

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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus this proposed action 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, Incorporation by reference, Particulate matter, Nitrogen oxides, Sulfur oxides, Reporting and recordkeeping requirements.

Dated: October 15, 2012.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2012-0752; FRL-9746-8]

#### Determination of Attainment for the Nogales Nonattainment Area for the 2006 Fine Particle Standard; Arizona; Determination Regarding Applicability of Clean Air Act Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Nogales nonattainment area in Arizona has

attained the 2006 24-hour fine particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS). This proposed determination is based upon complete, quality-assured, and certified ambient air monitoring data showing that the area has monitored attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS based on the 2009–2011 monitoring period. EPA is further proposing that, if EPA finalizes this determination of attainment, the requirements for the area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines shall be suspended for so long as the area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS.

**DATES:** Written comments must be received on or before November 29, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2012-0752 by one of the following methods:

1. Federal eRulemaking Portal, at [www.regulations.gov](http://www.regulations.gov), please follow the on-line instructions;
2. Email to [ungvarsky.john@epa.gov](mailto:ungvarsky.john@epa.gov); or
3. Mail or delivery to John Ungvarsky, Air Planning Office, AIR-2, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information you consider to be CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or email. [www.regulations.gov](http://www.regulations.gov) is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, (415) 972-3963, or by email at [ungvarsky.john@epa.gov](mailto:ungvarsky.john@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, wherever “we”, “us” or “our” are used, we mean EPA. We are providing the following outline to aid in locating information in this proposal.

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#### I. What determination is EPA making?

EPA is proposing to determine that the Nogales nonattainment area has clean data for the 2006 24-hour NAAQS for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, PM<sub>2.5</sub>). This determination is based upon complete, quality-assured, and certified ambient air monitoring data showing the area has monitored attainment of the 2006 PM<sub>2.5</sub> NAAQS based on 2009–2011 monitoring data. Preliminary data in EPA's Air Quality System (AQS) for 2012 indicate that the area continues to attain the 2006 PM<sub>2.5</sub> NAAQS. Based on this determination, we are also proposing to suspend the obligations on

the State of Arizona to submit certain state implementation plan (SIP) revisions related to attainment of this standard for the area for as long as the area continues to attain the standard.

## II. What is the background for this action?

### A. $PM_{2.5}$ NAAQS

Under section 109 of the Clean Air Act (CAA or “Act”), EPA has established national ambient air quality standards (NAAQS or “standards”) for certain pervasive air pollutants (referred to as “criteria pollutants”) and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established.

On July 18, 1997, EPA revised the NAAQS for particulate matter to add new standards for  $PM_{2.5}$ , using  $PM_{2.5}$  as the indicator for the pollutant. EPA established primary and secondary<sup>1</sup> annual and 24-hour standards for  $PM_{2.5}$  (62 FR 38652). The annual standard was set at 15.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), based on a 3-year average of annual mean  $PM_{2.5}$  concentrations, and the 24-hour standard was set at 65  $\mu\text{g}/\text{m}^3$ , based on the 3-year average of the 98th percentile of 24-hour  $PM_{2.5}$  concentrations at each population-oriented monitor within an area.

On October 17, 2006 (71 FR 61144), EPA revised the level of the 24-hour  $PM_{2.5}$  NAAQS to 35  $\mu\text{g}/\text{m}^3$ , based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA also retained the 1997 annual  $PM_{2.5}$  standard at 15.0  $\mu\text{g}/\text{m}^3$  based on a 3-year average of annual mean  $PM_{2.5}$  concentrations, but with tighter constraints on the spatial averaging criteria.

### B. Designation of $PM_{2.5}$ Nonattainment Areas

Effective December 14, 2009, EPA established the initial air quality designations for most areas in the United States for the 2006 24-hour  $PM_{2.5}$  NAAQS. See 74 FR 58688; (November 13, 2009). Among the various areas designated in 2009, EPA designated the Nogales<sup>2</sup> area in Arizona as nonattainment for the 2006 24-hour

$PM_{2.5}$  NAAQS.<sup>3</sup> The boundaries for the nonattainment area are described in 40 CFR 81.303.

