

category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under

#### ADDRESSES.

#### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 subpart C as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add Temporary § 165.T05-0391, to read as follows:

#### § 165.T05-0391 Safety Zone; Ocean City Air Show, Atlantic Ocean, Ocean City, MD

(a) *Regulated area.* The following area is a safety zone: Specified waters of the Atlantic Ocean bound by the following coordinates: 38°21'38" N/075°04'04" W, 38°21'27" N/075°03'29" W, 38°19'35" N/075°04'19" W, 38°19'45" N/075°04'54" W (NAD 1983), in the vicinity of Ocean City, Maryland.

(b) *Definition:* For purposes of enforcement of this section, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulation.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign; and

(ii) Proceed as directed by any commissioned, warrant or petty officer

on board a vessel displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads, Virginia can be contacted at telephone number (757) 638-6637.

(4) U.S. Coast Guard vessels enforcing the safety zone can be contacted on VHF-FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement period.* This rule will be enforced from 10 a.m. until 4 p.m. on June 10, 2011, from 10 a.m. until 4 p.m. on June 11, 2011, and from 10 a.m. until 4 p.m. on June 12, 2011.

Dated: May 16, 2011.

**Mark S. Ogle,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 2011-13329 Filed 5-27-11; 8:45 am]

**BILLING CODE 9110-04-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R03-OAR-2010-1082; FRL-9313-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determination of Attainment for the Pittsburgh-Beaver Valley 8-Hour Ozone Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** EPA is making a final determination that the Pittsburgh-Beaver Valley 8-hour ozone nonattainment area (the Pittsburgh Area) has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS). This determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007 to 2009 monitoring period. Complete, quality-assured air monitoring data available for 2010 in EPA's Air Quality System (AQS) are consistent with continued attainment. In accordance with EPA's applicable ozone implementation rule, this determination suspends the obligation of the Commonwealth of Pennsylvania to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for the Pittsburgh Area for as long as the

nonattainment area continues to meet the 1997 8-hour ozone NAAQS. This determination of attainment is not equivalent to a redesignation to attainment. The State must still meet the statutory requirements for redesignation in order to be redesignated to attainment. This action is being taken under the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on June 30, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-1082. 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.

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

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 7, 2011 (76 FR 6590), EPA published a notice of proposed rulemaking (NPR), proposing to determine that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS. The Pittsburgh Area is composed of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties in Pennsylvania. EPA's determination is based upon complete, quality-assured, quality-controlled, and certified ambient air quality monitoring data for the years 2007 to 2009 showing that the Pittsburgh Area has monitored attainment of the 1997 8-hour ozone NAAQS. Complete air quality monitoring data for 2010 in AQS also show continued attainment.

##### II. Summary of Action

EPA is determining that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS based on 2007 to 2009 complete, quality-assured, and certified ambient air quality monitoring data. Data for 2010 are consistent with continued attainment. As provided in 40 CFR 51.918, a final determination of

attainment suspends the requirement for the Commonwealth of Pennsylvania to submit, for the Pittsburgh Area, an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS as long as the area continues to attain the 1997 8-hour ozone NAAQS. If EPA subsequently determines, after notice-and-comment rulemaking, that the Pittsburgh Area has violated the 1997 8-hour ozone NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.918, would no longer exist, and the Pittsburgh Area would thereafter have to address applicable requirements.

This action is not a redesignation of the area to attainment. The Pittsburgh Area will remain designated nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

Other specific information regarding this determination and the rationale for EPA's proposed action are explained in the NPR, and will not be restated here.

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

On March 9, 2011, EPA received adverse comments on the NPR from Mr. Robert Ukeiley on behalf of the Chesapeake Bay Foundation, the Group Against Smog and Pollution, the National Parks Conservation Association, and the Sierra Club. A summary of the comments submitted and EPA's response is provided below.

*Comment:* The commenter stated that EPA should not approve the determination of attainment because the Pittsburgh Area does not have a plan to meet the 1997 8-hour ozone NAAQS.

*Response:* EPA disagrees with the commenter's assertion that no common sense or legal basis exists for EPA to finalize its determination of attainment. The sole question addressed by EPA's rulemaking is whether the monitored ambient air quality in the area shows that the area has attained the 1997 8-hour ozone standard. The commenter does not contest EPA's finding that the Pittsburgh Area meets this NAAQS. Upon EPA's final determination that the area has attained the standard, 40 CFR 51.918 provides that the CAA requirement to submit planning SIPs associated with attainment of that standard are suspended for as long as the area continues to have ambient air quality data that meets that NAAQS. This regulation, which was upheld by

the United States Court of Appeals for the District of Columbia Circuit (DC Cir) in *NRDC v. EPA*, 571 F.3d 1245 (DC Cir. 2009), is based on the principle that when an area is already attaining a standard, and continues in attainment, there is no basis for requiring planning SIPs to attain that standard. In other words, if an area is meeting the NAAQS, it does not need a plan to meet the NAAQS. No additional measures are required for the area to attain the standard, since the area is already in attainment. In any event, EPA's determination of attainment is based solely on quality-assured ambient air quality monitoring. It is 40 CFR 51.918 that directs the suspension of planning requirements for the 1997 8-hour ozone standard. This suspension lasts only for so long as the area continues in attainment. Contrary to the commenter's contention, under these circumstances there are no adverse impacts from the suspension.

