

*Docket:* The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Allen, EPA Region IX, (415) 947-4120, [allen.cynthia@epa.gov](mailto:allen.cynthia@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rule: Rule 2, Definitions. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 29, 2010.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2010-23129 Filed 9-16-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-R04-OAR-2010-0614-201036; FRL-9203-1]

#### Approval and Promulgation of Implementation Plans; Extension of Attainment Date for the Atlanta, GA 1997 8-Hour Ozone Moderate Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** The State of Georgia, through the Georgia Department of Natural Resources (GA DNR), submitted a letter on June 9, 2010, with a request for EPA to grant a one-year extension of the attainment date for the 1997 8-hour

ozone national ambient air quality standards (NAAQS) for the Atlanta, Georgia Area (hereafter referred to as the "Atlanta Area"). The Atlanta Area consists of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton Counties. In today's action, EPA is proposing to determine that the State of Georgia has met the Clean Air Act (CAA or the Act) requirements to obtain a one-year extension to its attainment date for the 1997 8-hour ozone NAAQS for the Atlanta Area. As a result, EPA is proposing to approve a one-year extension of the 1997 8-hour ozone moderate attainment date for the Atlanta Area. Specifically, EPA is proposing to extend the Atlanta Area's attainment date from June 15, 2010, to June 15, 2011.

**DATES:** Comments must be received on or before October 18, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-0614 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail:* [benjamin.lynora@epa.gov](mailto:benjamin.lynora@epa.gov).
3. *Fax:* 404-562-9019.
4. *Mail:* "EPA-R04-OAR-2010-0614"

Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Lynora Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. 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 federal holidays.

*Instructions:* Direct your comments to Docket ID No. "EPA-R04-OAR-2010-0614". 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 through [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*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 at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. 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 federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jane Spann or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9029. Ms. Spann can also be reached via

electronic mail at [spann.jane@epa.gov](mailto:spann.jane@epa.gov). Ms. Waterson may be reached by phone at (404) 562-9061 or via electronic mail at [waterson.sara@epa.gov](mailto:waterson.sara@epa.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Today's Action
- III. EPA's Analysis of the State's Requests for an Attainment Date Extension for the Atlanta Area for the 1997 8-Hour Ozone NAAQS
- IV. Proposed Actions
- V. Statutory and Executive Order Reviews

#### I. Background

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

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm). Under EPA's regulations at 40 CFR part 50, the 1997 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered) (69 FR 23857, April 30, 2004).<sup>1</sup> Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Atlanta Area was designated nonattainment for the 1997 8-hour ozone NAAQS on April 30, 2004 (effective June 15, 2004) using 2001-2003 ambient air quality data (69 FR 23857, April 30, 2004). At the time of designation the Atlanta Area was classified as a marginal nonattainment area for the 1997 8-hour ozone NAAQS. In the April 30, 2004, Phase I Ozone Implementation Rule, EPA established ozone nonattainment area attainment dates based on Table 1 of Section 181(a) of the CAA. This established an attainment date 3 years after the June 15, 2004, effective date for areas

classified as marginal areas for the 1997 8-hour ozone nonattainment designations. Therefore, the Atlanta Area's original attainment date was June 15, 2007. (*See* 69 FR 23951, April 30, 2004.)

The Atlanta Area failed to attain the 1997 8-hour ozone NAAQS by June 15, 2007 (the applicable attainment date for marginal nonattainment areas), and did not qualify for any extension of the attainment date as a marginal area. As a consequence of this failure, on March 6, 2008, EPA published a rulemaking determining that the Atlanta Area failed to attain and, consistent with Section 181(b)(2) of the CAA, the Atlanta Area was reclassified by operation of law to the next highest classification, or "moderate" nonattainment. (*See* 72 FR 58572, October 16, 2007.) When an area is reclassified, a new attainment date for the reclassified area must be established. Section 181 of the CAA explains that the attainment date for moderate nonattainment areas shall be as expeditiously as practicable, but no later than six years after designation, or June 15, 2010. EPA further required that Georgia submit the SIP revisions meeting the new moderate area requirements as expeditiously as practicable, but no later than December 31, 2008. Georgia submitted SIP revisions to address the moderate area requirements for the Atlanta Area on October 21, 2009. EPA is in the process of reviewing these submissions and will take action on these submissions in rulemaking separate from today's proposed action.

Under certain circumstances, the CAA allows for extensions of the attainment dates prescribed at the time of the original nonattainment designation. *See* below for further discussion.

