Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. This proposed rule is categorically excluded, under figure 2–1, paragraph 34(g) of the Instruction. This proposed rule amends permanent safety zones established in the Captain of the Port Lake Michigan Zone to protect the public from the hazards associated during annual events. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.929 to revise (a)(15)(i), (a)(52)(i), and (a)(65)(i); and to add paragraphs (a)(82) and (a)(83) to read as follows:

§ 165.929 Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone.

(a) * * *

(15) *Taste of Chicago Fireworks; Chicago, IL.*

(i) *Location.* All waters of Monroe Harbor and all waters of Lake Michigan bounded by a line drawn from 41°53′24″ N, 087°35′59″ W; then east to 41°53′15″ N, 087°35′26″ W; then south to 41°52′49″ N, 087°35′26″ W; then southwest to 41°52′27″ N, 087°36′37″ W; then north to 41°53′15″ N, 087°36′33″ W; then east returning to the point of origin. (NAD 83)

* * * * *

(52) *Gary Air and Water Show; Gary, IN.*

(i) *Location.* All waters of Lake Michigan bounded by a line drawn from 41°37′42″ N, 087°16′38″ W; then east to 41°37′54″ N, 087°14′00″ W; then south to 41°37′30″ N, 087°13′56″ W; then west to 41°37′17″ N, 087°16′36″ W; then north returning to the point of origin. (NAD 83)

* * * * *

(65) *Venetian Night Fireworks; Chicago, IL.*

(i) *Location.* All waters of Monroe Harbor and all waters of Lake Michigan bounded by a line drawn from 41°53′03″ N, 087°36′36″ W; then east to 41°53′03″ N, 087°36′21″ W; then south to 41°52′27″ N, 087°36′21″ W; then west to 41°52′27″ N, 087°36′37″ W; then north returning to the point of origin. (NAD 83)

* * * * *

(82) *Cochrane Cup; Blue Island, IL.*

(i) *Location.* All waters of the Calumet Sag Channel from the South Halstead Street Bridge at 41°39′27″ N, 087°38′29″ W; to the Crawford Avenue Bridge at 41°39′05″ N, 087°43′08″ W; and the Little Calumet River from the Ashland Avenue Bridge at 41°39′7″ N, 087°39′38″ W; to the junction of the Calumet Sag Channel at 41°39′23″ N, 087°39′ W (NAD 83).

(ii) *Enforcement date and time.* The first Saturday of May; 6:30 a.m. to 5 p.m.

* * * * *

(83) *World War II Beach Invasion Re-enactment; St. Joseph, MI.*

(i) *Location.* All waters of Lake Michigan in the vicinity of Tiscornia Park in St. Joseph, MI beginning at 42°06.55N, 086°29.23W; then west/northwest along the north breakwater to 42°06.59 N, 086°29.41 W; the northwest 100 yards to 42°07.01 N, 086°29.44 W; then northeast 2,243 yards to 42°07.50N, 086°28.43 W; the southeast to the shoreline at 42°07.39N, 086°28.27 W; then southwest along the shoreline to the point of origin (NAD 83).

(ii) *Enforcement date and time.* The third Saturday of June; 8 a.m. to 2 p.m.

* * * * *

Dated: March 8, 2010.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2010–6294 Filed 3–22–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2010–0172; FRL–9129–3]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM–10; Determination of Attainment for the Coso Junction Nonattainment Area; Determination Regarding Applicability of Certain Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Coso Junction nonattainment area (CJNA) in California has attained the 24-hour National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). This proposed determination is based upon monitored air quality data for the PM–10 NAAQS during the years 2006–2008. In addition, data for 2009 contained in EPA's Air Quality System (AQS) shows the CJNA continued to attain the PM–10 NAAQS through 2009, and preliminary data for 2010 available to date show no exceedances of the 24-hour NAAQS have been recorded at the CJNA monitoring site. EPA is also proposing to determine that, because the CJNA has attained the PM–10 NAAQS, the obligation to make submissions to meet certain Clean Air Act (CAA or the Act) requirements is not applicable for as long as the CJNA continues to attain the PM–10 NAAQS.

DATES: Written comments must be received on or before April 22, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0172, by one of the following methods:

(1) *Federal eRulemaking portal: http://www.regulations.gov*. Follow the on-line instructions.

(2) *E-mail: mahdavi.sarvy@epa.gov*.

(3) *Mail or deliver:* Sarvy Mahdavi (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that

you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the *http://www.regulations.gov* or e-mail. *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 e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *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 in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Sarvy Mahdavi, EPA Region IX, (415) 972–3173, *mahdavi.sarvy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" are used, we mean EPA.

