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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2014-0884; FRL-9928-42-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Determination of Attainment of the 2008 8-Hour Ozone National Ambient Air Quality Standard for the Baltimore, Maryland Moderate Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is making the determination that the Baltimore, Maryland Moderate Nonattainment Area (Baltimore Area) has attained the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured, and certified ambient air quality monitoring data that shows the Baltimore Area has monitored attainment of the 2008 8-hour ozone NAAQS for the 2012–2014 monitoring period. As a result of this determination, the requirement for the Baltimore Area to submit an attainment demonstration and associated reasonably available control measures (RACM), reasonable further progress plans (RFP), contingency measures, and other State Implementation Plan (SIP) revisions related to attainment of the standard are suspended for as long as the area continues to attain the 2008 8-hour ozone standard.

**DATES:** This final rule is effective on July 1, 2015.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0884. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (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](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection

Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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#### SUPPLEMENTARY INFORMATION:

##### I. Background

On March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over three years) to provide increased protection of public health and the environment. 73 FR 16436 (March 27, 2008).<sup>1</sup> The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. On May 21, 2012 (77 FR 30088), effective July 20, 2012, EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air monitoring data. The Baltimore Area (specifically, Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Harford County, and Howard County) was designated as a moderate ozone nonattainment area. See 40 CFR 81.321. Moderate areas are required to attain the 2008 8-hour ozone NAAQS by no later than six years after the effective date of designations, or July 20, 2018. See 40 CFR 51.903. Air quality monitoring data from the 2012–2014 monitoring period indicate that the Baltimore Area is now attaining the 2008 8-hour ozone NAAQS. On March 18, 2015 (80 FR 14041), EPA published a notice of proposed rulemaking (NPR), which proposed to determine that the Baltimore Area has attained the 2008 8-hour ozone NAAQS. Public comments were received on the NPR. Summaries of the comments as well as EPA's responses are in section III of this rulemaking notice.

Under the provisions of 40 CFR 51.1118,<sup>2</sup> also known as EPA's Clean Data Policy, a determination by EPA that an area is attaining the relevant standard (through a rulemaking that includes public notice and comment) suspends the area's obligations to

submit an attainment demonstration, RACM, RFP, contingency measures and other planning requirements related to attainment of the 2008 8-hour ozone NAAQS for as long as the area continues to attain the standard. This suspension remains in effect until such time, if ever, 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 2008 8-hour ozone NAAQS. Although these requirements are suspended, EPA remains obligated under section 110(k)(2) to act upon these elements at any time if submitted to EPA for review and approval. On April 22, 2015, the Maryland Department of the Environment (MDE) sent correspondence to EPA indicating its intent to submit an attainment SIP for the 2008 8-hour ozone NAAQS.<sup>3</sup> This determination of attainment is not equivalent to a redesignation under section 107(d)(3) of the CAA. The designation status of the Baltimore Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA determines that the Area meets the Clean Air Act (CAA) requirements for redesignation to attainment, including an approved maintenance plan. Additionally, the determination of attainment is separate from, and does not influence or otherwise affect, any future designation determination or requirements for the Baltimore Area based on any new or revised ozone NAAQS, and it remains in effect regardless of whether EPA designates this Area as a nonattainment area for purposes of any new or revised ozone NAAQS. Finally, this determination does not relieve other CAA requirements that are not related to attainment planning and achievement of the NAAQS, such as an emissions inventory as required by CAA section 172(c)(3) or a nonattainment area permitting program pursuant to CAA sections 172(c)(5) and 173.

##### II. EPA's Evaluation

EPA has reviewed the complete, quality-assured and certified ozone ambient air monitoring data for the monitoring period for 2012–2014 for the Baltimore Area. The design values for each monitor for the years 2012–2014 are less than or equal to 0.075 ppm which is the 2008 ozone NAAQS level, and all monitors meet the data completeness requirements (*see* Table

<sup>1</sup> For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, Appendix I.

<sup>2</sup> EPA issued its proposal to determine that the Baltimore Area was attaining the 2008 ozone NAAQS pursuant to 40 CFR 51.918, EPA's Clean Data Policy under the 1997 8-hour ozone implementation rule. On April 6, 2015, EPA's plan implementing the 2008 ozone NAAQS became effective, thereby replacing 40 CFR 51.918 with 40 CFR 51.1118, a functionally identical provision for purposes of this action. See 40 CFR 51.919.

<sup>3</sup> The April 22, 2015 letter from MDE is available in the docket for this rulemaking under docket number EPA-R03-OAR-2014-0884.

1).<sup>4</sup> Based on this 2012–2014 data from EPA's Air Quality System (AQS) database and consistent with the requirements contained in 40 CFR part 50, EPA has concluded that this Area attained the 2008 8-hour ozone NAAQS.

TABLE 1—2012–2014 BALTIMORE AREA 2008 8-HOUR OZONE DESIGN VALUES

Monitor ID	Average percent data completeness	2012–2014 Design value (ppm)
24–003–0014 .....	97	0.074
24–005–1007 .....	95	0.072
24–005–3001 .....	99	0.072
24–013–0001 .....	99	0.069
24–025–1001 .....	98	0.075
24–025–9001 .....	96	0.073
24–510–0054 .....	90	0.064

The data in Table 1 are available in EPA's AQS database. The AQS report with this data is available in the docket for this rulemaking under docket number EPA–R03–OAR–2014–0884 and available online at [www.regulations.gov](http://www.regulations.gov), docket number EPA–R03–OAR–2014–0884. Other specific requirements of the determination and the rationale for EPA's proposed action were explained in the NPR and will not be restated here.

### III. Summary of Public Comments and EPA Responses

EPA received the following adverse comments on the proposed determination of attainment for the Baltimore Area for the 2008 8-hour ozone NAAQS. A summary of the adverse comments and our responses follow.

*Comment 1:* A commenter stated that EPA's proposed determination of attainment for the 2008 8-hour ozone standard for the Baltimore Area thwarts the CAA's mandate of expeditious attainment of the NAAQS because the monitored data are the result of unusual weather patterns resulting in low ozone concentrations in Baltimore's air quality, which the commenter asserts is likely to revert back to monitored nonattainment in the near future. The commenter further states that this is of particular concern in the Baltimore Area given that asthma is an endemic problem and an environmental justice issue in Maryland. According to the commenter, issuance of a determination of attainment for the Baltimore Area for the 8-hour ozone NAAQS would defer additional needed air quality planning requirements, delay permanent attainment, and jeopardize public health. The commenter also asserts Maryland cannot rely on voluntary

control measures which are not permanent and enforceable. Therefore, the commenter stated EPA's issuance of the determination of attainment would be arbitrary, capricious and counterproductive to the mandate of the CAA.

*Response 1:* EPA disagrees with the commenter that EPA should not finalize the determination of attainment because, in accordance with EPA regulations and longstanding policy for such determinations, and in accordance with the intent of the CAA, the area is factually attaining the NAAQS. As the commenter acknowledges, unlike the CAA's redesignation requirement that an area's attainment air quality is due to permanent and enforceable measures in CAA section 7407(d)(3)(E)(iii), EPA's Clean Data Policy does not require an analogous demonstration. *See* 40 CFR 51.1118. It is for this reason that EPA's determination of attainment merely suspends the requirement to submit attainment planning SIPs for only so long as the area continues to attain the standard. If the area falls back into nonattainment, those attainment planning SIPs become immediately due upon a determination by EPA that the area is no longer attaining the NAAQS. Moreover, Maryland may still submit SIPs in anticipation of this event, and EPA will be required to act on those SIPs in accordance with CAA section 7410(k)(2) and (3). The Clean Data Policy embodies EPA's longstanding interpretation that certain planning requirements in the CAA no longer have meaning for areas that are attaining the standard because the purpose of these provisions is to help a nonattainment area reach attainment, a goal which will already have been achieved.

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the general preamble for the implementation of Title I of the CAA Amendments of 1990 (General Preamble). *See* 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171, 172, and 182 in the General Preamble, EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS. *See* Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard, EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning Standards, May 10, 1995 (Seitz Memorandum). The Seitz Memorandum provided that requirements to submit SIP revisions addressing RFP, an attainment demonstration, and other related requirements such as contingency measures and other specific ozone-related requirements in section 182 would be suspended for as long as the nonattainment area continued to monitor attainment of the NAAQS. EPA incorporated its "Clean Data Policy" interpretation in both its 8-Hour Ozone Implementation Rule in 40 CFR 51.918, its Final Clean Air Fine Particle Implementation Rule (1997 PM<sub>2.5</sub> Implementation Rule) in 40 CFR 51.1004(c), the SIP requirements rule for the 2008 ozone NAAQS published on March 6, 2015 (80 FR 12264), and the proposed PM implementation rule published on March 23, 2015 (80 FR 15340). *See* 72 FR 20585, 20665 (April

<sup>4</sup> Under EPA regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.075 ppm. *See* 40 CFR part 50, Appendix P. This 3-year

average is referred to as the design value. When the design value is less than or equal to 0.075 ppm at each monitor within the area, then the area is attaining the NAAQS. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater

than or equal to 90 percent (%), and no single year has less than 75% data completeness as determined in Appendix P of 40 CFR part 50. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System.

25, 2007).<sup>5</sup> Over the past two decades, in regulations, guidance memoranda, and numerous individual rulemakings, EPA has consistently articulated its Clean Data Policy interpretation as applying to the attainment-related SIP planning provisions of subparts 1, 2 and 4 of Part D of Title I of the CAA, and the spectrum of ambient air quality standards, including the 1-hour and 1997 ozone, coarse particulate matter (PM<sub>10</sub>), fine particulate matter (PM<sub>2.5</sub>), and lead (Pb) NAAQS. *See e.g.* 79 FR 77911 (December 29, 2014) (determination of attainment of 2008 Pb NAAQS); 79 FR 25014 (May 2, 2014) (determination of attainment of 2006 PM<sub>2.5</sub> NAAQS); 79 FR 21139 (April 15, 2014) (determination of attainment of 2008 ozone NAAQS); 78 FR 20244 (April 4, 2013) (determination of attainment of 1997 ozone NAAQS); and 77 FR 36163 (June 18, 2012) (determination of attainment of 1-hour ozone NAAQS). The D.C. Circuit explicitly upheld EPA's Clean Data Policy interpretation as embodied in the 1997 8-Hour Ozone Implementation Rule, 40 CFR 51.918.<sup>6</sup> *NRDC v. EPA*, 571 F.3d 1245, 1258–61 (D.C. Cir. 2009). Other U.S. Circuit Courts of Appeals that have considered and reviewed EPA's Clean Data Policy interpretation have similarly upheld it and the rulemakings applying EPA's interpretation. *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); *Our Children's Earth Foundation v. EPA*, N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion); and *Latino Issues Forum v. EPA*, Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009) (memorandum opinion).

Because EPA finds the Baltimore Area's monitoring data supports a determination that the Baltimore Area has attained the 2008 ozone NAAQS as explained above and in the NPR, EPA disagrees with the commenter that EPA should not issue at this time a determination of attainment which suspends SIP planning requirements for the Baltimore Area pursuant to our Clean Data Policy. EPA acts to protect the public health in accordance with the CAA and its mandates and the Agency

is concerned with increased asthma incidences as well as with ensuring environmental justice for communities. EPA's determination of attainment for the Baltimore Area is in accordance with our regulations and longstanding policy and is based on monitored ozone data demonstrating attainment with the 2008 8-hour ozone NAAQS, which EPA set at a level to protect the public health. Thus, EPA's action is in accordance with the CAA, its implementing regulations, and policy.

Second, to the extent that the commenter is suggesting that EPA may not issue a determination of attainment where the factors that contributed to attainment are not permanent, EPA notes that such a requirement is a prerequisite to a redesignation of a nonattainment area under CAA section 107(d)(3)(E)(iii), but not for a determination of attainment. A redesignation changes the legal status of an area from nonattainment of the NAAQS to attainment of the NAAQS, and is not pertinent to determinations of attainment that simply suspend attainment planning requirements in Part D of Title I of the CAA. Thus, EPA disagrees with the commenter that our determination of attainment, which is based on data from ozone monitors in the Baltimore Area showing attainment with the 2008 ozone NAAQS in accordance with 40 CFR part 50, Appendix P, is arbitrary or capricious, or contrary to the CAA.

Finally, under the provisions of EPA's ozone implementation rules (40 CFR 51.918 and 51.919), if EPA issues a determination that an area is attaining the relevant standard (through a rulemaking that includes public notice and comment), it will suspend the area's obligations to submit an attainment demonstration, RACM, RFP, contingency measures and other planning requirements related to attainment of the 2008 8-hour ozone NAAQS for as long as the area continues to attain the standard. This suspension remains in effect until such time, if ever, 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 2008 8-hour ozone NAAQS. Although these requirements are suspended, EPA is required to act upon these elements if submitted to EPA for review and approval. In fact, Maryland has stated its intent to submit an attainment plan for the 2008 8-hour ozone NAAQS, which will address SIP attainment planning requirements in sections 172 and 182 of the CAA, including control measures, RACM, RFP and contingency measures which will

assist the Baltimore Area with maintenance of the NAAQS. *See* April 22, 2015 letter from MDE to EPA regarding plans for 2008 ozone NAAQS attainment SIP which is included in the docket for this rulemaking action. Thus, EPA has considered the commenter's concern that this rulemaking will delay attainment planning which could assist with maintenance with the NAAQS, and has determined that MDE is addressing these concerns. Furthermore, EPA's NPR which proposed to determine the Baltimore Area had attained the 2008 8-hour ozone NAAQS has not delayed or interfered with MDE's plans for additional control measures to address ozone formation and attainment and maintenance of ozone NAAQS. For example, MDE recently proposed action on new nitrogen oxide (NO<sub>x</sub>) regulations for electric generating units (EGUs), which may assist the Area with maintenance of the 2008 8-hour ozone NAAQS.<sup>7</sup> *See* COMAR 26.11.38 (proposed April 17, 2015).<sup>8</sup> In addition, EPA expects further NO<sub>x</sub> reductions will occur in Maryland with the projected closure of coal-fired power generating units at NRG Energy's Dickerson and Chalk Point power plants which are projected to deactivate by 2018.<sup>9</sup> In addition, many other coal-fired EGUs in Maryland and in states neighboring Maryland have already deactivated or will soon deactivate in 2015 and 2016, including R. Paul Smith, Potomac River, Chesapeake, Clinch River, Glen Lynn, Armstrong, Elrama, Hatfields Ferry, Mitchell, Willow Island, Albright, Kammer, Kanawha River, Phillip Sporn, Rivesville, Walter C. Beckjord, Muskingum River, Eastlake, Ashtabula, and Big Sandy, which will likely result in further NO<sub>x</sub> and ozone

<sup>7</sup> NO<sub>x</sub> is a precursor pollutant which reacts in the atmosphere to form ozone.

<sup>8</sup> According to MDE's Web site, MDE has petitioned the Administrative, Executive, and Legislative Review (AELR) Committee of the Maryland General Assembly requesting emergency status for COMAR 26.11.38. If the AELR Committee grants its approval, the emergency measure for NO<sub>x</sub> reductions at EGUs may go into effect immediately. To become a permanent regulation, the regulation must be promulgated following the State required administrative procedures, which includes a 30-day public comment period. *See* <http://www.mde.state.md.us/programs/regulations/air/Pages/Emergency.aspx>. For additional information including the proposed regulations, *see* [http://www.mde.state.md.us/programs/regulations/air/Documents/COMAR\\_26.11.38.pdf](http://www.mde.state.md.us/programs/regulations/air/Documents/COMAR_26.11.38.pdf) and <http://www.baltimore-sun.com/news/maryland/bs-md-air-pollution-rule-20150417-story.html>.

<sup>9</sup> For a listing of EGUs which deactivated already or are planning to deactivate in the states which are part of PJM Interconnection, L.L.C., a regional transmission organization which coordinates the movement of wholesale electricity within states including Maryland, *see* <http://www.pjm.com/planning/generation-deactivation/gd-summaries.aspx>.

<sup>5</sup> While the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in a January 4, 2013 decision remanded the 1997 PM<sub>2.5</sub> Implementation Rule to EPA, the D.C. Circuit did not address the merits of that regulation regarding our Clean Data Policy in 40 CFR 51.1004(c), nor cast any doubt on EPA's existing interpretation of the statutory provisions for the Clean Data Policy. *See* *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013).

<sup>6</sup> "EPA's Final Rule to implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2 (Phase 2 Final Rule)." *See* 70 FR 71612, 71645–46 (November 29, 2005).

reductions and thereby additionally address the commenter's concerns with continued attainment and maintenance of the ozone NAAQS in the Baltimore Area.<sup>10</sup>

*Comment 2:* The commenter asserts that EPA should not issue a determination of attainment for the Baltimore Area because the Area experienced atypical weather conditions in 2013 and 2014, leading to lower monitored ozone levels in the Area, and asserts the Area is likely to revert back to nonattainment in the near future. The commenter states that unusually cool summers, increased precipitation, and shifting ozone transport patterns which occurred in 2013 and 2014 contributed to unusually low ozone levels in the Baltimore Area, but that the National Oceanic Atmospheric Administration (NOAA) predicts that such aberrant weather trends will not continue through summer 2015. The commenter asserts the Baltimore Area could revert to nonattainment if summers are warmer with less precipitation than 2013 and 2014. The commenter cites to statements from Maryland and the Ozone Transport Commission regarding the shifting weather and transport patterns in 2013 and 2014.<sup>11</sup> Furthermore, the commenter asserts that 2013 and 2014 atypical weather conditions led to lower energy demand due to less use of air conditioners by consumers in summer, and thereby led to lower coal plant operations, and presumably lower NO<sub>x</sub> emissions helping to keep ozone levels low. The commenter notes the coal-fired EGUs in Maryland have generally operated less in recent years but tend to continue to operate on warmer summer days, which the commenter says are the most "sensitive" from the ozone and public health perspective. Thus, the commenter states EPA should decline to issue the clean data determination for the Baltimore Area because of the aberrant weather in 2013 and 2014 and because the Area is likely to revert back to nonattainment in the near future.

*Response 2:* EPA disagrees with the commenter that transport of NO<sub>x</sub> or ozone or that weather patterns including unusual patterns of transport of pollution and cooler, wetter weather data than historical averages should impact EPA's determination of attainment for the Baltimore Area with respect to the 2008 8-hour ozone NAAQS. EPA's determinations of

attainment with a NAAQS are based entirely on monitoring data and on our evaluation of that data's compliance with 40 CFR part 50, Appendix P. Therefore, weather conditions, transport patterns, energy demand, and EGU megawatt generation that the commenter alleges may impact NO<sub>x</sub> and ozone pollution levels are irrelevant in determining whether an area is attaining a NAAQS. Under EPA regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.075 ppm. *See* 40 CFR part 50, Appendix P. This 3-year average is the design value. When the design value is less than or equal to 0.075 ppm at each monitor within the area, then the area is attaining the NAAQS. EPA's analysis of monitoring data in the Baltimore Area (included in Section II of this rulemaking action) supports the determination that the Baltimore Area has attained the 2008 8-hour ozone NAAQS. In addition, the data completeness requirement for evaluating monitoring data for NAAQS attainment is met when the average percent of days with valid ambient monitoring data is greater than or equal to 90 percent (%), and no single year has less than 75% data completeness as defined in Appendix P of 40 CFR part 50. Monitor data must also be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's AQS. EPA's analysis in Section II of this rulemaking action of the monitor data in the Baltimore Area shows the Baltimore Area monitors meet the completeness criterion which also supports our determination that the Baltimore Area has attained the 2008 8-hour ozone NAAQS.

In sum, EPA reviewed the complete, quality-assured and certified ozone ambient air monitoring data for the 2012–2014 monitoring period for the Baltimore Area. The design values for each monitor for the years 2012–2014 are less than or equal to 0.075 ppm, and all monitors meet the data completeness requirements (*see* Table 1 in Section II of this rulemaking action). Thus, EPA disagrees with the commenter that EPA should not issue the determination of attainment based on factors such as atypical weather, transport, or reduced EGU generation. The Baltimore Area has attained the 2008 8-hour ozone NAAQS in accordance with 40 CFR part 50, Appendix P requirements and 40 CFR 51.918. Thus, EPA's determination is in accordance with CAA requirements and

is not arbitrary or capricious.<sup>12</sup> If the Baltimore Area's monitors show design values exceeding the 2008 8-hour ozone NAAQS in the future, EPA will take appropriate action to remove the suspension of attainment plan requirements as discussed in this rulemaking and in the NPR. Furthermore, as noted in response to Comment 1, notwithstanding the lawful suspension of these requirements in accordance with 40 CFR 51.1118, the state has indicated that it plans to continue working on submissions to address the suspended attainment planning requirements, which EPA will be required to act upon in accordance with CAA section 110(k).

*Comment 3:* The commenter states that Baltimore's ozone monitors do not accurately capture all maximum ozone exposures. According to the commenter, several ozone monitors in the Baltimore Area (including specifically the Davidsonville, Padonia, and Aldino monitors) have shut off for several days during the ozone season in 2011, 2012 and 2013, and on several occasions, shut off on very hot days as ozone concentrations increased. The commenter asserts these monitors may have missed exceedances that would have kept the monitor in nonattainment for 2012–2014 with the 2008 8-hour ozone NAAQS. The commenter states the untimely shut-offs of ozone monitors call into question the "cleanliness" of the Area's data as monitors were "down and failing to record ambient ozone levels at critical points during ozone season and summer heat waves." The commenter states EPA should decline to grant the clean data determination at this time due to "illusory air quality improvements." Because the commenter questions the monitoring data due to certain shut off episodes, the commenter additionally claims EPA's determination of attainment for the Baltimore Area is arbitrary, capricious and contrary to law.

*Response 3:* EPA disagrees with the commenter that EPA should not finalize

<sup>10</sup> *See* <http://www.pjm.com/planning/generation-deactivation/gd-summaries.aspx>.

<sup>11</sup> By reference to "transport," the commenter refers to the transport of air pollution and pollutants from upwind states to downwind states in the atmosphere.

<sup>12</sup> EPA also discussed the irrelevance of atypical weather in EPA's approval of the attainment demonstration for the Washington DC–MD–VA, moderate ozone nonattainment area for the 1997 ozone NAAQS. 80 FR 19206 (April 10, 2015). In response to comments that the weather in 2012 was cooler and wetter than average which led to ozone levels lower than seen in prior years, EPA agreed that weather plays an important role in ozone formation but stated that these considerations do not require EPA to disapprove the attainment demonstration where modeling and actual design values from ambient air quality monitors demonstrated attainment of the NAAQS. *Id.* at 19213–214 (stating EPA's approval of attainment demonstration was in accordance with CAA statutory requirements).

