determine Attainment by the Attainment Date

Under CAA sections 179(c) and 181(b)(2), EPA is required to make a determination that a nonattainment area has attained by its attainment date, and publish that determination in the **Federal Register**. Under CAA section 181(b)(2), which is specific to ozone nonattainment areas, if EPA determines that an area failed to attain the ozone NAAQS by its attainment date, EPA is required to reclassify that area to a higher classification.

#### D. EPA's Analysis of the Relevant Air Quality Data

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the ozone ambient air monitoring data for the monitoring period from 2008 through 2010 for the Baltimore Area, as recorded in AQS. The data that EPA relied on for this

proposed action is included in the docket for this rulemaking, which can be viewed at <http://www.regulations.gov>.

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 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.

Table 1 shows the ozone design values for each monitor in the Baltimore Area for the years 2008–2010. In order to attain the NAAQS, all 2008–2010 design values must be below 0.084 ppm, and all monitors must meet the data completeness requirements. However, monitor number 240251001 in Harford County has a design value of 0.089 ppm. Therefore, the Baltimore Area has not attained the 1997 8-hour ozone NAAQS, considering 2008–2010 data.

TABLE 1—2008–2010 BALTIMORE AREA 1997 8-HOUR OZONE DESIGN VALUES

County	Monitor ID	2008–2010 Average % data completeness	2008–2010 Design value (ppm)
Anne Arundel .....	240030014	96	0.079
Baltimore .....	240051007	100	0.077
	240053001	94	0.078
Carroll .....	240130001	98	0.076
Harford .....	240251001	94	0.089
	240259001	99	0.078
Baltimore (City) .....	245100054	93	0.067

EPA's regulations at 40 CFR 51.907 set forth how a nonattainment area for the 1997 8-hour ozone NAAQS can qualify for an extension of its attainment date. Under 40 CFR 51.907, an area will qualify for a 1-year extensions of the attainment date if:

(a) For the first one-year extension, the area's 4th highest daily 8-hour average in the attainment year is 0.084 ppm or less,

(b) For the second one-year extension, the area's 4th highest daily 8-hour

value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

(c) For purposes of paragraphs (a) and (b) of this section, the area's 4th highest daily 8-hour average shall be from the monitor with the highest 4th highest daily 8-hour average of all the monitors that represent that area.

For the Baltimore Area, the original attainment year was 2009 and the first extension year was 2010. Table 2, below, show the 2009 and 2010 highest

4th highest daily 8-hour values for the Baltimore Area, and the 4th highest daily 8-hour values averaged over 2009 and 2010. The 4th highest daily 8-hour values averaged over 2009 and 2010 for monitor number 240251001 in Harford County is greater than 0.084 ppm (0.090 ppm). Therefore, the Baltimore Area does not qualify for a second extension of its attainment date.

TABLE 2—BALTIMORE AREA 2009–2010 AVERAGE 4TH HIGHEST DAILY 8-HOUR OZONE VALUES

County	Monitor ID	2009 4th highest daily value	2010 4th highest daily value	2009–2010 Average 4th highest daily value
Anne Arundel .....	240030014	0.070	0.087	0.079
Baltimore .....	240051007	0.068	0.078	0.073
	240053001	0.071	0.084	0.078
Carroll .....	240130001	0.068	0.083	0.076
Harford .....	240251001	0.083	0.096	0.090
	240259001	0.069	0.080	0.075
Baltimore (City) .....	245100054	0.066	0.074	0.070

#### *E. Determination of Nonattainment/ Ambient Air Quality Monitoring Data*

Complete, quality assured, certified 8-hour ozone air quality monitoring data from 2008 through 2010 show that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. In addition, as stated above, the area does not qualify for a second 1-year extension of its attainment date.

#### *F. Serious Nonattainment Area SIP Requirements*

The SIP requirements for a serious nonattainment area are set out in section 182(c) of the CAA. The requirements for serious ozone nonattainment areas include, but are not limited to: (1) Attainment and reasonable further progress demonstrations (CAA section 182(c)(2), 40 CFR 51.908 and 40 CFR 51.910); (2) an enhanced monitoring program (CAA section 182(c)(1) and 40 CFR 58.10); (3) an enhanced vehicle inspection and maintenance (I/M) program (CAA section 182(c)(3) and 40 CFR 51.350); (4) clean fuel vehicle programs (CAA section 182(c)(4)); (5)

transportation control (CAA section 182(c)(5)); (6) a 50 ton-per-year (tpy) major source threshold (CAA section 182(c) and 40 CFR 51.165); (7) more stringent new source review requirements (CAA section 182(c)(6) and 40 CFR 51.165); (8) special rules for modification of sources (CAA sections 182(c)(7) and 182(c)(8), and 40 CFR 51.165); (9) contingency provisions (CAA section 182(c)(9)); and (10) increased offsets (CAA section 182(c)(10) and 40 CFR 51.165). See also the requirements for serious ozone nonattainment areas set forth in section 182(c) of the CAA.

Because the Baltimore Area was designated as a severe-15 nonattainment area under the 1-hour ozone NAAQS (40 CFR 81.321), the State of Maryland has already implemented severe area requirements. These measures have been approved into Maryland's SIP for the Baltimore Area. The Baltimore Area is subject to "anti-backsliding" provisions of 40 CFR 51.905(a)(1) as an area that was nonattainment for the 1-hour ozone NAAQS that became a nonattainment area for the 1997 8-hour ozone NAAQS. Anti-backsliding

provisions require measures approved into Maryland's SIP for the 1-hour ozone NAAQS remain in the SIP for the 1997 8-hour NAAQS. The applicable requirements are specified in 40 CFR 51.900(f) and include enhanced vehicle inspection and maintenance, clean fuel fleets, enhanced monitoring, and a 25 tpy major source threshold for volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>). In addition, the anti-backsliding provisions require that the new source review (NSR) requirements based on the Baltimore Area's 1-hour severe nonattainment classification continue to apply. (See *South Coast Air Quality Management Dist. v. EPA*, 489 F.3d 1295 (DC Cir. 2007).)

Because severe area measures are more stringent than serious area measures, the Baltimore Area already meets many of the required serious area measures. Table 3, below, summarizes the serious nonattainment area requirements and their SIP approval status. The State of Maryland is only required to submit SIP revisions for any outstanding serious area measures for the 1997 8-hour NAAQS.

TABLE 3—STATUS OF SERIOUS AREA REQUIREMENTS IN THE MARYLAND SIP FOR THE BALTIMORE AREA

Requirement CAA section	SIP status
50 tpy threshold for VOC and NO <sub>x</sub> § 182(c).	COMAR 26.11.02.01 approved into SIP on 02/27/2003 (68 FR 9012).
Enhanced monitoring § 182(c)(1) .....	Photochemical Assessment Monitoring Stations (PAMS) Program approved into SIP on 9/11/1995 (60 FR 47084).
Attainment Demonstration § 182(c)(2)(A)	Must be submitted to EPA for approval by 9/30/2012.
RFP Demonstration § 182(c)(2)(B)/ § 182(c)(2)(C).	Must be submitted to EPA for approval by 9/30/2012.
Enhanced vehicle I/M program § 182(c)(3).	COMAR 11.14.08: Approved into the Maryland SIP on 10/29/1999 (64 FR 58340), revisions approved on 1/16/2003 (68 FR 2208).
Clean-fuel vehicle programs § 182(c)(4)	COMAR 26.11.20.04, National Low Emission Vehicle program (NLEV), approved into the SIP on 12/28/1999 (64 FR 72564). Maryland opted into NLEV as a substitute measure under § 182(c)(4). Upon expiration of NLEV, Maryland reverted to the Federal Tier 2 motor vehicle standards, and subsequently adopted and implemented California's Low Emission Vehicle Program.
Transportation control § 182(c)(5) .....	Compliance is ongoing through annual submission of Transportation Plans with accompanying conformity demonstrations.
<i>De minimis</i> rule § 182(c)(6) .....	NSR regulations, COMAR 26.11.17, approved into SIP on 2/12/2001 (66 FR 56170), revisions approved on 9/20/2004 (69 FR 56170).
Special rule for modifications of sources emitting less than 100 tons § 182(c)(7).	NSR regulations, COMAR 26.11.17, approved into SIP on 2/12/2001 (66 FR 56170), revisions approved on 9/20/2004 (69 FR 56170).

TABLE 3—STATUS OF SERIOUS AREA REQUIREMENTS IN THE MARYLAND SIP FOR THE BALTIMORE AREA—Continued

Requirement CAA section	SIP status
Special rule for modifications of sources emitting 100 tons or more § 182(c)(8).	NSR regulations, COMAR 26.11.17, approved into SIP on 2/12/2001 (66 FR 56170), revisions approved on 9/20/2004 (69 FR 56170).
Contingency provisions § 182(c)(9) .....	Must be submitted to EPA for approval by 9/30/2012.
Offsets of 1.2 to 1 § 182(c)(10) .....	NSR regulations, COMAR 26.11.17, approved into SIP on 2/12/2001 (66 FR 56170), revisions approved on 9/20/2004 (69 FR 56170).

### III. Proposed Action

Pursuant to section 181(b)(2) of the CAA, EPA is proposing to determine, based on certified, quality-assured monitoring data for 2008–2010, that the Baltimore Area did not attain the 1997 8-hour ozone standard by its June 15, 2011 attainment date. If EPA finalizes this determination, upon the effective date of the final determination, the Baltimore Area will be reclassified by operation of law as a serious 1997 8-hour ozone nonattainment area. Pursuant to section 182(i) of the CAA, EPA is also proposing the schedule for submittal of the SIP revisions required for serious areas once the Baltimore Area is reclassified. Because the Baltimore Area was designated as a severe-15 nonattainment area under the 1-hour ozone NAAQS (40 CFR 81.321), the State of Maryland has already implemented severe area requirements, and these measures have been approved into Maryland's SIP for the Baltimore Area. The Baltimore Area is subject to "anti-backsliding" provisions which require that the measures approved into Maryland's SIP for the 1-hour NAAQS remain in the SIP. Because severe area measures are more stringent than serious area measures, the Baltimore Area already meets many of the required serious area measures. Therefore, the State of Maryland is only required to submit SIP revisions for any outstanding serious area measures for the 1997 8-hour ozone NAAQS. EPA is proposing that the State of Maryland submit the required SIP revisions to EPA by September 30, 2012.

### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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 7629, February 16, 1994).

In addition, this proposed determination that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its applicable attainment date does 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 81

Air pollution control, National parks, Wilderness areas.

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

Dated: August 22, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2011–22449 Filed 8–31–11; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket ID FEMA–2008–0020; Docket No. FEMA–B–1043]

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** On March 25, 2009, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This document provides corrections to that table, to be used in lieu of the information published. The table provided in this document represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Cumberland County, Kentucky, and Incorporated Areas. Specifically, it addresses the following flooding sources: Bear Creek (backwater effects from Cumberland River), Big Renox Creek (backwater effects from Cumberland River), Big Whetstone Creek (backwater effects from Cumberland River), Big Willis Creek (backwater effects from Cumberland River), Brush Creek (backwater effects from Cumberland River), Carter Branch West (backwater effects from Cumberland River), Casey Branch (backwater effects from Dale Hollow Lake), Cedar Creek North (backwater effects from Cumberland River), Clover