Table of Contents

I. Background

A. The NAAQS for PM–10

Particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (PM–10) is the subject of this proposed action. The NAAQS are limits for certain ambient air pollutants set by EPA to protect public health and welfare. PM–10 is among the ambient air pollutants for which EPA has established a health-based standard.

On July 1, 1987 (52 FR 24634), EPA revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The 24-hour primary PM–10 standard was set at 150 micrograms per cubic meter (μg/m^3) with no more than one expected exceedance per year. The annual primary PM–10 standard was set at 50 μg/m^3 as an annual arithmetic mean. The secondary PM–10 standards, promulgated to protect against adverse welfare effects, were identical to the primary standards.

On October 17, 2006, EPA revised the primary PM–10 standards by revoking the annual standard of 50 μg/m^3, but retained the 24-hour standard of 150 μg/m^3. EPA also revised the secondary PM–10 standards to be the same as the primary standards. The revised PM–10 NAAQS became effective on December 18, 2006. *See* 71 FR 61144 and 40 CFR 50.6.

B. Designation, Classification and Air Quality Planning for PM–10 for the CJNA

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM–10 NAAQS. On the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. *See* 56 FR 11101 (March 15, 1991). At that time, the CJNA was within the boundaries of the Searles Valley planning area and EPA codified the boundaries of the Searles Valley planning area at 40 CFR 81.305; however, EPA subsequently changed the boundaries of the Searles Valley area by dividing it into three separate nonattainment areas: The CJNA, Indian Wells and Trona planning areas. 67 FR 50805 (August 6, 2002).

Once an area is designated nonattainment for PM–10, section 188 of the CAA outlines the process for classifying the area and establishes the area's initial attainment deadline. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, such as the Searles Valley, were initially classified as moderate nonattainment. When EPA changed the boundaries of the Searles Valley area, the Agency also classified the newly created CJNA, Indian Wells and Trona planning areas as moderate. In the same action, EPA determined that the Trona planning area had attained the PM–10 NAAQS by the statutory attainment deadline. 67 FR 50805. EPA redesignated the Indian Wells planning area to attainment for the PM–10 NAAQS on December 17, 2002. 67 FR 77196. This proposed action concerns only the moderate CJNA.

C. Attainment Determinations

We generally determine whether an area's air quality meets the PM–10 NAAQS for purposes of sections 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to the EPA AQS database. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in its AQS database when determining the attainment status of areas. *See* 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. We will also consider air quality data from other air monitoring stations in the nonattainment area regardless of whether they have been entered into the EPA AQS database if the stations meet the federal monitoring requirements for SLAMS. *See* 40 CFR 58.20 and August 22, 1997 Memorandum "Agency Policy on the Use of Special Purpose Monitoring Data," from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Directors. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 μg/m^3. The 24-hour standard is attained when the expected number of days per year with levels above 150 μg/m^3 (averaged over a three-year period) is less than or equal to one. Three consecutive years of air quality data are necessary to show attainment of the 24-hour standard for PM–10. *See* 40 CFR part 50, appendix K. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, includes all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

II. Proposed Attainment Determination for the CJNA

The CJNA has one SLAMS site operated by the Great Basin Unified Air Pollution Control District (District or GBUAPCD). This monitoring site is located in the Rose Valley of Coso Junction at the southern end of Inyo County and currently has a continuous

PM–10 analyzer which records PM–10 concentrations on an hourly basis.[1]

PM–10 data collected in the CJNA is reported by the GBUAPCD to the EPA AQS database. The database contains three consecutive years of complete, quality-assured and certified data for 2006–2008 for CJNA. Table 1 summarizes the exceedances of the 24-hour PM–10 NAAQS of 150 μg/m[3] measured in the CJNA during the 2006–2008 period. This table also summarizes data for 2009 that are contained in the AQS database but not yet certified.

TABLE 1—CJNA 24-HOUR PM–10 EXCEEDANCES, 2006–2009

Monitoring site	Date of exceedance	Maximum (μg/m[3])	Number of expected exceedances 2006–2008	Number of expected exceedances 2007–2009
Coso Junction	12/8/06	295	1	1
	6/5/07	217		
	12/6/07	283		
	*12/22/09	*168		

Source: EPA AQS Database.
* The 2009 data have been submitted to the AQS database but are not yet certified.

