

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2012-0053; FRL-9625-7]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Missouri and Illinois; St. Louis; Determination of Attainment by Applicable Attainment Date for the 1997 Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine, pursuant to the Clean Air Act (CAA), that the bi-state St. Louis (MO-IL) ozone nonattainment area ("St. Louis area") attained the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of June 15, 2010. This proposed determination is based upon complete, quality-assured, and certified ambient air quality data from the 2007-2009 monitoring period which show that the St. Louis area has monitored attainment of the 1997 8-hour ozone NAAQS as of the applicable date.

DATES: Comments must be received on or before March 5, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2012-0053, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email*: kemp.lachala@epa.gov.
3. *Fax*: (913) 551-9214.
4. *Mail*: Lachala Kemp, Air Planning and Development Branch, Environmental Protection Agency Region 7, 901 North 5th Street, Kansas City, Kansas 66101.
5. *Hand Delivery or Courier*: Lachala Kemp, Air Planning and Development Branch, Environmental Protection Agency Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2012-0053. 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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. 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 email comment directly to EPA without going through www.regulations.gov, your email 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.

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, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency Region 7, 901 North 5th Street, Kansas City, Kansas 66101, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency Region 7, 901 N. 5th Street, Kansas City, Kansas 66101, at (913) 551-7214 or by email at kemp.lachala@epa.gov. In

Region 5 contact Edward Doty, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-6057 or by email at doty.edward@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following questions:

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I. What action is EPA taking?

Pursuant to section 181(b)(2) of the CAA, EPA is proposing to determine that the St. Louis area attained the 1997 8-hour ozone NAAQS by its applicable attainment date of June 15, 2010. The St. Louis area is composed of Jefferson County, Franklin County, St. Louis County, St. Louis City, and St. Charles County in Missouri, and Madison, Monroe, Jersey, and St. Clair Counties in Illinois. This proposed determination is based upon complete, quality-assured and certified ambient air monitoring data from 2007-2009 which show that the St. Louis area monitored attainment of the 1997 8-hour ozone NAAQS as of its applicable attainment date.

On June 9, 2011, EPA published in the **Federal Register** a final determination that the St. Louis area has attained the 1997 8-hour ozone NAAQS based on complete, quality-assured ozone monitoring data for 2008-2010, and the effect of that determination pursuant to 40 CFR 51.918. See 76 FR 33647-50. Today's proposed action is separate from and independent of EPA's June 9, 2011 determination, and it does not affect or modify that rulemaking. Today's proposed determination concerns an earlier period of air quality monitoring, and it addresses only EPA's obligation under CAA section 181(b)(2) to determine whether the area attained the 8-hour ozone standard by its applicable June 15, 2010 attainment date.

II. What is the background for this action?

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million (ppm). On April 30, 2004 (69 FR 23858), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and

classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003. Under EPA’s implementation rule for the 1997 8-hour ozone standard (69 FR 23951, April 30, 2004), an area was classified under subpart 2 of the CAA based on its 8-hour ozone design value (i.e. the three-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm. See 40 CFR 51.902(a). All other nonattainment areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The St. Louis area was classified as a subpart 2, 8-hour ozone moderate nonattainment area by EPA on April 30, 2004 (69 FR 23858, 23898, and 23915), based on the three most recent years of monitoring data (2001–2003), consistent with 40 CFR 51.903(a).

As a moderate nonattainment area for the 1997 8-hour ozone NAAQS, the St.

Louis (MO–IL) area had an applicable attainment date of June 15, 2010, as required by 40 CFR 51.903(a) Table 1. Pursuant to section 181(b)(2) of the CAA, EPA is required to make a determination as to whether the St. Louis area attained the standard as of its applicable attainment date. This determination is based on the area’s design value as of the attainment date, which in turn is based on the three most recent years of air quality data (2007–2009) prior to the attainment date.

III. What was the air quality in the St. Louis area for the 1997 8-hour ozone NAAQS for the 2007–2009 monitoring period?

Today’s rulemaking assesses whether the St. Louis area attained the 1997 8-hour ozone NAAQS by its applicable attainment date of June 15, 2010. Under EPA regulations at 40 CFR 50.15, the 1997 8-hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-

hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR part 50, Appendix I. Based on the rounding convention set forth in section 2.3 of Appendix I, the smallest value that is greater than 0.08 ppm is 0.085 ppm.