##### B. CAA Requirements for One-Year Extension Requests

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether an ozone nonattainment area attained the NAAQS. CAA Section 181(b)(2)(A) states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified to the next classification. However, in accordance with CAA Section 181(a)(5), EPA may grant up to 2 one-year extensions of the attainment date under specified conditions. Specifically, Section 181(a)(5) states:

"Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date

specified in table 1 of paragraph (1) of this subsection if—

(A) The State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year."

With regard to the first element, "applicable implementation plan" is defined in Section 302(q) of the CAA as, the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

The language in Section 181(a)(5)(B) reflects the form of the 1-hour ozone NAAQS, which is exceedance based and does not reflect the 1997 8-hour ozone NAAQS, which is concentration based. Because Section 181(a)(5)(B) does not reflect the form of the 8-hour NAAQS and application would produce an absurd result, EPA interprets this provision in a manner consistent with Congressional intent but reflecting the form of the 1997 8-hour NAAQS. Therefore, EPA adopted an interpretation of Sections 172(a)(2)(C) and 181(a)(5) that an area will be eligible for the first of the one-year extensions under the 8-hour NAAQS if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 ppm or less.<sup>2</sup> The area will be eligible for the second extension if 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. No more than 2 one-year extensions may be issued for a single nonattainment area.

EPA interprets the CAA and implementing regulations to allow the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) the area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (or an 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, if

<sup>1</sup> EPA issued a revised 8-hour ozone NAAQS in 2008. EPA subsequently reconsidered the 2008 NAAQS, and proposed a new 8-hour ozone NAAQS on January 19, 2010 (75 FR 2938). Final 8-hour ozone NAAQS are expected to be effective in October 2010. The current proposed action, however, is being taken with regard to the 1997 8-hour ozone NAAQS. Requirements for the Atlanta Area for the 2010 8-hour ozone NAAQS will be addressed in the future.

<sup>2</sup> *See* 40 CFR 51.907. The preamble language can be found in the Phase 1 Implementation Rule 69 FR 23951 (April 30, 2004).

a second one-year extension is requested).<sup>3</sup>

**II. Today's Actions**

EPA is proposing to determine that Georgia has met the CAA requirements to obtain a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the Atlanta Area. As a result, EPA is proposing to extend the Atlanta Area's attainment date from June 15, 2010, to June 15, 2011, for the 1997 8-hour ozone NAAQS. EPA's proposed action is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for 2009, and on EPA's preliminary determination that the State is meeting its federally-approved state implementation plan. If today's proposed action is finalized, the Atlanta Area's attainment date for the 1997 8-hour ozone NAAQS will be extended one-year from June 15, 2010, to June 15, 2011.

**III. EPA's Analysis of the State's Requests for an Attainment Date Extension for the Atlanta Area for the 1997 8-Hour Ozone NAAQS**

As was explained above in this rulemaking, EPA interprets the CAA and implementing regulations to allow the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) the area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (or an 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, if a second one-year extension is requested). Below provides EPA's analysis of how Georgia has met these minimum requirements.

*(1) The State Requests a One-Year Extension*

The State of Georgia, through GA DNR, submitted a letter on June 9, 2010, requesting that EPA grant a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the Atlanta Area. The letter contained a certification that the State is complying with all requirements and commitments pertaining to the Atlanta Area in the applicable implementation plan; and that the Atlanta Area has a 4th highest daily 8-hour average of 0.084 ppm or less for the attainment year (*i.e.*, 2009) for this initial request for an extension. EPA's analysis of the certification from Georgia, and of the ambient air quality monitoring data for the Atlanta Area for the 1997 8-hour ozone NAAQS (*i.e.*, in relation to the State's attainment date extension request) is provided below.

*(2) All Requirements and Commitments in the EPA-Approved SIP for the Area Have Been Complied With*

In the letter submitted by GA DNR, on June 9, 2010, the State discusses implementation of state measures in the SIP. One of the required elements for a one-year extension required under Section 181(a)(5) of the CAA is that the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan (as that term is defined in Section 302(q) of the CAA). EPA has conducted an independent

review of whether Georgia is in compliance with the applicable implementation plan for the Atlanta Area as intended by Section 181(a)(5)(A) of the CAA, and has made the preliminary determination that the State is in compliance. This preliminary determination is based on EPA's belief that the state is currently meeting the EPA-approved state implementation plan for the Atlanta Area.

On October 21, 2009, the State of Georgia submitted SIP revisions to address the requirements related to the 1997 8-hour ozone attainment demonstration for the Atlanta Area. Nonetheless, EPA does not and did not view submission or approval of this attainment demonstration as relevant for meeting the "applicable implementation plan" for the Atlanta Area with regard to Section 181(a)(5)(A) of the CAA. EPA is currently reviewing the approvability of this attainment demonstration submission and will make a final determination on the approvability through a separate rulemaking in the **Federal Register**.

*(3) The Area Has a 4th Highest Daily 8-Hour Average of 0.084 ppm or Less for the Attainment Year*

In the letter submitted by GA DNR, on June 9, 2010, the State has certified that the 4th highest daily 8-hour average ozone concentration for the Atlanta Area in 2009 was below 0.084 ppm, and that the 2009 ozone data which are included in EPA's Air Quality System (AQS) meets necessary quality control and quality assurance requirements. Table 1 provides the 2009 4th highest concentrations at the monitors in the Atlanta Area.

TABLE 1—2009 4TH HIGHEST CONCENTRATIONS FOR THE ATLANTA AREA

Monitoring site ID	City, county	2009 4th highest concentration (ppm)
13-067-0003	Kennesaw, Cobb	0.076
13-077-0002	Coweta	0.065
13-089-0002	Decatur, DeKalb	0.077
13-097-0004	Douglasville, Douglas	0.072
13-121-0055	Atlanta, Fulton	0.077
13-135-0002	Lawrenceville, Gwinnett	0.073
13-151-0002	McDonough, Henry	0.074
13-223-0003	Paulding	0.067
13-247-0001	Conyers, Rockdale	0.070

EPA has reviewed the 1997 8-hour ozone NAAQS ambient air quality monitoring data for the Atlanta Area, consistent with the requirements contained in 40 CFR part 50 and as

recorded in the EPA AQS database. On the basis of that review, EPA has preliminarily concluded that for the attainment year, 2009, the Atlanta Area's 4th highest daily 8-hour average

concentration was 0.077 ppm which is below the 8-hour ozone NAAQS of 0.08 ppm (effectively 0.084 ppm).

Because the statutory provisions have been satisfied, EPA is proposing

<sup>3</sup> See 40 CFR 51.907. The preamble language can be found in the Phase 1 Implementation Rule 69 FR 23951 (April 30, 2004).

approval of Georgia's attainment date extension request for the Atlanta Area for the 1997 8-hour ozone NAAQS.

#### IV. Proposed Actions

EPA is proposing to approve Georgia's June 9, 2010, request for EPA to grant a one-year extension (from June 15, 2010, to June 15, 2011) of the Atlanta Area attainment date for the 1997 8-hour ozone NAAQS because EPA believes that Georgia has met the statutory requirements for such an extension. EPA's belief is based on its preliminary determination that the state is in compliance of the requirements and commitments associated with the EPA-approved implementation plan, and on the belief that the 4th highest daily 8-hour ozone average concentration for 2009 for the Atlanta Area is below the 1997 8-hour ozone NAAQS as required by the CAA. As provided in 40 CFR 51.907, if EPA finalizes this action, it will extend, by one year, the deadline by which the Atlanta Area must attain the 1997 8-hour ozone NAAQS. It will also extend the timeframe by which EPA must make an attainment determination for the area. EPA notes that this proposed action only relates to the initial one-year extension. As noted in Section 181(a)(5) of the CAA, areas may qualify for up to 2 one-year extensions. If requested at a future date, EPA will make a determination of the appropriateness of a second one-year extension for the Atlanta Area for the 1997 8-hour ozone NAAQS in a separate rulemaking.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve SIP submissions and requests that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing the state's request for an extension of the 1997 8-hour ozone NAAQS attainment date for the Atlanta Area, EPA's role is to approve the state's request, provided that it meets the criteria of the CAA. Accordingly, this proposed action merely approves a state request for an extension of the 1997 8-hour ozone NAAQS attainment date 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 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 proposed 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.

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: September 3, 2010.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2010-23317 Filed 9-16-10; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 431

[CMS-2325-P]

RIN 0938-AQ46

#### Medicaid Program; Review and Approval Process for Section 1115 Demonstrations

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement provisions of section 10201(i) of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act) that set forth transparency and public notice procedures for experimental, pilot, and demonstration projects approved under section 1115 of the Social Security Act relating to Medicaid and the Children's Health Insurance Program (CHIP). This proposed rule would increase the degree to which information about Medicaid and CHIP demonstration applications and approved demonstration projects are publicly available and promote greater transparency in the review and approval of demonstrations. It would also codify existing statutory requirements pertaining to tribal consultation for section 1115 demonstration projects.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 16, 2010.

**ADDRESSES:** In commenting, please refer to file code CMS-2325-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2325-P, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the