Within three years of the effective date of designations, states with areas designated as nonattainment for the 2006  $PM_{2.5}$  NAAQS are required to submit SIP revisions that, among other elements, provide for implementation of reasonably available control measures (RACM), reasonable further progress (RFP), attainment of the standard as expeditiously as practicable but no later than five years from the nonattainment designation (in this instance, no later than December 14, 2014), as well as contingency measures. See CAA section 172(a)(2), 172(c)(1), 172(c)(2), and 172(c)(9). Prior to the due date for submittal of these SIP revisions, the State of Arizona requested that EPA make a determination that the Nogales<sup>4</sup> nonattainment area has attained the 2006  $PM_{2.5}$  NAAQS. Today's proposal responds to the State's request.

### C. How Does EPA Make Attainment Determinations?

A determination of whether an area's air quality currently meets the  $PM_{2.5}$  NAAQS is generally based upon the most recent three years of complete, quality-assured data gathered at established State and Local Air Monitoring Stations (SLAMS) in a nonattainment area and entered into the AQS database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in AQS when determining the attainment status of areas. See 40 CFR 50.13; 40 CFR part 50, appendix L; 40 CFR part 53; 40 CFR part 58, and 40 CFR part 58, appendices A, C, D, and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix N.

Under EPA regulations in 40 CFR part 50, section 50.13 and in accordance with appendix N, the 2006 24-hour  $PM_{2.5}$  standard is met when the design value is less than or equal to 35  $\mu\text{g}/\text{m}^3$  (based on the rounding convention in 40 CFR part 50, appendix N) at each

monitoring site within the area.<sup>5</sup> The  $PM_{2.5}$  24-hour average is considered valid when 75 percent of the hourly averages for the 24-hour period are available. Data completeness requirements for a given year are met when at least 75 percent of the scheduled sampling days for each quarter have valid data.

## III. What is EPA's analysis of the relevant air quality data?

### A. Monitoring Network and Data Considerations

The Arizona Department of Environmental Quality (ADEQ) is the governmental agency with the authority and responsibility under state law for collecting ambient air quality data within the Nogales nonattainment area. Annually, ADEQ submits monitoring network plans to EPA. These plans discuss the status of the air monitoring network, as required under 40 CFR part 58. EPA reviews these annual network plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to  $PM_{2.5}$ , we have found that ADEQ's annual network plans meet the applicable requirements under 40 CFR part 58.<sup>6</sup> Furthermore, we concluded in our *Technical System Audit Report* concerning ADEQ's ambient air quality monitoring program that ADEQ's ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for  $PM_{2.5}$  in the Nogales nonattainment area.<sup>7</sup> Also, ADEQ annually certifies that the data it submits to AQS are quality-assured.<sup>8</sup>

<sup>5</sup> The 24-hour  $PM_{2.5}$  standard design value is the 3-year average of annual 98th percentile 24-hour average values recorded at each monitoring site [see 40 CFR part 50, appendix N, section 1.0(c)], and the 24-hour  $PM_{2.5}$  NAAQS is met when the 24-hour standard design value at each monitoring site is less than or equal to 35  $\mu\text{g}/\text{m}^3$ .

<sup>6</sup> Letter from Joe Lapka, Acting Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Nancy Wrona, Director, Air Quality Division, ADEQ (November 12, 2009) (approving ADEQ's “Final Report of the State of Arizona Air Monitoring Network Plan for the Year 2009”); Letter from Matthew Lakin, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Eric Massey, Director, Air Quality Division, ADEQ (December 10, 2010) (approving ADEQ's “Final Report of the State of Arizona Air Monitoring Network Plan for the Year 2010”); Letter from Matthew Lakin, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Eric Massey, Director, Air Quality Division, ADEQ (December 1, 2011) (approving ADEQ's “State of Arizona Air Monitoring Network Plan: For the Year 2011”).

<sup>7</sup> Technical System Audit Report transmitted via correspondence dated September 23, 2010, from Deborah Jordan, Director, Air Division, EPA Region IX, to Eric Massey, Air Division, ADEQ.

<sup>8</sup> See, e.g., the letter from Eric C. Massey, Director, Air Quality Division, ADEQ to Deborah Jordan,

<sup>1</sup> For a given air pollutant, “primary” national ambient air quality standards are those determined by EPA as requisite to protect the public health, and “secondary” standards are those determined by EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. See CAA section 109(b).

<sup>2</sup> Covering 76.1 square miles, the Nogales  $PM_{2.5}$  nonattainment area is located within Santa Cruz County, Arizona, with the southernmost boundary of the nonattainment area and Santa Cruz County being the U.S./Mexico border.

<sup>3</sup> With respect to the annual  $PM_{2.5}$  NAAQS, this area is designated as “unclassifiable/attainment.”

<sup>4</sup> On July 6, 2012, in an email to Lisa Hanf, Manager, Planning Office, Air Division, U.S. EPA Region IX, Diane Arnst, Planning Section Manager, Air Quality Division, Arizona Department of Environmental Quality, requested that EPA determine whether the Nogales  $PM_{2.5}$  nonattainment area qualified for a determination of attainment for the 2006 24-hour  $PM_{2.5}$  NAAQS.

There was one PM<sub>2.5</sub> SLAMS operating during the 2009–2011 period in the Nogales PM<sub>2.5</sub> nonattainment area. This site has been monitoring PM<sub>2.5</sub> concentrations since 1999 with a one-in-six-day sampling frequency. EPA defines specific monitoring site types and spatial scales of representativeness to characterize the nature and location of required monitors. The monitor’s spatial scale is neighborhood scale,<sup>9</sup> and its monitoring objective (site type) is population exposure.<sup>10</sup>

For the purposes of this proposed action, we have reviewed the data for the most recent three-year period (2009–2011) for completeness, and we determined that the data collected by ADEQ meets the completeness criterion for all 12 quarters at the Nogales PM<sub>2.5</sub> monitor. While we consider the PM<sub>2.5</sub> data set for 2009–2011 to be complete for the purposes of determining whether the area has attained the standard, we have also determined that, under our

monitoring regulations, ADEQ should be sampling PM<sub>2.5</sub> on a one-in-three day schedule rather than at the current one-in-six day schedule because the co-located PM<sub>2.5</sub> monitor at the Nogales site is not a continuously operating monitor, and under those circumstances, a sampling frequency of at least one day in every three is required under 40 CFR 58.12(d)(1). ADEQ has agreed to increase the monitoring frequency at the Nogales monitoring site to meet the requirements of 40 CFR 58.12(d)(1), beginning January 2013.<sup>11</sup> The increased number of samples would provide sufficient information to evaluate the area’s continued attainment of the 2006 PM<sub>2.5</sub> NAAQS if we finalize this proposed determination of attainment for the Nogales nonattainment area.

B. Evaluation of Current Attainment

EPA’s evaluation of whether the Nogales PM<sub>2.5</sub> nonattainment area has

attained the 2006 24-hour PM<sub>2.5</sub> NAAQS is based on our review of the monitoring data and takes into account the adequacy of the PM<sub>2.5</sub> monitoring network in the nonattainment area and the reliability of the data collected by the network as discussed in the previous section of this document.