EPA has reviewed the ambient air monitoring data for the St. Louis area for the 1997 8-hour ozone NAAQS, consistent with requirements contained at 40 CFR part 50. EPA’s review focused primarily on data recorded in the EPA Air Quality System (AQS) database for the St. Louis area for 2007–2009.

Table 1 shows the 2007–2009 and 2008–2010 ozone design values for the St. Louis area monitors with complete, quality-assured and certified data for that period. All data values are expressed in ppm. As shown in Table 1, all of these monitors recorded ozone design values less than 0.085 ppm for 2007–2009 and 2008–2010, with the highest value at any monitor in the area, 0.078 ppm, recorded at the West Alton monitor.

TABLE 1—ANNUAL FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGES IN PPM FOR THE ST. LOUIS AREA MONITORS WITH COMPLETE DATA (2007–2009) AND (2008–2010)

State	County	Monitor	2007 4th High (ppm)	2008 4th High (ppm)	2009 4th High (ppm)	2010 4th High (ppm)	2007–2009 Design value (ppm)	2008–2010 Design value (ppm)*
Illinois	Jersey	Jerseyville 17–083–1001.	0.075	0.069	0.068	0.072	0.070	0.069
	Madison	Alton 17–119–0008.	0.081	0.068	0.067	0.080	0.072	0.071
		Maryville 17–119–1009.	0.087	0.070	0.074	0.074	0.077	0.072
		Wood River 17–119–3007.	0.086	0.067	0.066	0.070	0.073	0.067
	St. Clair	East St. Louis 17–163–0010.	0.077	0.064	0.069	0.072	0.070	0.068
Missouri	St. Charles	West Alton 29–183–1002.	0.089	0.076	0.071	0.084	0.078	0.077
		Orchard Farm 29–183–1004.	0.083	0.072	0.073	0.077	0.076	0.074
	St. Louis	Maryland Heights 29–189–0014.	0.094	0.069	0.070	0.076	0.077	0.071
		Pacific 29–189–0005.	0.085	0.064	0.064	0.069	0.071	0.065
	St. Louis City	Blair Street 29–510–0085.	0.087	0.073	0.065	0.071	0.075	0.069

*Although the determination here is whether the area attained the 1997 8-hour ozone NAAQS based on 2007–2009 data, the 2010 data shows that all monitors in the St. Louis area continued to attain the NAAQS in 2008–2010.

As shown above in Table 1, there were ten monitoring sites with complete

data during the 2007–2009 monitoring period. Data are considered to be

sufficient for comparison to the NAAQS if three consecutive complete years of

data exist. These ten monitoring sites with complete data provide an adequate basis for EPA to determine that the area has attained the NAAQS. See 40 CFR Part 58, Appendix D for network design criteria.¹

Based on its evaluation of complete quality assured and certified data from the relevant monitoring sites for the 2007–2009 monitoring period, EPA believes that the St. Louis area attained the 1997 8-hour ozone NAAQS by the June 15, 2010 attainment date.

Two additional monitors have recorded data that are not considered as complete for the 2007–2009 monitoring period. Pertinent data from these sites are shown in Table 2.

TABLE 2—ANNUAL FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGES IN PPM FOR THE ST. LOUIS AREA MONITORS WITH INCOMPLETE DATA

State	County	Monitor	2007 4th high (ppm)	2008 4th high (ppm)	2009 4th high (ppm)	2010 4th high (ppm)	2008–2010 average (ppm)
Missouri	Jefferson	Arnold & Tenbrook 29–099–0012. Arnold West 29–099–0019 ..	0.087 0.070 0.070 0.077 0.072

The Arnold and Tenbrook site was discontinued after the 2007 ozone season because it no longer met siting criteria in 40 CFR 58.14(c)(6) and section 5 of Appendix E to Part 58, due to trees in the immediate vicinity of the site. The Arnold West site replaced the discontinued monitor and began operation in the 2008 ozone season. The

Missouri Department of Natural Resources requested, and EPA approved, the discontinuation of the Arnold & Tenbrook monitor. The siting of the replacement monitor at the Arnold West site was approved in the 2008 annual network plan as a more optimal location with respect to meeting the siting criteria in 40 CFR Part 58,

including the criteria in section 5 of Appendix E.² The two sites are located within two miles of each other, and if data from the Arnold and Tenbrook monitor was combined with data from the Arnold West monitor, the resulting 2007–2009 design value would attain the 1997 8-hour ozone NAAQS at 0.075 ppm.

