

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE:				
Atlantic County .....		Nonattainment .....		Subpart 2/Moderate. <sup>2</sup>
Burlington County .....		Nonattainment .....		Subpart 2/Moderate. <sup>2</sup>
Camden County .....		Nonattainment .....		Subpart 2/Moderate. <sup>2</sup>
Cape May County .....		Nonattainment .....		Subpart 2/Moderate. <sup>2</sup>
Cumberland County .....		Nonattainment .....		Subpart 2/Moderate. <sup>2</sup>
Gloucester County .....		Nonattainment .....		Subpart 2/Moderate. <sup>2</sup>
Mercer County .....		Nonattainment .....		Subpart 2/Moderate. <sup>2</sup>
Ocean County .....		Nonattainment .....		Subpart 2/Moderate. <sup>2</sup>
Salem County .....		Nonattainment .....		Subpart 2/Moderate. <sup>2</sup>

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.  
<sup>2</sup> Attainment date extended to June 15, 2011.

\* \* \* \* \*  
 [FR Doc. 2011-1260 Filed 1-20-11; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[EPA-R03-OAR-2010-0574; FRL-9251-7]

**Approval of One-Year Extension for Attaining the 1997 8-Hour Ozone Standard for the Delaware, Maryland, and Pennsylvania Portions of the Philadelphia-Wilmington-Atlantic City Moderate Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** EPA is extending the attainment date from June 15, 2010 to June 15, 2011 for the Delaware, Maryland, and Pennsylvania portions of the Philadelphia-Wilmington-Atlantic City nonattainment area (Philadelphia Area), which is classified as moderate for the 1997 8-hour ozone national ambient air quality standard (NAAQS). This extension is based in part on air quality data recorded during the 2009 ozone season. Specifically, the Philadelphia Area's 4th highest daily 8-hour monitored ozone value during the 2009 ozone season is 0.084 parts per million (ppm) or less. Accordingly, EPA is revising the tables concerning the 8-hour ozone attainment dates for the Philadelphia Area in the States of Delaware and Maryland, and the Commonwealth of Pennsylvania (the States). EPA is approving the extension of the attainment date for the Delaware, Maryland, and Pennsylvania portions of the Philadelphia Area in accordance with the requirements of the Clean Air Act (CAA). EPA is approving the extension of the attainment date for the

New Jersey portion of the Philadelphia Area in a separate rulemaking in this **Federal Register**.

**DATES:** *Effective Date:* This final rule is effective on February 22, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0574. All documents in the docket are listed in the <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 <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. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903; the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Maria Pino, (215) 814-2181, or by e-mail at [pino.maria@epa.gov](mailto:pino.maria@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 9, 2010 (75 FR 68736), EPA published a notice of proposed rulemaking (NPR) for the States. The

NPR proposed approval of requests made by the States for a one-year attainment date extension for the Philadelphia Area. The Philadelphia Area, which is classified as moderate for the 1997 8-hour ozone NAAQS, consists of: Cecil County in Maryland; Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania; the entire State of Delaware; and Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem Counties in New Jersey. Since this area was classified as a moderate ozone nonattainment area, the statutory ozone attainment date, as prescribed by section 181(a) of the CAA, is June 15, 2010. The States requested that the attainment date be extended to June 15, 2011. As previously stated, EPA is approving the extension of the attainment date for the New Jersey portion of the Philadelphia Area in a separate rulemaking notice in this **Federal Register**.

Section 172(a)(2)(C) of subpart 1 of the CAA provides for EPA to extend the attainment date for an area by one year if the State has complied with all the requirements and commitments pertaining to the area in the applicable implementation plan and no more than a minimal number of exceedances of the NAAQS has occurred in the attainment year. Up to two one-year extensions may be issued for a single nonattainment area. Section 181(a)(5) of subpart 2 contains a similar provision for the ozone NAAQS, but instead of providing for an extension where there has been a "minimal" number of exceedances, it allows an extension only if there is no more than one exceedance of the NAAQS in the year preceeding the extension year. However, the language in section 181(a)(5) reflects the form of the 1-hour ozone NAAQS and not the 1997 8-hour ozone NAAQS. 40 CFR 51.907 sets forth how sections

172(a)(2)(C) and 181(a)(5) apply to an area subject to the 1997 8-hour ozone NAAQS.

EPA has determined that the requirements for a one-year extension of the attainment date, as set out under 40 CFR 51.907, have been fulfilled as follows:

(1) The States have complied with all requirements and commitments pertaining to the area in the applicable ozone implementation plan. The applicable ozone implementation plans can be found at 40 CFR 52.420, 40 CFR 52.1070, 40 CFR 52.2020, for the States of Delaware, Maryland, and Pennsylvania, respectively; and

(2) the Philadelphia Area's 4th highest daily 8-hour monitored value during the 2009 ozone season is 0.084 ppm or less.

Therefore, EPA approves the States' attainment date extension requests for the Delaware, Maryland, and Pennsylvania portions of the Philadelphia Area. As a result, the charts in 40 CFR 81.308, 40 CFR 81.321, and 40 CFR 81.339 are being modified to reflect EPA's approval of the States' attainment date extension request. Those charts are entitled "Delaware-Ozone (8-Hour Standard)", "Maryland-Ozone (8-Hour Standard)", and "Pennsylvania-Ozone (8-Hour Standard)", respectively.

In the Technical Support Document (TSD) for this action, EPA evaluates the air quality monitoring data for the Philadelphia Area. For details, please refer to EPA's TSD. Other specific requirements for an attainment date extension and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

## II. Final Action

EPA is approving a 1-year attainment date extension, from June 15, 2010 to June 15, 2011, for the Delaware, Maryland, and Pennsylvania portions of the Philadelphia Area, which is classified as moderate for the 1997 8-hour ozone NAAQS.

## III. Statutory and Executive Order Reviews

### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May

22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely determines that each of two areas has attained a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental

justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low income populations in the United States.

EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The rulemaking does not affect the level of protection provided to human health or the environment because extending the attainment date does not alter the emission reduction measures that are required to be implemented in the Philadelphia Area, which is classified as moderate nonattainment for the 1997 8-hour ozone standard. *See* 69 FR at 23909 (April 30 2004). Additionally, if the Philadelphia Area were not granted an extension of its attainment date, EPA's recourse would be to initiate a reclassification of the Philadelphia Area from its current classification of moderate nonattainment to serious nonattainment, pursuant to section 181(b)(2) of the CAA. Because the Philadelphia Area was formerly a severe nonattainment area under the revoked 1-hour ozone standard (*see* 56 FR at 56773, November 6, 1991), it is required to continue to implement severe area requirements pursuant to EPA's interpretation of "anti-backsliding" provision of section 172(e) of the CAA. *See* 69 FR at 23973, April 30, 2004, *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2006), *modified and rehearing den.*, 489 F.3d 1245 (D.C. Cir. 2007). The severe area requirements are more stringent than both the moderate and serious area requirements set forth in Title I, Part D, Subpart 2 of the CAA. Therefore, even if EPA were to not grant the attainment date extension and instead move to reclassify the area to serious nonattainment, no additional emission reduction measures would be required to be implemented in the Philadelphia Area through a 181(b)(2) reclassification. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*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 March 22, 2011. 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 1-year attainment date extension for the 1997 8-hour ozone NAAQS for the Delaware, Maryland, and Pennsylvania portions of the Philadelphia Area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

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

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

Dated: January 4, 2011.  
**W.C. Early,**  
*Acting Regional Administrator, Region III.*

40 CFR part 81 is amended as follows:

**PART 81—[AMENDED]**

■ 1. The authority citation for Part 81 continues to read as follows:

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

■ 2. In § 81.308, the table entitled “Delaware—Ozone (8-Hour Standard)” is revised to read as follows:

**§ 81.308 Delaware.**

\* \* \* \* \*

**DELAWARE—OZONE**  
 [8-Hour standard]

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Philadelphia-Wilmington-Atlantic Ci, PA-NJ-MD-DE:				
Kent County .....	.....	Nonattainment .....	.....	Subpart 2/Moderate. <sup>2</sup>
New Castle County .....	.....	Nonattainment .....	.....	Subpart 2/Moderate. <sup>2</sup>
Sussex County .....	.....	Nonattainment .....	.....	Subpart 2/Moderate. <sup>2</sup>

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.  
<sup>2</sup> Attainment date extended to June 15, 2011.

\* \* \* \* \*  
 ■ 3. In § 81.321, the table entitled “Maryland—Ozone (8-Hour Standard)”

is amended by revising the entry for Philadelphia-Wilmin-Atlantic Ci, PA-NJ-MD-DE (Cecil County) to read as follows:

**§ 81.321 Maryland.**

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**MARYLAND—OZONE**  
 [8-Hour standard]

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Philadelphia-Wilmin-Atlantic Ci, PA-NJ-MD-DE:				
Cecil County .....	.....	Nonattainment .....	.....	Subpart 2/Moderate. <sup>4</sup>

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.  
<sup>2</sup> Effective April 15, 2008.  
<sup>3</sup> November 22, 2004.  
<sup>4</sup> Attainment date extended to June 15, 2011.