*Comment:* The commenter asserts that the data from ambient air quality monitors in the Pittsburgh Area do not meet the 75 parts per billion (ppb) 2008 NAAQS or the 60 to 70 ppb levels proposed in EPA's reconsideration of the 2008 NAAQS.

*Response:* EPA's rulemaking action here addresses only the 1997 8-hour ozone NAAQS, and has no bearing on whether the area is attaining any other NAAQS or requirements under any other NAAQS. Therefore, this comment is not relevant to this rulemaking action.

*Comment:* The commenter alleges that EPA must perform an evaluation under CAA Section 110(l) to justify a determination of attainment for the Pittsburgh Area, and further alleges that CAA Section 110(l) would show that EPA should disapprove the attainment determination. The commenter contends that EPA must analyze how delaying implementation of the 1987 SIP revisions, including RACT, will interfere with other NAAQS attainment.

*Response:* CAA Section 110(l) applies explicitly and only to a "revision to an implementation plan." As set forth in the response to comment above, EPA's rulemaking here is restricted to EPA's determination, based on ambient air quality, that the Pittsburgh Area is attaining the 1997 8-hour ozone standard. It is not a SIP revision, and thus section 110(l) is by its own terms not applicable to this rulemaking. It is not this determination of attainment, but rather EPA's ozone implementation rule, 40 CFR 51.918, that specifies the consequence of the determination as suspension of the area's obligations to submit an attainment demonstration, a RFP plan, contingency measures and

other planning requirements related to attainment as SIP revisions for as long as the area continues to attain. In any case, the requirements that are suspended by the regulation are related solely to attainment for the 1997 8-hour ozone standard. EPA is determining, and the commenter does not contest, that the area is attaining that standard and the suspension of attainment planning SIP submissions lasts only as long as the area is meeting that standard. No other requirements are suspended. The commenter is incorrect in arguing that the determination of attainment would delay implementation of measures needed for attainment of the 1997 8-hour ozone standard, and that it would relax SIP control measures. This action has no effect on control measures, or air quality, in the area. For example, contrary to commenter's contention, RACT requirements for the 1997 8-hour ozone standard (or for any other standard), are not suspended or delayed by this determination, nor by 40 CFR 51.918.

In sum, no evaluation under section 110(l) is required by law, and even if such an evaluation were required, EPA would conclude that this determination of attainment would not interfere with attainment, reasonable further progress towards attainment, or any other applicable requirement of the CAA.

### IV. Final Action

EPA has determined that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS based on 2007 to 2009 complete, quality-assured, and certified ambient air quality monitoring data. Data in AQS for 2010 are consistent with continued attainment. As provided in 40 CFR 51.918, this determination suspends the requirements for the Commonwealth of Pennsylvania to submit, for the Pittsburgh Area, an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS as long as the area continues to attain the 1997 8-hour ozone NAAQS.

This action is not a redesignation. The Pittsburgh Area will remain designated nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

### V. Statutory and Executive Order Reviews

This action makes a determination of attainment based on air quality and results in the suspension of certain

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 determination that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS 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.

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 these actions 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 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 determination that the Pittsburgh Area has attained the 1997 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, Ozone, Reporting and recordkeeping requirements.

Dated: May 23, 2011,

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart NN—Pennsylvania

- 2. In § 52.2037, paragraph (q) is added to read as follows:

##### § 52.2037 Control strategy plans for attainment and rate-of-progress: Ozone.

\* \* \* \* \*

(q) *Determination of attainment*—In accordance with 40 CFR 51.918, EPA has determined that Pittsburgh-Beaver Valley 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard and that certain requirements of section 172(c) of the Clean Air Act are suspended as long as the nonattainment area continues to meet the 1997 8-hour ozone NAAQS. This determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007 to 2009 monitoring

period. Complete, quality-assured air monitoring data for 2010 are consistent with continued attainment. This determination suspends the obligation of the Commonwealth of Pennsylvania to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for the Pittsburgh Area for as long as the area continues to meet the 1997 8-hour ozone NAAQS. If a violation of the 1997 8-hour ozone NAAQS is monitored in the Pittsburgh-Beaver Valley 8-hour ozone nonattainment area, this determination shall no longer apply.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2011–0084–201135; FRL–9312–5]

#### Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Alabama, Georgia, and Tennessee: Chattanooga; Determination of Attaining Data for the 1997 Annual Fine Particulate Standard

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

**ACTION:** Final rule.

**SUMMARY:** EPA has determined that the Chattanooga, Tennessee-Georgia, fine particulate (PM<sub>2.5</sub>) nonattainment area (hereafter referred to as “the Chattanooga Area” or “Area”) has attained the 1997 annual average PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS). The Chattanooga Area is comprised of Hamilton County in Tennessee, Catoosa and Walker Counties in Georgia, and a portion of Jackson County in Alabama. This determination of attainment is based upon quality-assured and certified ambient air monitoring data for the 2007–2009 period showing that the Area has monitored attainment of the 1997 annual PM<sub>2.5</sub> NAAQS. The requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be