

Dated: March 11, 2008.

**Peter B. McCarthy,**

*Assistant Secretary for Management and  
Chief Financial Officer.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2008-0078; FRL-8546-2]

#### **Determinations of Attainment of the Eight-Hour Ozone Standard for Various Ozone Nonattainment Areas in Upstate New York State**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is determining that three ozone nonattainment areas in New York, the Albany-Schenectady-Troy, Jefferson County and Rochester areas, have attained the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon certified ambient air monitoring data that show each area has monitored attainment of the 8-hour ozone NAAQS based on complete, quality-assured ambient air monitoring data for the three year period ending in 2006. In addition, data for 2007 show that the areas continue to attain the standard. This determination suspends any applicable requirements for these areas 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. These requirements shall remain suspended for so long as these areas continue to attain the ozone NAAQS. New York proposed that Essex County had also attained the 8-hour ozone standard, but because of incomplete data, a determination of attainment cannot be made at this time.

**DATES:** *Effective Date:* This rule is effective on March 25, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R02-OAR-2008-0078. All documents in the docket are listed on the <http://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 <http://www.regulations.gov> or in hard copy at the Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866. To make your visit as productive as possible, 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:** Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone number (212) 637-4249, fax number (212) 637-3901, e-mail [kelly.bob@epa.gov](mailto:kelly.bob@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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##### **I. EPA's Action**

EPA is determining that the Albany-Schenectady-Troy, Jefferson County and Rochester 8-hour ozone nonattainment areas have attained the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. These determinations are based upon certified ambient air monitoring data that show the areas have monitored attainment of the ozone NAAQS for the three-year period from 2004 to 2006. In addition, based on quality controlled and quality assured ozone data, these areas continued to attain the ozone NAAQS in 2007, the most recent year of data available. All these data are available in the EPA Air Quality System (AQS) database. Essex County did not have enough complete data to make a determination of attainment at this time.

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 14, 2008 (73 FR 8638) and will not be restated here. No public comments were received on the NPR.

##### **II. The Effect of EPA's Action**

Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), this determination suspends the requirements for the Albany-Schenectady-Troy, Jefferson County and Rochester ozone nonattainment areas 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 these areas continue to attain the ozone NAAQS.

This action does not constitute a redesignation to attainment under Clean Air Act (CAA) section 107(d)(3), because these areas do not have approved maintenance plans as required under section 175A of the CAA, nor are there determinations that the areas have met the other requirements for redesignation. The classification and designation status of these areas will not change from nonattainment for the 8-hour ozone NAAQS until such time as EPA determines that they meet the CAA requirements for redesignation to attainment.

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

##### **III. The Effective Date of EPA's Action**

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 York to submit attainment demonstrations, reasonable further progress plans, section 172(c)(9) contingency measures, and any other planning SIPs related to attainment of the 8-hour ozone NAAQS in each of these areas for so long as an 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 York'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 York, do not need time to adjust and prepare before the rule takes effect.

#### IV. Final Action

EPA is determining that the Albany-Schenectady-Troy, Jefferson County and Rochester 8-hour ozone nonattainment areas have attained the 8-hour ozone standard and continue 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 York to submit attainment demonstrations, reasonable further progress plans, and contingency measures under section 172(c)(9), and any other planning SIP related to attainment of the 8-hour ozone NAAQS for these areas. If one or more of these areas no longer attains the standard, that area or areas would have to submit the required SIP planning elements required by the CAA for each particular area. EPA is codifying this determination in 40 CFR 52.1683 as a new paragraph (f)(2). The existing text of paragraph (f) has been designated as (f)(1) without any changes.

#### 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 27, 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 18, 2008.

**Alan J. Steinberg**,  
*Regional Administrator, Region 2.*

■ 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 HH—New York

■ 2. Section 52.1683 is amended by revising paragraph (f) to read as follows:

##### § 52.1683 Control strategy: Ozone.

\* \* \* \* \*

(f) Attainment Determination. (1) EPA has determined that, as of February 5, 1998, the Poughkeepsie ozone nonattainment area (consisting of Dutchess and Putnam Counties and northern Orange County) has air monitoring data that attains the one-hour ozone standard and that the requirements of section 182(b)(1) (reasonable further progress and attainment demonstration) and related requirements of section 172(c)(9) (contingency measures) of the Clean Air Act do not apply to the area.

(2) EPA is determining that the 8-hour ozone nonattainment areas in New York listed below have attained the 8-hour ozone standard on the date listed. 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 each of these areas 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 this determination shall no longer apply in the area where the violation occurs.

(i) Albany-Schenectady-Troy (consisting of Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, and Schoharie Counties) as of March 25, 2008,

(ii) Jefferson County, as of March 25, 2008, and

(iii) Rochester (consisting of Genesee, Livingston, Monroe, Ontario, Orleans and Wayne Counties) as of March 25, 2008.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 970730185-7206-02]

RIN 0648-XG40

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2008 Gulf of Mexico Recreational Fishery for Red Snapper

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the recreational fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf). NMFS has determined this action is necessary to prevent the recreational fishery from exceeding its quota for the fishing year. This closure is necessary to prevent overfishing of Gulf red snapper.

**DATES:** The closure is effective 12:01 a.m., local time, August 5, 2008, through December 31, 2008, the end of the current fishing year. The recreational

fishery will reopen on June 1, 2009, the beginning of the 2009 recreational fishing season.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter, telephone 727-551-5796, fax 727-824-5308, e-mail [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The red snapper fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

#### Background

The final rule implementing the approved actions in joint Amendment 27 to the FMP and Amendment 14 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 27/14) (73 FR 5117, January 29, 2008) is intended to end overfishing and rebuild the red snapper stock in the Gulf of Mexico. In part, the final rule reduced the 2008 recreational quota for red snapper to 2.45 million lb (1.11 million kg). To constrain the recreational fishery's harvest to the quota, the recreational daily bag limit was revised to two fish per person and the daily bag limit for captains and crews of for-hire vessels was reduced to zero. The recreational minimum size limit remained at 16 inches (40.6 cm) total length (TL). The Federal red snapper recreational fishing season was reduced to June 1 through September 30. These recreational management measures, in combination, were projected to constrain red snapper harvest to the 2.45 million lb (1.11 million kg) recreational quota based on the assumption all five Gulf states would adopt compatible regulations.

Previously, in 2007, NMFS implemented temporary rules (72 FR 15617, April 2, 2007; 72 FR 54223, September 24, 2007) to initiate reductions in harvest and fishing mortality on the overfished red snapper stock until the more permanent regulations above could be established. The temporary regulations included a recreational quota of 3.185 million lb (1.445 million kg), a two-fish bag limit, a zero-fish bag limit captains and crews of for-hire vessels, a 16-inch (40.6 cm) TL minimum size limit, and a recreational fishing season of April 21 through October 31. These harvesting restrictions were intended to have a 50-percent probability of constraining

recreational harvest to the recreational quota, and also assumed implementation of compatible state regulations throughout the Gulf.

Substantial quantities of red snapper are harvested by the recreational fishery from state waters. This is particularly true for Florida and Texas where state jurisdiction extends 9 nautical miles. State water recreational harvest of red snapper is much more limited off Mississippi, Alabama, and Louisiana, in part due to their more limited 3 nautical-mile jurisdiction. Reported recreational red snapper landings in state waters off the west coast of Florida in 2007 represented more than 25 percent of the total Gulf recreational red snapper landings, and more than 50 percent of the total recreational landings for the state. Although the quantity of recreational red snapper landed from state waters off Texas is only approximately 4.5 percent of the total recreational quota, landings from state waters constitute more than 30 percent of Texas' total recreational landings. During 2007, the Texas Parks and Wildlife Department (TPWD) kept Texas state waters open year-round compared to the restricted Federal season, and anglers were allowed a daily bag limit of four fish compared to the two-fish bag limit in Federal waters. The Florida Fish and Wildlife Conservation Commission (FWC) maintained a fishing season of April 15 through October 31 during 2007 in its state waters, and a four-fish recreational bag limit compared to a two-fish bag limit in Federal waters. These incompatible regulations in state waters contributed to a total recreational harvest that was estimated to exceed the recreational red snapper quota by approximately 1.0 million lb (453,592 kg) in 2007.

To ensure the 2008 recreational red snapper quota would not be exceeded, NMFS and the Council requested the five Gulf states adopt regulations compatible with Federal regulations implemented for red snapper during the 2008 fishing year. In response, the FWC implemented regulations for Florida state waters that allow anglers to possess two fish per day and prohibited retention by captain or crew of for-hire vessels, compatible with Federal regulations, but maintained its recreational fishing season of April 15 through October 31; 78 days longer than the existing June 1 through September 30 Federal fishing season. The TPWD maintained its existing regulations of a year-round fishing season and a four-fish bag limit in Texas state waters.

The ramifications of incompatible state regulations for the Federal red snapper fishery are significant. The