Table 1 shows the PM<sub>2.5</sub> design values for the Nogales nonattainment area monitor based on ambient air quality monitoring data for the most recent complete three-year period (2009–2011). The data show that the design value for the 2009–2011 period was equal to or less than 35 µg/m<sup>3</sup> at the monitor. Therefore, we are proposing to determine, based on the complete, quality-assured data for 2009–2011, that the Nogales area has attained the 2006 24-hour PM<sub>2.5</sub> standard. Preliminary data available in AQS for 2012 indicate that the area continues to attain the standard.

TABLE 1—2009–2011 24-HOUR PM<sub>2.5</sub> MONITORING SITE AND DESIGN VALUE FOR THE NOGALES NONATTAINMENT AREA

Monitoring site	AQS site identification No.	98th Percentile (µg/m <sup>3</sup> )			2009–2011 design values (µg/m <sup>3</sup> )
		2009	2010	2011	
Nogales Post Office .....	04–023–0004	29.7	31.6	27.2	30

Source: Design Value Report, August 14, 2012 (in the docket to this proposed action).

IV. How does EPA’s Clean Data Policy apply to this action?

A. Application of EPA’s Clean Data Policy to the 2006 PM<sub>2.5</sub> NAAQS

In April 2007, EPA issued its PM<sub>2.5</sub> Implementation Rule for the 1997 PM<sub>2.5</sub> standard. 72 FR 20586; (April 25, 2007). In March, 2012, EPA published implementation guidance for the 2006 PM<sub>2.5</sub> standard. See Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, “Implementation Guidance for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)” (March 2, 2012). In that guidance, EPA stated its view “that the overall framework and policy approach of the 2007 PM<sub>2.5</sub> Implementation Rule continues to provide effective and appropriate guidance on the EPA’s interpretation of the general statutory requirements that states should address in their SIPs. In general, the EPA believes that the interpretations of the

statute in the framework of the 2007 PM<sub>2.5</sub> Implementation Rule are relevant to the statutory requirements for the 2006 24-hour PM<sub>2.5</sub> NAAQS \* \* \*.” *Id.*, page 1. With respect to the statutory provisions applicable to 2006 PM<sub>2.5</sub> implementation, the guidance emphasized that “EPA outlined its interpretation of many of these provisions in the 2007 PM<sub>2.5</sub> Implementation Rule. In addition to regulatory provisions, the EPA provided substantial general guidance for attainment plans for PM<sub>2.5</sub> in the preamble to the final the [sic] 2007 PM<sub>2.5</sub> Implementation Rule.” *Id.*, page 2. In keeping with the principles set forth in the guidance, and with respect to the effect of a determination of attainment for the 2006 PM<sub>2.5</sub> standard, EPA is applying the same interpretation with respect to the implications of clean data determinations that it set forth in the preamble to the 1997 PM<sub>2.5</sub> standard and in the regulation that embodies this

interpretation. 40 CFR 51.1004(c).<sup>12</sup> EPA has long applied this interpretation in regulations and individual rulemakings for the 1-hour ozone and 1997 8-hour ozone standards, the PM–10 standard, and the lead standard.

B. History and Basis of EPA’s Clean Data Policy

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble) 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its “Clean Data Policy” for the 1-hour ozone NAAQS. See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, “Reasonable Further

Director, Air Division, EPA Region IX, dated September 21, 2012 certifying the ambient air quality data collected for year 2011.  
<sup>9</sup> In this context, “neighborhood” spatial scale defines concentrations within some extended area of the city that has relatively uniform land use with dimensions in the 0.5 to 4.0 kilometers range. See 40 CFR part 58, appendix D, section 1.2.

<sup>10</sup> State of Arizona Air Monitoring Network Plan for the Year 2012, Final Report, August 1, 2012. ADEQ also operates a co-located PM<sub>2.5</sub> monitor at the Nogales monitoring site. The co-located monitor also collects samples on a one-day-in-six schedule.  
<sup>11</sup> See ADEQ’s September 11, 2012 letter to Matthew Lakin, Manager, Air Quality Analysis

Office, EPA Region IX, from Eric Massey, Director, Air Quality Division, ADEQ.  
<sup>12</sup> While EPA recognizes that 40 CFR 51.1004(c) does not itself expressly apply to the 2006 PM<sub>2.5</sub> standard, the statutory interpretation that it embodies is identical and is applicable to both the 1997 and 2006 PM<sub>2.5</sub> standards.

Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard” (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the PM<sub>2.5</sub> NAAQS. See Memorandum from Steve Page, Director, EPA Office of Air Quality Planning and Standards, “Clean Data Policy for the Fine Particle National Ambient Air Quality Standards” (December 14, 2004).

Since 1995, EPA has applied its interpretation under the Clean Data Policy in many rulemakings, suspending certain attainment-related planning requirements for individual areas, based on a determination of attainment. See 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah, 1-hour ozone); 61 FR 20458 (May 7, 1996) (Cleveland-Akron-Lorain, Ohio, 1-hour ozone); 61 FR 31832 (June 21, 1996) (Grand Rapids, Michigan, 1-hour ozone); 65 FR 37879 (June 19, 2000) (Cincinnati-Hamilton, Ohio-Kentucky, 1-hour ozone); 66 FR 53094 (October 19, 2001) (Pittsburgh-Beaver Valley, Pennsylvania, 1-hour ozone); 68 FR 25418 (May 12, 2003) (St. Louis, Missouri-Illinois, 1-hour ozone); 69 FR 21717 (April 22, 2004) (San Francisco Bay Area, California, 1-hour ozone); 75 FR 6570 (February 10, 2010) (Baton Rouge, Louisiana, 1-hour ozone); 75 FR 27944 (May 19, 2010) (Coso Junction, California, PM<sub>10</sub>).

EPA also incorporated its interpretation under the Clean Data Policy in several implementation rules. See Clean Air Fine Particle Implementation Rule, 72 FR 20586 (April 25, 2007); Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2, 70 FR 71612 (November 29, 2005). The Court of Appeals for the District of Columbia Circuit (DC Circuit) upheld EPA’s rule embodying the Clean Data Policy for the 1997 8-hour ozone standard. *NRDC v. EPA*, 571 F.3d 1245 (DC Cir. 2009). Other courts have reviewed and considered individual rulemakings applying EPA’s Clean Data Policy, and have consistently upheld them in every case. *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004); *Our Children’s Earth Foundation v. EPA*, No. 04–73032 (9th Cir. June 28, 2005 (Memorandum Opinion)), *Latino Issues Forum v. EPA*, Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009 (Memorandum Opinion)).

EPA sets forth below a brief explanation of the statutory interpretations in the Clean Data Policy. EPA also incorporates the discussions of

its interpretation set forth in prior rulemakings, including the 1997 PM<sub>2.5</sub> implementation rulemaking. See 72 FR 20586, at 20603–20605 (April 25, 2007). See also 75 FR 31288 (June 3, 2010) (Providence, Rhode Island, 1997 8-hour ozone); 75 FR 62470 (October 12, 2010) (Knoxville, Tennessee, 1997 8-hour ozone); 75 FR 53219 (August 31, 2010) (Greater Connecticut Area, 1997 8-hour ozone); 75 FR 54778 (September 9, 2010) (Baton Rouge, Louisiana, 1997 8-hour ozone); 75 FR 64949 (October 21, 2010) (Providence, Rhode Island, 1997 8-hour ozone); 76 FR 11080 (March 1, 2011) (Milwaukee-Racine and Sheboygan Areas, Wisconsin, 1997 8-hour ozone); 76 FR 31237 (May 31, 2011) (Pittsburgh-Beaver Valley, Pennsylvania, 1997 8-hour ozone); 76 FR 33647 (June 9, 2011) (St. Louis, Missouri-Illinois, 1997 8-hour ozone); 76 FR 70656 (November 15, 2011) (Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina, 1997 8-hour ozone); 77 FR 31496 (May 29, 2012) (Boston-Lawrence-Worcester, Massachusetts, 1997 8-hour ozone). See also, 75 FR 56 (January 4, 2010) (Greensboro-Winston-Salem-High Point, North Carolina, 1997 PM<sub>2.5</sub>); 75 FR 230 (January 5, 2010) (Hickory-Morganton-Lenoir, North Carolina, 1997 PM<sub>2.5</sub>); 76 FR 12860 (March 9, 2011) (Louisville, Kentucky-Indiana, 1997 PM<sub>2.5</sub>); 76 FR 18650 (April 5, 2011) (Rome, Georgia, 1997 PM<sub>2.5</sub>); 76 FR 31239 (May 31, 2011) (Chattanooga, Tennessee-Georgia-Alabama, 1997 PM<sub>2.5</sub>); 76 FR 31858 (June 2, 2011) (Macon, Georgia, 1997 PM<sub>2.5</sub>); 76 FR 36873 (June 23, 2011) (Atlanta, Georgia, 1997 PM<sub>2.5</sub>); 76 FR 38023 (June 29, 2011) (Birmingham, Alabama, 1997 PM<sub>2.5</sub>); 76 FR 55542 (September 7, 2011) (Huntington-Ashland, West Virginia-Kentucky-Ohio, 1997 PM<sub>2.5</sub>); 76 FR 60373 (September 29, 2011) (Cincinnati, Ohio-Kentucky-Indiana, 1997 PM<sub>2.5</sub>); 77 FR 18922 (March 29, 2012) (Harrisburg-Lebanon-Carlisle-York, Allentown, Johnstown and Lancaster, Pennsylvania, 1997 PM<sub>2.5</sub>).

The Clean Data Policy represents EPA’s interpretation that certain requirements of subpart 1 of part D of the Act are by their terms not applicable to areas that are currently attaining the NAAQS.<sup>13</sup> As explained below, the specific requirements that are inapplicable to an area attaining the standard are the requirements to submit a SIP that provides for: attainment of the NAAQS; implementation of all reasonably available control measures;

reasonable further progress (RFP); and implementation of contingency measures for failure to meet deadlines for RFP and attainment.

CAA section 172(c)(1), the requirement for an attainment demonstration, provides in relevant part that SIPs “shall provide for attainment of the [NAAQS].” EPA has interpreted this requirement as not applying to areas that have already attained the standard. If an area has attained the standard, there is no need to submit a plan demonstrating how the area will reach attainment. In the General Preamble (57 FR 13564), EPA stated that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since “attainment will have been reached.” See also Memorandum from John Calcagni, “Procedures for Processing Requests to Redesignate Areas to Attainment,” (September 4, 1992), at page 6.

A component of the attainment plan specified under section 172(c)(1) is the requirement to provide for “the implementation of all reasonably available control measures as expeditiously as practicable” (RACM). Since RACM is an element of the attainment demonstration, see General Preamble (57 FR 13560), for the same reason the attainment demonstration no longer applies by its own terms, RACM also no longer applies to areas that EPA has determined have clean air. Furthermore, EPA has consistently interpreted this provision to require only implementation of such potential RACM measures that could advance attainment.<sup>14</sup> Thus, where an area is already attaining the standard, no additional RACM measures are required. EPA’s interpretation that the statute requires only implementation of the RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. EPA*, 314 F.3d 735, 743–745, 5th Cir. 2002) and by the United States Court of Appeals for the D.C. Circuit (*Sierra Club v. EPA*, 294 F.3d 155, 162–163, D.C. Cir. 2002). See also the final rulemakings for Pittsburgh-Beaver Valley, Pennsylvania, 66 FR 53096 (October 19, 2001) and St. Louis, Missouri-Illinois, 68 FR 25418 (May 12, 2003).

CAA section 172(c)(2) provides that SIP provisions in nonattainment areas must require “reasonable further

<sup>13</sup> This discussion refers to subpart 1 because subpart 1 contains the requirements relating to attainment of the 2006 PM<sub>2.5</sub> NAAQS.

<sup>14</sup> This interpretation was adopted in the General Preamble, see 57 FR 13498, and has been upheld as applied to the Clean Data Policy, as well as to nonattainment SIP submissions. See *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155 (D.C. Cir. 2002).

progress.” The term “reasonable further progress” is defined in section 171(1) as “such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.” Thus, by definition, the “reasonable further progress” provision under subpart 1 requires only such reductions in emissions as are necessary to attain the NAAQS. If an area has attained the NAAQS, the purpose of the RFP requirement has been fulfilled, and since the area has already attained, showing that the State will make RFP towards attainment “[has] no meaning at that point.” General Preamble, 57 FR 13498, 13564 (April 16, 1992).

CAA section 172(c)(9) provides that SIPs in nonattainment areas “shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA].” This contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Contingency measures are implemented if reasonable further progress targets are not achieved, or if attainment is not realized by the attainment date. Where an area has already achieved attainment, it has no need to rely on contingency measures to come into attainment or to make further progress to attainment. As EPA stated in the General Preamble: “The section 172(c)(9) requirements for contingency measures are directed at ensuring RFP and attainment by the applicable date.” See 57 FR 13564. Thus these requirements no longer apply when an area has attained the standard.

It is important to note that should an area attain the 2006 PM<sub>2.5</sub> standard based on three years of data, its obligation to submit an attainment demonstration and related planning submissions is suspended only for so long as the area continues to attain the standard. If EPA subsequently determines, after notice-and-comment rulemaking, that the area has violated the NAAQS, the requirements for the State to submit a SIP to meet the previously suspended requirements would be reinstated. It is likewise important to note that the area remains designated nonattainment pending a further redesignation action.

## V. EPA's Proposed Action and Request for Public Comment

EPA is proposing to determine that the Nogales nonattainment area in Arizona has attained the 2006 24-hour PM<sub>2.5</sub> standard based on the most recent three years of complete, quality-assured, and certified data for 2009–2011. Preliminary data available in AQS for 2012 show that the area continues to attain the standard.

EPA further proposes that, if its proposed determination of attainment is made final, the requirements for the Nogales nonattainment area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2006 PM<sub>2.5</sub> NAAQS would be suspended for so long as the area continues to attain the 2006 PM<sub>2.5</sub> NAAQS. EPA's proposal is consistent and in keeping with its long-held interpretation of CAA requirements, as well as with EPA's regulations for similar determinations for ozone (see 40 CFR 51.918) and the 1997 fine particulate matter standards (see 40 CFR 51.1004(c)). As described below, any such determination would not be equivalent to the redesignation of the area to attainment for the 2006 PM<sub>2.5</sub> NAAQS.

Any final action resulting from this proposal would not constitute a redesignation to attainment under CAA section 107(d)(3) because we have not yet approved a maintenance plan for the nonattainment area as meeting the requirements of section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 would remain nonattainment for the area until such time as EPA determines that Arizona has met the CAA requirements for redesignating the Nogales PM<sub>2.5</sub> nonattainment area to attainment.

If the Nogales nonattainment area continues to monitor attainment of the 2006 PM<sub>2.5</sub> NAAQS, EPA proposes that the requirements for the area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning requirements related to attainment of the 2006 PM<sub>2.5</sub> NAAQS will remain suspended. If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 2006 PM<sub>2.5</sub> NAAQS, the basis for the suspension of these attainment planning requirements for the area would no

longer exist, and the area would thereafter have to address such requirements.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

## VI. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality and to suspend certain federal requirements, and thus, 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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus this

proposed action 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, Incorporation by reference, Particulate matter, Nitrogen oxides, Sulfur oxides, Reporting and recordkeeping requirements.

Dated: October 15, 2012.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

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