TABLE 3—DESIGN VALUES FOR INCOMPLETE DATA MONITORS COMPARED TO HIGHEST MONITORS IN THE ST. LOUIS AREA, 2000–2010

		2000–2002 Design value (ppm)	2001–2003 Design value (ppm)	2002–2004 Design value (ppm)	2003–2005 Design value (ppm)	2004–2006 Design value (ppm)	2005–2007 Design value (ppm)	2006–2008 Design value (ppm)	2007–2009 Design value (ppm)	2008–2010 Design value (ppm)
Incomplete Data Monitors	Arnold & Tenbrook 29–099–0012. Arnold West 29–099–0019	0.086	0.087	0.081	0.081	0.080	0.086
Design Value Monitors	West Alton 29–183–1002 Orchard Farm 29–183–1004.	0.090 0.090	0.091 0.092	0.089 0.088	0.085 0.086	0.085 0.086	0.089 0.089	0.085 0.082	0.078 0.076	0.077 0.074

Table 3 lists data over the last ten years for the monitors with incomplete data in comparison with the monitors that determine the design value for the St. Louis area. The design value monitor for any three year period is the monitor recording the highest levels out of all the monitors in the nonattainment area. The design values are used to compare against the NAAQS. Table 3 illustrates that the Arnold and Tenbrook and Arnold West monitor’s three year monitoring averages in all cases have been below the design value monitor for the area. It also shows the continued decrease in overall ozone levels over this period. Although the data from these monitors are used for comparison to the 8-hour ozone NAAQS, the table

demonstrates they are not the monitors that would set the design value for the area. The other monitors for the area, including the monitors which have historically set the design value for the area, all have complete data and recorded attainment of the 1997 8-hour ozone NAAQS during the 2007–2009 period, as discussed above and shown in Table 1. Therefore, EPA believes it is reasonable to conclude that the area met the NAAQS based on complete data from the ten monitors recording values during the 2007–2009 period.

EPA finds that Missouri and Illinois have exercised diligence in monitoring in the St. Louis area, and have worked cooperatively with EPA in evaluating

and seeking approval for monitor closures and moves.

EPA’s review of monitoring data from the 2007–2009 monitoring period is supported by corroborating data from 2010 and shows that the St. Louis area attained the 1997 8-hour ozone NAAQS by its applicable attainment date of June 15, 2010.

IV. What is the proposed action?

This action proposes to determine that the St. Louis area attained the 1997 8-hour ozone NAAQS by its applicable attainment date of June 15, 2010, pursuant to CAA section 181(b)(2).

¹ The monitoring network for the 2007–2009 monitoring period met and exceeded the minimum

criteria for ozone monitoring in 40 CFR part 58, Appendix D.

² The MDNR did not request that the data from the discontinued monitor and the replacement monitor be combined.

V. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would 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 determination that the St. Louis area attained the 1997 8-hour ozone NAAQS by its applicable attainment date does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIPs are not approved to apply in Indian country located in the states, 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 52

Environmental protection, Air pollution control, ozone, Reporting and recordkeeping requirements.

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

Dated: January 19, 2012.

Karl Brooks,

Regional Administrator, Region 7.

Dated: January 25, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–2336 Filed 2–1–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 489

[CMS–1350–NC]

RIN 0938–AQ51

Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA); Applicability to Hospital Inpatients and Hospitals With Specialized Capabilities

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

ACTION: Request for comments.

SUMMARY: This request for comments addresses the applicability of the Emergency Medical Treatment and Labor Act (EMTALA) to hospital inpatients.

DATES: *Comment Date:* To be assured consideration, comments on the Applicability of EMTALA to Hospitals with Specialized Capabilities (section II.B. of this document) must be received at one of the addresses provided below, no later than 5 p.m. EST on April 2, 2012.

ADDRESSES: In commenting, please refer to file code CMS–1350–NC. 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–1350–NC, P.O. Box 8013, Baltimore, MD 21244–8013.

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

following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1350–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–1066 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Renate Dombrowski, (410) 786–4645, Ankit Patel, (410) 786–4537.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication