

Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This proposed rule is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves special local regulations issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

2. Add a temporary § 100.35T07–0503 to read as follows:

#### § 100.35T07–0503 Special Local Regulations; Fajardo Offshore Festival II, Rada Fajardo, Fajardo, Puerto Rico.

(a) *Regulated Areas.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of Rada Fajardo encompassed within an imaginary line connecting the following points: starting at Point 1 in position 18°21.357 N, 65°37.203 W; thence southeast to Point 2 in position 18°21.334 N, 65°37.112 W; thence northeast to Point 3 in position 18°22.365 N, 65°36.585 W; thence northwest to point 4 in position 18°22.365 N, 65°36.585 W; thence southwest to point 5 in position 18°21.733 N, 65°37.112 W; thence south back to origin. All persons and vessels, except those persons and vessels participating in the high-speed boat race, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) *Buffer Zone.* All waters of Rada Fajardo encompassed within an imaginary line connecting the following points: starting at Point 1 in position 18°22.492 N, 65°36.515 W; thence northeast to Point 2 in position 18°22.423 N, 65°36.355 W; thence southeast to Point 3 in position 18°21.297 N, 65°37.110 W; thence southwest to point 4 in position 18°21.369 N, 65°37.264 W; thence northwest to point 5 in position 18°21.728 N, 65°37.220 W; thence north back to origin. All persons and vessels except those persons and vessels enforcing the buffer zone are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone.

(3) *Spectator Area.* All waters of Rada Fajardo excluding the race areas and buffer zone, encompassed within an imaginary line connecting the following points: starting at Point 1 in position 18°22.540 N, 65°36.421 W; thence

southeast to Point 2 in position 18°22.331 N, 65°36.205 W; thence southwest to Point 3 in position 18°21.199 N, 65°36.995 W; thence west to Point 4 in position 18°21.205 N, 65°37.243 W. All vessels are prohibited from anchoring in the spectator area. On-scene designated representatives will direct spectator vessels to the spectator area.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) *Regulations.* (1) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

(2) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: June 13, 2012.

**D.W. Pearson,**

*Captain, U.S. Coast Guard. Captain of the Port San Juan.*

[FR Doc. 2012–17581 Filed 7–18–12; 8:45 am]

**BILLING CODE 9110–04–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R01–OAR–2012–0229; A–1–FRL–9700–5]

#### Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Determination of Attainment of the One-Hour Ozone Standard for the Portsmouth-Dover-Rochester and Manchester Areas

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to make four separate and independent determinations for two areas in New Hampshire. First, with respect to the

Portsmouth-Dover-Rochester, (Portsmouth) serious one-hour ozone nonattainment area, EPA is proposing to determine that the area attained the one-hour National Ambient Air Quality Standard (NAAQS) for ozone, by the applicable deadline of November 15, 1999. Second, EPA is proposing to determine that the Portsmouth area attained the one-hour ozone standard in 1999, and continues to attain the standard. Third, EPA is proposing to determine that the Manchester marginal one-hour ozone nonattainment area attained the one-hour NAAQS, by the applicable deadline of November 15, 1993. Fourth, EPA is proposing to determine, that the Manchester area has attained the one-hour ozone standard since 1993, and continues to attain the standard.

**DATES:** Written comments must be received on or before August 20, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2012–0229 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email*: [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).
3. *Fax*: (617) 918–0047.
4. *Mail*: “Docket Identification Number EPA–R01–OAR–2012–0229,” Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier*. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA–R01–OAR–2012–0229. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at *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 through *www.regulations.gov*, or email, information that you consider to be CBI or otherwise protected. The

*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 email comment directly to EPA without going through *www.regulations.gov* your email 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 *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 *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person 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](mailto:Burkhart.Richard@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble:

- I. What is EPA proposing?