this determination of attainment for the Baltimore Area for the 2008 8-hour ozone NAAQS due to concerns raised by the commenter with respect to certain ozone monitors in the Area, and disagrees that EPA's determination is arbitrary, capricious or contrary to law. As discussed previously, EPA issues determinations of attainment for the NAAQS based solely on monitoring data input into EPA's AQS demonstrating attainment with a NAAQS in accordance with requirements for attainment in 40 CFR part 50, Appendix P, regardless of weather or transport conditions or patterns. For EPA to issue a determination of attainment, one important criterion is that the monitoring data must meet the completeness requirements set forth in Appendix P of 40 CFR part 50 (amongst other requirements.) The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than or equal to 90%, and no single year has less than 75% data completeness. EPA has determined that the 2012–2014 ozone monitoring data in the Baltimore Area meet these requirements because the average percent of days with valid ambient monitoring data is greater than or equal to 90% and because no single year has less than 75% data completeness. Therefore, EPA has sufficient data in accordance with Appendix P of 40 CFR part 50 for issuance of the determination of attainment for the Baltimore Area with the 2008 8-hour ozone NAAQS. EPA disagrees with the commenter that the monitors "shutting off" create illusory air quality improvements as the monitors satisfy EPA's data completeness requirements.

In addition, EPA disagrees with the commenter's characterization that the monitors were "shutting off," and EPA finds it unreasonable to infer ozone exceedances may have occurred during any periods when monitors may not have collected valid data. Ozone monitors are sophisticated analytical instruments. While they mostly operate quite reliably, there may be occasional incidences where monitors malfunction or produce erroneous or compromised data despite best efforts at maintenance and good operating practices. EPA believes it is unreasonable to expect any ozone monitor to operate continuously twenty-four hours a day for seven days a week over the seven month ozone season without experiencing any operational issues. EPA believes routine issues may be expected to occur affecting monitor operation and performance including issues such as

ultraviolet lamps and vacuum pumps needing repair, particulate filters becoming clogged, and water vapor condensing in the sample manifold and being drawn into the monitor.

In addition, monitors must be operated in environmentally controlled buildings or instrument shelters. If the air conditioning fails and the monitors overheat, unstable readings may occur. If the temperature gets too cold in a shelter on a hot and humid day, condensation can occur and affect the ozone readings. Condensation may also impact a monitor because ozone exceedance days are often observed on warm and humid days. Further, monitoring stations frequently house additional monitoring equipment creating a high electrical demand. Thus, monitors are susceptible to electrical power disturbances from power failures due to stress on the electrical grid or from power failures due to thunderstorms which also frequently occur during hot and humid ozone exceedance days.

To combat such issues, a strict schedule of preventative maintenance, operational checks, daily zero and span challenges, periodic audits and a minimum of bi-weekly precision checks are in place by state agencies operating monitors such as MDE to insure that any monitor problems are addressed in a timely manner and that the highest possible quality data is being produced. Since MDE produces daily ozone forecasts, MDE's monitoring site operators are alerted ahead of time when they can expect ozone exceedance days and extra efforts are taken to insure that the monitors are operating properly as practically possible.

Because of these concerns with monitor operations, Appendix P of 40 CFR part 50 accounts for potential missing data with the completeness criterion discussed previously. All of the Baltimore Area ozone monitors meet these requirements for the period in question. EPA reviewed data from the Davidsonville, Padonia, and Aldino monitors noted by the commenter as having missing data from 2011–2013 including on hotter days in the ozone season. In general, EPA believes that the characterization of these monitors as being "shut off" is not accurate. Instead, EPA found the data from these monitors was invalidated for very brief periods or was briefly not collected due to operational concerns such as malfunctioning air conditioning units, power failures, and condensation concerns in sample lines. EPA's analysis of the Davidsonville, Padonia, and Aldino monitors for the time periods noted by the commenter is included in

a Supplemental Technical Support Document (Supplemental TSD) which is available in the docket for this rulemaking action under Docket ID Number EPA–R03–OAR–2014–0884. EPA also believes it is unlikely that the monitors missed high ozone exceedances as other monitors were operating in or near the Baltimore Area during some of these limited occasions and were not reporting exceedances. EPA finds it is unreasonable for the commenter to infer ozone exceedances would have occurred during the very limited periods of invalidated data or uncollected data due to power outages because ozone concentrations are not solely dependent on temperature, because ozone concentrations do not behave linearly from day to day at each monitor, and because such inference ignores the meteorology and the behavior of the other ozone monitors in Maryland, which did not report exceedances on the same days and times when these three monitors had limited periods of invalidated data.<sup>13</sup> For a detailed discussion of monitor performance and an explanation for the brief periods of invalidated data at each of the noted monitors, see the Supplemental TSD.

In conclusion, because EPA's determination of attainment for the Baltimore Area is in accordance with established CAA requirements and is supported by EPA analysis in the NPR and in Section II of this rulemaking action regarding complete, quality-assured, and certified ambient air monitoring data that shows the Baltimore Area has monitored attainment of the 2008 8-hour ozone NAAQS for the 2012–2014 monitoring period, EPA's determination is neither arbitrary, capricious, nor contrary to the CAA.

#### IV. Final Action

EPA has determined that the Baltimore Area has attained the 2008 8-hour ozone NAAQS. This determination is based upon complete, quality-assured, and certified ambient air monitoring data that show the Baltimore Area has monitored attainment of the 2008 8-hour ozone NAAQS for the

<sup>13</sup> For example, one period of unavailable monitor data noted by the commenter around June 29, 2012 at the Davidsonville monitor occurred due to a power failure brought on by a historic storm (known as a *derecho*) which caused extensive power outages and property damage in Maryland. Despite the summer heat, none of the other Baltimore area monitors registered exceedances during that period of time as temperature is not always directly linked to ozone exceedances. EPA finds it reasonable during this *derecho* that strong winds likely swept ozone away from the Area based on monitoring data from nearby monitors.

2012–2014 monitoring period. This determination suspends the requirement for Maryland to submit an attainment demonstration for the Baltimore Area, RACM, a RFP plan, contingency measures, and other planning requirements related to attainment of the 2008 8-hour ozone NAAQS for so long as the Baltimore Area continues to attain the 2008 8-hour ozone NAAQS. Although these requirements are suspended, EPA is still obligated to act upon revisions addressing these requirements if submitted to EPA for review and approval. Finalizing this determination does not constitute a redesignation of the Baltimore Area to attainment for the 2008 8-hour ozone NAAQS under CAA section 107(d)(3). Therefore, the designation status of the Baltimore Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA takes final rulemaking action to determine that the Baltimore Area meets the CAA requirements for redesignation to attainment. Finally, this determination does not relieve other CAA requirements that are not related to attainment planning and achievement of the NAAQS such as an emissions inventory as required by CAA section 172(c)(3) or a nonattainment area permitting program pursuant to CAA sections 172(c)(5) and 173.

## V. Statutory and Executive Order Reviews

### A. General Requirements

This action makes a determination of attainment based on air quality, and will result in the suspension of certain Federal requirements, and will not impose additional requirements beyond those imposed by state law. For that reason, this 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 CAA; 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 rule does 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.

### B. Submission to Congress and the Comptroller General

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 this action 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).

### C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 2015. 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 determining that the Baltimore Area has attained the 2008 8-hour ozone NAAQS 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: May 19, 2015.

**William C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

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

### Subpart V—Maryland

- 2. In § 52.1082, paragraph (i) is added to read as follows:

#### § 52.1082 Determinations of attainment.

\* \* \* \* \*

(i) EPA has determined, as of *June 1, 2015*, that based on 2012 to 2014 ambient air quality data, the Baltimore nonattainment area has attained the 2008 8-hour ozone NAAQS. This determination, in accordance with 40 CFR 51.1118, suspends the requirement for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2008 8-hour ozone NAAQS.

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