ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0069; A–1–FRL–8543–4]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Determination of Attainment of the Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is determining that the Boston-Manchester-Portsmouth (SE), New Hampshire moderate 8-hour ozone nonattainment area has attained the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 8-hour ozone NAAQS since the 2002–2004 monitoring period, and continues to monitor attainment of the NAAQS based on 2004–2006 data. In addition, quality controlled and quality assured ozone data for 2007 that are available in the EPA Air Quality System database, but not yet certified, show this area continues to attain the 8-hour ozone NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans related to attainment of the 8-hour ozone NAAQS and these requirements shall remain suspended for so long as the area continues to attain the ozone NAAQS.

EFFECTIVE DATE: This rule is effective on March 18, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2008–0069. All documents in the docket are listed on the *www.regulations.gov* Web site. 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 through www.regulations.gov or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact 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, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1664, fax number (617) 918–0664, e-mail *Burkhart.Richard@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What Action Is EPA Taking?
II. What Is the Effect of This Action?
III. When Is This Action Effective?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is determining that the Boston-Manchester-Portsmouth (SE), New Hampshire moderate 8-hour ozone nonattainment area has attained the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the ozone NAAQS since the 2002–2004 monitoring period, and monitoring data that continue to show attainment of the NAAQS based on 2004–2006 data. In addition, quality controlled and quality assured ozone data for 2007 that are available in the EPA Air Quality System (AQS) database, but not yet certified, show this area continues to attain the ozone NAAQS.

Other specific requirements of the determination and the rationale for EPA's proposed action are explained in the Notice of Proposed Rulemaking (NPR) published on February 7, 2008 (73 FR 7324) and will not be restated here. No public comments were received on the NPR.

II. What Is the Effect of This Action?

Under the provisions of EPA's ozone implementation rule (see 40 CFR Section 51.918), this determination suspends the requirements for the Boston-Manchester-Portsmouth (SE), New Hampshire moderate ozone nonattainment area to submit an attainment demonstration, a reasonable further progress plan, section 172(c)(9) contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment of the 8-hour ozone NAAQS for so long as the area continues to attain the ozone NAAQS.

This action does not constitute a redesignation to attainment under CAA section 107(d)(3), because the area does not have an approved maintenance plan as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The classification and designation status of the area remains moderate nonattainment for the 8-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the current 8-hour ozone standard, the basis for the suspension of these requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

III. When Is This Action Effective?

EPA finds that there is good cause for this approval to become effective on the date of publication of this action in the **Federal Register**, because a delayed effective date is unnecessary due to the nature of the approval. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' As noted above, this determination of attainment suspends the requirements for New Hampshire to submit an attainment demonstration, a reasonable further progress plan, section 172(c)(9) contingency measures, and any other planning SIPs related to attainment of the 8-hour ozone NAAQS for so long as the area continues to attain the ozone NAAQS. The suspension of these requirements is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, New Hampshire's suspension from these requirements provides good cause to make this rule effective on the date of publication of this action in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as

here, the final rule suspends requirements rather than imposing obligations, affected parties, such as the State of New Hampshire, do not need time to adjust and prepare before the rule takes effect.

IV. Final Action

EPA is determining that the Boston-Manchester-Portsmouth (SE), New Hampshire 8-hour ozone nonattainment area has attained the 8-hour ozone standard and continues to attain the standard based on data through the 2007 ozone season. As provided in 40 CFR 51.918, this determination suspends the requirements for New Hampshire to submit an attainment demonstration, a reasonable further progress plan, and contingency measures under section 172(c)(9), and any other planning SIP related to attainment of the 8-hour ozone NAAQS for this area, for so long as the area continues to attain the standard.

V. Statutory and Executive Order Reviews

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 makes a determination based on air quality data, and results in the suspension of certain Federal requirements. 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 makes a determination based on air quality data, and results in the suspension of certain Federal requirements, 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 tribal implications because it will 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). This action also does not have Federalism implications because it does not 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 makes a determination based on air quality data and results in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it determines that air quality in the affected area is meeting Federal standards.

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 because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

Under Executive Order 12898, EPA finds that this rule involves a determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

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 rule 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 May 19, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 11, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 EE—New Hampshire

■ 2. Section 52.1534 is amended by adding paragraph (c) to read as follows:

§ 52.1534 Control strategy: Ozone.

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(c) *Determination of Attainment.* Effective March 18, 2008, EPA is determining that the Boston-Manchester-Portsmouth (SE), New Hampshire 8-hour ozone nonattainment area has attained the 8-hour ozone standard. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), this determination suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act for as long as the area does not monitor any violations of the 8-hour ozone standard. If a violation of the ozone NAAQS is monitored in the Boston-Manchester-Portsmouth (SE), New Hampshire 8-hour ozone nonattainment area, this determination shall no longer apply.

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