- II. What is the background for these proposed actions?
- III. What is EPA’s analysis of data for purposes of determining attainment of the one-hour ozone standard?
  - A. How does EPA compute whether an area meets the one-hour ozone standard?
  - B. EPA’s Analysis of the One-Hour Ozone Data for the Portsmouth, NH Serious One-Hour Ozone Nonattainment Area
  - C. EPA’s Analysis of the One-Hour Ozone Data for the Manchester, NH Marginal One-Hour Ozone Nonattainment Area
- IV. What is the effect of the proposed determinations?
- V. Proposed Determinations
- VI. Statutory and Executive Order Reviews

**I. What is EPA proposing?**

EPA is proposing to determine that the Portsmouth, NH serious one-hour ozone nonattainment area attained the one-hour ozone NAAQS by the deadline of November 15, 1999. This proposed determination is based upon complete, quality-assured and certified air quality monitoring data for the 1997–1999 ozone seasons showing that the area had an expected ozone exceedance rate below the level of the now revoked one-hour ozone NAAQS during that period and therefore attained the standard by its applicable deadline. EPA is also proposing to determine that the Portsmouth, NH area is currently attaining the standard based on complete, certified and quality-assured ozone monitoring data since 1999 and continues to attain the standard based on the most recent three years of complete, quality-assured and certified ozone monitoring data (2009–2011). If EPA finalizes its determination, that the area is currently attaining the one-hour standard, in accordance with EPA’s interpretation under the Clean Data Policy, it will relieve the area of the obligation to submit one-hour ozone contingency measures for failure to attain.

In addition, EPA is proposing to determine that the Manchester, NH marginal one-hour ozone nonattainment area attained the one-hour ozone NAAQS by the applicable deadline of November 15, 1993. This proposed determination is based upon complete, certified, quality-assured ambient air quality monitoring data for the 1991–1993 ozone seasons showing that the area had an expected ozone exceedance rate below the level of the now revoked one-hour ozone NAAQS during that period, and that the area attained the standard by its applicable deadline. EPA is also proposing to determine that the Manchester, NH area has attained the one-hour ozone standard since 1993, and continues to attain the standard based on the most recent three years of

complete, quality-assured and certified ozone monitoring data (2009–2011).

## II. What is the background for these proposed actions?

EPA designated the Portsmouth, NH serious one-hour ozone nonattainment area as nonattainment for the one-hour ozone standard following the enactment of the Clean Air Act (CAA) Amendments of 1990. Most areas of the country that EPA designated nonattainment for the one-hour ozone NAAQS were classified by operation of law as marginal, moderate, serious, severe, or extreme, depending on the severity of the area's air quality problem. (See CAA sections 107(d)(1)(C) and 181(a).) The Portsmouth, NH one-

hour ozone nonattainment area was classified as serious. The one-hour ozone attainment deadline for the area was November 15, 1999. The Portsmouth, NH area has both an approved 15 Percent Reasonable Further Progress (RFP) plan and a Post-96 RFP plan. (See 63 FR 67405, December 7, 1998; and 67 FR 18493, April 16, 2002.) The area does not have an approved one-hour attainment demonstration, or one-hour contingency measures, but if EPA finalizes its proposed one-hour determinations, there would be no requirement for the Portsmouth, NH area to submit or implement one-hour ozone contingency measures for failure to attain the standard or for the

Portsmouth, NH area to submit or implement a one-hour attainment demonstration.

In addition, EPA designated the Manchester, NH one-hour ozone nonattainment area as marginal for the one-hour ozone standard. The one-hour ozone attainment deadline for this area was November 15, 1993. Marginal areas had very few CAA requirements. For example one-hour ozone marginal areas did not have to prepare or submit attainment demonstrations, RFP or contingency measures. Table 1 lists the cities and towns in the Portsmouth and Manchester, NH one-hour ozone nonattainment areas. (See also 40 CFR 81.330.)

TABLE 1—LIST OF CITIES AND TOWNS FOR THE PORTSMOUTH AND MANCHESTER, NH AREAS

Area	County	Cities and towns included	Classification
Manchester, NH Area .....	Merrimack (all) .....	Allenstown, Andover, Boscawen, Bow, Bradford, Canterbury, Chichester, Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker, Hill, Hooksett, Hopkinton, Loudon, New London, Newbury, Northfield, Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster, Wilmot.	Marginal.
	Hillsborough (part) .....	Antrim, Bedford, Bennington, Deering, Francetown, Goffstown, Greenfield, Greenville, Hancock, Hillsborough, Lyndeborough, Manchester, Mason, New Boston, New Ipswich, Petersborough, Sharon, Temple, Weare, Windsor.	Marginal.
	Rockingham (part) .....	Auburn, Candia, Chester, Deerfield, Epping, Fremont, Northwood, Nottingham, Raymond.	Marginal.
Portsmouth, NH Area .....	Rockingham (part) .....	Exeter, Greenland, Hampton, New Castle, Newfields, Newington, Newmarket, North Hampton, Portsmouth, Rye, Stratham.	Serious.
	Strafford (all) .....	Barrington, Dover, Durham, Farmington, Lee, Madbury, Middleton, Milton, New Durham, Rochester, Rollinsford, Somersworth, Strafford.	Serious.

On July 18, 1997 (62 FR 38856), EPA promulgated for the first time a new standard for ozone based on an 8-hour average concentration (the “1997 8-hour ozone NAAQS”). EPA designated and classified most areas of the country under the eight-hour ozone NAAQS in an April 30, 2004 final rule (69 FR 23858). EPA designated Southern New Hampshire as nonattainment for the 1997 8-hour ozone NAAQS. This area is known as the Boston-Manchester-Portsmouth (SE), NH area. At the time of eight-hour designations, the Boston-Manchester-Portsmouth (SE), NH area did not meet the one-hour ozone standard. The Boston-Manchester-Portsmouth (SE), NH area is composed of portions of three separate one-hour ozone nonattainment areas: (1) The Portsmouth, NH serious one-hour ozone nonattainment area; (2) the Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area; and (3) the Manchester, NH marginal one-hour ozone nonattainment area. This

proposed action concerns the Portsmouth, NH serious one-hour ozone nonattainment area, and the Manchester, NH marginal one-hour ozone nonattainment area. The Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area, was the subject of a previous **Federal Register** notice that determined the Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area attained the one-hour NAAQS by its attainment date (see 77 FR 31496, May 29, 2012).

On April 30, 2004, EPA issued a final rule (69 FR 23951) entitled “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1,” referred to as the Phase 1 Rule. Among other matters, this rule revoked the one-hour ozone NAAQS in most areas of the country, effective June 15, 2005. (See 40 CFR 50.9(b); 69 FR at 23996; and 70 FR 44470, August 3, 2005.) The Phase 1 Rule also set forth how anti-backsliding principles will ensure continued

progress toward attainment of the eight-hour ozone NAAQS by identifying which one-hour requirements remain applicable in an area after revocation of the one-hour ozone NAAQS. Although EPA revoked the one-hour ozone standard (effective June 15, 2005), eight-hour ozone nonattainment areas remain subject to certain one-hour anti-backsliding requirements based on their one-hour ozone classification.<sup>1</sup> The United States Court of Appeals for the District of Columbia Circuit subsequently determined that EPA should have retained certain additional measures as one-hour ozone anti-backsliding requirements. These include one-hour ozone contingency measures under section 172(c)(9), which are to be implemented in the event an area fails to attain by its one-hour ozone attainment date. *South Coast Air Quality Management District v. EPA*,

<sup>1</sup> Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951, April 30, 2004.

472 F.3d 882 (D.C. Cir. 2006) rehearing denied 489 F.3d 1245. EPA has since added one-hour ozone contingency measures as an applicable requirement in 40 CFR 51.900(o). (See 77 FR 28424, May 14, 2012).

EPA is proposing two separate and independent determinations for the Portsmouth, NH serious one-hour ozone nonattainment area. First, EPA is proposing to determine that the area attained the one-hour ozone standard by its attainment deadline, the end of the 1999 ozone season, and second, that the area continues to attain that NAAQS. If EPA finalizes its proposed determinations, there would be no requirement for the Portsmouth, NH area to submit or implement one-hour ozone contingency measures for failure to attain that standard.

In addition, EPA is proposing to determine that the Manchester, NH marginal one-hour ozone nonattainment area attained the one-hour ozone standard by its attainment date, the end of the 1993 ozone season, and that the area continues to attain that NAAQS. Since the Manchester, NH area is a marginal nonattainment area for the one-hour ozone standard, the area has no CAA-required contingency measures for failure to attain the one-hour NAAQS.

### III. What is EPA's analysis of data for purposes of determining attainment of the one-hour ozone standard?

#### A. How does EPA compute whether an area has attained the one-hour ozone standard?

Although the one-hour ozone NAAQS as promulgated in 40 CFR 50.9 includes no discussion of specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the one-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 parts per million (ppm). 40 CFR 50.9(a) states

that: "The level of the national one-hour primary and secondary ambient air quality standards for ozone \* \* \* is 0.12 parts per million. \* \* \* The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations of 0.12 parts per million \* \* \* is equal to or less than 1, as determined by appendix H to this part." Thus, compliance with the NAAQS is based on comparison of air quality concentrations with the standard and on the number of days that standard has been exceeded, adjusted for the number of missing days.

For comparison with the NAAQS, EPA has communicated the data handling conventions for the one-hour ozone NAAQS in guidance documents. As early as 1979, EPA issued guidance stating that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded. The stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. (See, "Guideline for the Interpretation of Ozone Air Quality Standards," EPA-450/4-79-003, OAQPS No. 1.2-108, January 1979.) EPA has consistently applied the rounding convention in this 1979 guideline. See, 68 FR 19111, April 17, 2003; 68 FR 62043, October 31, 2003; and 69 FR 21719, April 22, 2004. Then, EPA determines attainment status under the one-hour ozone NAAQS on the basis of the annual average number of expected exceedances of the NAAQS over a three-year period. (See, 60 FR 3349, January 17, 1995 and "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," at 57 FR 13506, April 16, 1992 ("General Preamble").) EPA's determination is based upon data that

have been collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS) database. To account for missing data, the procedures found in appendix H to 40 CFR part 50 are used to adjust the actual number of monitored exceedances of the standard to yield the annual number of expected exceedances ("expected exceedance days") at an air quality monitoring site. We determine if an area meets the one-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (i.e., "average number of expected exceedance days") during the applicable 3-year period. See, the General Preamble, 57 FR 13498, April 16, 1992. The term "exceedance" is used throughout this document to describe a daily maximum ozone measurement that is equal to or exceeds 0.125 ppm which is the level of the standard after rounding. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of expected exceedances occur at the same monitor. For more information please refer to 40 CFR 50.9 "National one-hour primary and secondary ambient air quality standards for ozone" and "Interpretation of the one-hour Primary and Secondary National Ambient Air Quality Standards for Ozone" (40 CFR part 50, appendix H).

#### B. EPA's Analysis of the One-Hour Ozone Data for the Portsmouth, NH Serious One-Hour Ozone Nonattainment Area

Table 2 shows a summary of one-hour ozone data for all the ozone monitors in the Portsmouth, NH serious one-hour ozone nonattainment area for the period 1997–2011. In short, if the three-year average expected exceedance rate, shown in the far right column, is less than or equal to 1.0, the site meets the one-hour ozone NAAQS. If all sites in the area are shown to meet the one-hour ozone NAAQS, it can be determined that the area has attained the one-hour ozone NAAQS.

TABLE 2—AVERAGE EXPECTED EXCEEDANCE RATE FOR THE ONE-HOUR OZONE STANDARD IN THE PORTSMOUTH, NH SERIOUS NONATTAINMENT AREA FOR 1997–2011

AQS No.	Site name	Years	Actual exceedance days over 0.124 ppm ozone	3-Year average expected exceedance rate
33-015-0012 .....	Rye-Harbor State Park .....	1997–1999	2	0.7
		1998–2000	0	0.0
		1999–2001	1	0.3
		2000–2002	2	0.7
		2001–2003	2	0.7
		Site relocated to Science Center		

TABLE 2—AVERAGE EXPECTED EXCEEDANCE RATE FOR THE ONE-HOUR OZONE STANDARD IN THE PORTSMOUTH, NH SERIOUS NONATTAINMENT AREA FOR 1997–2011—Continued

AQS No.	Site name	Years	Actual exceedance days over 0.124 ppm ozone	3-Year average expected exceedance rate
33-015-0016 .....	Rye-Seacoast Science Center .....	2003–2005	0	0.0
		2004–2006	0	0.0
		2005–2007	0	0.0
		2006–2008	0	0.0
		2007–2009	0	0.0
		2008–2010	0	0.0
		2009–2011	0	0.0
33-015-0013 .....	Brentwood-South Road .....	1998–2000	0	0.0
		1999–2001	0	0.0
		2000–2002	0	0.0
		2001–2003	0	0.0
		Site Discontinued		
33-015-0009 .....	Portsmouth-Vaughan Street .....	1997–1999	2	0.7
		1998–2000	1	0.3
33-015-0015 .....	Portsmouth-Port Authority .....	Site relocated to Port Authority		
		2001–2003	2	0.7
33-015-0014 .....	Portsmouth-Peirce Island .....	Site relocated to Peirce Island		
		2003–2005	0	0.0
33-017-3002 .....	Rochester-Rochester Hill Road .....	2004–2006	0	0.0
		2005–2007	0	0.0
		2006–2008	0	0.0
		2007–2009	0	0.0
		2008–2010	0	0.0
		2009–2011	0	0.0
		1997–1999	1	0.3
		1998–2000	0	0.0
		1999–2001	0	0.0
		2000–2002	1	0.3
		2001–2003	1	0.3
		Site Discontinued		

As shown in Table 2, the Portsmouth, NH serious one-hour ozone nonattainment area attained the one-hour ozone NAAQS at the end of the 1999 ozone season, since the three ozone monitors (Rye-Harbor State Park, Portsmouth-Vaughan Street, and Rochester-Rochester Hill Road) had expected exceedance rates below 1.0. Thus EPA is proposing to determine that, based on the 1997–1999 complete, quality-assured and certified ozone data in the Air Quality System (AQS) database, the Portsmouth, NH serious

one-hour ozone nonattainment area met the one-hour ozone NAAQS, by the attainment deadline of November 15, 1999. EPA is also proposing to determine that the area has remained in attainment of the one-hour NAAQS ever since.

*C. EPA's Analysis of the One-Hour Ozone Data for the Manchester, NH Marginal One-Hour Ozone Nonattainment Area*

Table 3 shows the results of one-hour ozone data for all the ozone monitors in

the Manchester, NH marginal one-hour ozone nonattainment area for the period 1991–2011. In short, if the three-year average expected exceedance rate, shown in the far right column, is less than or equal to 1.0, the site meets the one-hour ozone NAAQS. If all sites in the area are shown to meet the one-hour ozone NAAQS, it can be determined that the area has attained the one-hour ozone NAAQS.

TABLE 3—AVERAGE EXPECTED EXCEEDANCE RATE FOR THE ONE-HOUR OZONE STANDARD IN THE MANCHESTER, NH MARGINAL ONE-HOUR OZONE NONATTAINMENT AREA FOR 1991–2011

AQS No.	Site name	Years	Actual exceedance days over 0.124 ppm ozone	3-Year expected exceedance rate
33-011-0016 .....	Manchester-Hartnett Park .....	1991–1993	0	0.0
		1992–1994	0	0.0
		1993–1995	0	0.0
		1994–1996	0	0.0
		1995–1997	0	0.0
		1996–1998	0	0.0

TABLE 3—AVERAGE EXPECTED EXCEEDANCE RATE FOR THE ONE-HOUR OZONE STANDARD IN THE MANCHESTER, NH MARGINAL ONE-HOUR OZONE NONATTAINMENT AREA FOR 1991–2011—Continued

AQS No.	Site name	Years	Actual exceedance days over 0.124 ppm ozone	3-Year expected exceedance rate
33-011-0019 .....	Manchester-North Commercial Street .....	1997–1999	0	0.0
		Site relocated to Commercial Street		
		1999–2000	0	*
33-011-0020 .....	Manchester-Pearl Street .....	Site relocated to Pearl Street		
		2001–2003	0	0.0
		2002–2004	0	0.0
		2003–2005	0	0.0
		2004–2006	0	0.0
		2005–2007	0	0.0
		2006–2008	0	0.0
		2007–2009	0	0.0
		2008–2010	0	0.0
		2009–2011	0	0.0
33-013-0007 .....	Concord-Storrs Street .....	1992–1993	0	*
		1992–1994	0	0.0
		1993–1995	0	0.0
		1994–1996	0	0.0
		1995–1997	0	0.0
		1996–1998	0	0.0
		1997–1999	0	0.0
		1998–2000	0	0.0
		1999–2001	1	0.3
		2000–2002	1	0.3
		2001–2003	1	0.3
		Site relocated to Hazen Drive		
		2004–2006	0	0.0
		2005–2007	0	0.0
		2006–2008	0	0.0
		2007–2009	0	0.0
		2008–2010	0	0.0
		2009–2011	0	0.0
33-013-1007 .....	Concord-Hazen Drive .....	2004–2006	0	0.0
		2005–2007	0	0.0
		2006–2008	0	0.0
		2007–2009	0	0.0
		2008–2010	0	0.0
		2009–2011	0	0.0

\* Three year average expected exceedance rate cannot be calculated because the site has less than 3 years of data. For this area the two sites with an asterisk both have no exceedances for the time period in question.

As shown in Table 3, the Manchester, NH marginal one-hour ozone nonattainment area attained the one-hour ozone NAAQS at the end of the 1993 ozone season, since the one monitor (Manchester-Hartnett Park) with three years of data had an expected exceedance rate below 1.0. The other site (Concord-Storrs Street) began in 1992 and had no exceedance in either 1992 or 1993. Thus, EPA is proposing to determine that, based on the 1991–1993 complete, quality-assured and certified ozone data in the AQS database, the Manchester, NH marginal one-hour ozone nonattainment area met the one-hour ozone NAAQS, by its attainment deadline of November 15, 1993. Based on data from 1993–2011, EPA proposes to determine that the area has continued in attainment of the one-hour NAAQS ever since.

#### IV. What is the effect of the proposed determinations?

If EPA finalizes its proposed determination that the Portsmouth and Manchester, NH areas attained the one-hour ozone standard by their respective deadlines, there are no consequences for failure to attain that standard. For the Portsmouth, NH area, it would discharge any obligation with respect to contingency measures triggered by a failure to attain by the one-hour ozone attainment deadline. In addition, if EPA finalizes its determination that the Portsmouth, NH one-hour ozone area continues to attain the standard, under EPA's "Clean Data Policy" interpretation, which was first articulated for the one-hour standard and then codified for the eight-hour ozone standard (40 CFR 51.918), that determination suspends the Portsmouth, NH area's obligation to submit attainment-related requirements for the one-hour ozone standard, including

contingency measures. See, for example, determination of one-hour ozone attainment for Baton Rouge, (75 FR 6570, February 10, 2010).

#### V. Proposed Determinations

For the reasons set forth in this notice, EPA is proposing four separate and independent determinations. First, EPA is proposing to determine that the Portsmouth, NH serious one-hour ozone nonattainment area met the applicable deadline of November 15, 1999, for attaining the one-hour NAAQS for ozone, based on 1997–1999 complete, certified and quality-assured ozone monitoring data. If EPA finalizes this determination, it would discharge any obligation with respect to contingency measures triggered by a failure to attain by the one-hour ozone attainment deadline. Second, EPA is proposing to determine that the Portsmouth, NH area is currently attaining the standard based on complete, certified and quality-assured ozone monitoring data since

1999 and continues to attain the standard based on the most recent three years of complete, quality assured ozone monitoring data. A final determination, by EPA, that the area is currently attaining the one-hour standard would relieve the area of its obligation to submit one-hour ozone contingency measures. Third, EPA is proposing to determine that the Manchester, NH marginal nonattainment area met the applicable deadline of November 15, 1993, for attaining the one-hour NAAQS for ozone. This proposed determination is based upon complete, certified, quality-assured ambient air quality monitoring data for the 1991–1993 monitoring period showing that the area had an expected ozone exceedance rate below the level of the now revoked one-hour ozone NAAQS during that period and therefore attained the standard by its applicable deadline. Fourth and last with respect to the Manchester, NH area, EPA is proposing to determine, that the area has attained the one-hour ozone standard since 1993, and continues to attain the standard based on the most recent three years of complete, quality-assured and certified ozone monitoring data.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. EPA will consider these comments before final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

## VI. Statutory and Executive Order Reviews

This action proposes to make determinations of attainment based on monitored air quality data, and/or does not impose additional requirements beyond those imposed by state law. For that reason, these proposed 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.

## 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.

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

Dated: June 28, 2012.

## H. Curtis Spalding,

*Regional Administrator, EPA New England.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 1206013412–2211–01]

RIN 0648–BB97

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 35

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in Amendment 35 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would establish sector annual catch limits (ACLs) and sector annual catch targets (ACTs) for greater amberjack; revise the sector accountability measures (AMs) for greater amberjack; and establish a commercial trip limit for greater amberjack. Additionally, Amendment 35 would modify the greater amberjack rebuilding plan. The intent of Amendment 35 is to end overfishing of greater amberjack, modify the greater amberjack rebuilding plan and help achieve optimum yield (OY) for the greater amberjack resource in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before August 20, 2012.

**ADDRESSES:** You may submit comments on the proposed rule identified by “NOAA–NMFS–2012–0107” by any of the following methods:

- **Electronic submissions:** Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the “Instructions” for submitting comments.
- **Mail:** Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter “NOAA–NMFS–2012–0107” in the search field and click on “search.” After you locate the document “Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 35,” click the “Submit a Comment” link in that row. This will display the comment Web form. You can then enter your submitter