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 ■ 4. In § 81.339, the table entitled “Pennsylvania—Ozone (8-Hour Standard)” is amended by revising the

entry for Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (Bucks County, Chester County, Delaware

County, Montgomery County, Philadelphia County) to read as follows:

**§ 81.339 Pennsylvania.**

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PENNSYLVANIA—OZONE  
[8-Hour standard]

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE:				
Bucks County .....		Nonattainment .....		Subpart 2/Moderate. <sup>3</sup>
Chester County .....		Nonattainment .....		Subpart 2/Moderate. <sup>3</sup>
Delaware County .....		Nonattainment .....		Subpart 2/Moderate. <sup>3</sup>
Montgomery County .....		Nonattainment .....		Subpart 2/Moderate. <sup>3</sup>
Philadelphia County .....		Nonattainment .....		Subpart 2/Moderate. <sup>3</sup>

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

<sup>2</sup> November 22, 2004.

<sup>3</sup> Attainment date extended to June 15, 2011.

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**COUNCIL ON ENVIRONMENTAL QUALITY**

**40 CFR Parts 1500, 1501, 1502, 1505, 1506, 1507, and 1508**

**Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact**

**AGENCY:** Council on Environmental Quality.

**ACTION:** Notice of availability.

**SUMMARY:** The Council on Environmental Quality (CEQ) is issuing its final guidance for Federal departments and agencies on the appropriate use of mitigation in Environmental Assessments (EAs) and Environmental Impact Statements (EISs) under the National Environmental Policy Act (NEPA). The guidance was developed to modernize, reinvigorate, and facilitate and increase the transparency of NEPA implementation.

This guidance outlines principles Federal agencies should apply in the development of their NEPA implementing regulations and procedures to guide their consideration of measures to mitigate adverse environmental impacts in EAs and EISs; their commitments to carry out mitigation made in related decision documents, such as the Record of Decision; the implementation of mitigation; and the monitoring of mitigation outcomes during and after implementation. This guidance also

outlines principles agencies should apply to provide for public participation and accountability in the development and implementation of mitigation and monitoring efforts that are described in their NEPA documentation. Mitigation commitments should be explicitly described as ongoing commitments and should specify measurable performance standards and adequate mechanisms for implementation, monitoring, and reporting.

In addition, this guidance affirms the appropriateness of what is traditionally referred to as a “mitigated Finding of No Significant Impact.” Mitigated Findings of No Significant Impact (FONSIs) can result when an agency concludes its NEPA review with an EA that is based on a commitment to mitigate significant environmental impacts, so that a more detailed EIS is not required. As explained in this guidance, an agency does not have to prepare an EIS when the environmental impacts of a proposed action can be mitigated to a level where the agency can make a FONSI determination, provided that the agency or a project applicant commits to carry out the mitigation, and establishes a mechanism for ensuring the mitigation is carried out. When a FONSI depends on successful mitigation, the requisite mitigation commitments should be made public.

**DATES:** The guidance is effective January 21, 2011.

**FOR FURTHER INFORMATION CONTACT:** The Council on Environmental Quality (ATTN: Horst Greczmiel, Associate Director for National Environmental Policy Act Oversight), 722 Jackson Place, NW., Washington, DC 20503. Telephone: (202) 395-5750.

**SUPPLEMENTARY INFORMATION:** This guidance applies to Federal agencies in accordance with sections 1507.2 and

1507.3 of the CEQ Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR Parts 1500-1508. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370, enacted in 1970, is a fundamental tool used to harmonize our environmental, economic, and social aspirations and is a cornerstone of our Nation’s efforts to protect the environment. NEPA recognizes that many Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions before deciding to adopt proposals and take action. Additionally, NEPA emphasizes public involvement in government actions affecting the environment by requiring that the benefits and risks associated with proposed actions be assessed and publicly disclosed.

The Council on Environmental Quality (CEQ) is charged with overseeing NEPA’s implementation by Federal agencies. CEQ recognizes that NEPA is a visionary and versatile law that can be used effectively to address new environmental challenges facing our nation and also to engage the public widely and effectively. Furthermore, CEQ recognizes that successful NEPA implementation requires agencies to make information accessible to the public to strengthen citizen involvement in government decisionmaking. This guidance is designed to facilitate agency compliance with NEPA, by clarifying the commitments agency decisionmakers may decide to make when complying with NEPA, and ensuring that information about those commitments is accurate and made available to the public.

On February 18, 2010, CEQ announced the issuance of three