As noted above, the 24-hour PM–10 standard is attained when the expected number of days per year with levels above 150 μg/m[3] (averaged over a three-year period) is less than or equal to one. As can be seen from Table 1, there were three exceedances of the 24-hour PM–10 NAAQS for both the 2006–2008 and 2007–2009 periods; therefore the expected number of days per year with levels above 150 μg/m[3] (averaged over that three-year period) for both of these periods is one.[2] [3] EPA is not aware of any exceedances to date during the year 2010. Thus, based on quality-assured and certified data for the period 2006–2008 and data in AQS for the period 2007–2009 that show the area continues to attain, we propose to find that the CJNA has attained the 24-hour PM–10 NAAQS. Before EPA finalizes its rulemaking on a determination of attainment for CJNA, the Agency will consider the most current data available at that time.

III. Applicability of Clean Air Act Planning Requirements

The air quality planning requirements for moderate PM–10 nonattainment areas, such as the CJNA, are set out in part D, subparts 1 and 4 of title I of the Act. EPA has issued guidance in a General Preamble [4] describing how we will review state implementation plans (SIPs) and SIP revisions submitted under title I of the Act, including those containing moderate PM–10 nonattainment area SIP provisions.

In nonattainment areas where monitored data demonstrate that the NAAQS have already been achieved, EPA has determined that certain requirements of part D, subparts 1 and 2 of the Act do not apply. Therefore, we do not require certain submissions for an area that has attained the NAAQS. These include reasonable further progress (RFP) requirements, attainment demonstrations, reasonably available control measures (RACM), and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS.

This interpretation of the CAA is known as the Clean Data Policy and is the subject of two EPA memoranda. EPA also finalized the statutory interpretation set forth in the policy in its final rule, 40 CFR 51.918, as part of its "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2" (Phase 2 Final Rule). *See* discussion in the preamble to the rule at 70 FR 71612, 71645–46 (November 29, 2005). The D.C. Circuit upheld this Clean Data regulation as a valid interpretation of the Clean Air Act *NRDC* v. *EPA,* 571 F. 3d 1245 (D.C. Cir. 2009). EPA also finalized its interpretation in a regulation that was part of its Implementation Rulemaking for the PM2.5 NAAQS. 40 CFR 51.1004(c). Thus, EPA has codified the policy when it established final rules governing implementation of new or revised NAAQS for the pollutants. 70 FR 71612, 71644–46 (November 29, 2005) (ozone); 72 FR 20585, 20665 (April 25, 2007) (PM–2.5). Otherwise, it applies the policy in individual rulemakings related to specific nonattainment areas. *See, e.g.,* 75 FR 6571 (February 10, 2010). EPA believes that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," our PM–2.5 implementation rule, and our December 14, 2004 memorandum from Stephen D. Page entitled "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards", are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM–10. Our interpretation that an area that is attaining the standards is relieved of obligations to demonstrate RFP and to provide an attainment demonstration, RACM and contingency measures pursuant to part D of the CAA, pertains whether the standard is PM–10, ozone or PM–2.5.

In our recent proposed and final rulemakings determining that the San Joaquin Valley nonattainment area attained the PM–10 standard, EPA set forth at length our rationale for applying the Clean Data Policy to PM–10. The

[1] The Federal Reference Method (FRM) for PM–10 monitoring sites is a manual sampler operated on a once every six day schedule. These samplers draw ambient air through a quartz fiber filter which is weighed before and after sampling in order to determine the mass of PM–10 that is collected after the 24-hour run period. The GBUAPCD was operating two FRMs at the CJNA monitoring site on a staggered once every six day schedule that enabled the District to collect a 24-hour PM–10 sample every three days until June 30, 2006 when the FRMs were terminated. See EPA AQS Database, Monitor Description Report. Prior to terminating the FRMS, the GBUAPCD added a tapered element oscillating microbalance (TEOM) analyzer on May 11, 2006. *Id.* The TEOM analyzer, which records PM–10 levels continuously, is not a FRM but has been designated a Federal equivalent method (FEM) by EPA. All exceedances monitored from 2006 to date were recorded by this TEOM.

[2] Based on data from the EPA AQS database.

[3] We note that the GBUAPCD has reported the 4th quarter data for 2009 before the deadline. Under 40 CFR 58.16(b), quarterly data are not required to be reported in the AQS database until 90 days after the quarter; thus the data for the 4th quarter of 2009 must be reported by no later than March 31, 2010. The AQS data for the year 2009 must be certified by May 1, 2010. *See* 40 CFR 58.15.

[4] "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992), as supplemented at 57 FR 18070 (April 28, 1992).

Ninth Circuit subsequently upheld this rulemaking, and specifically EPA's Clean Data Policy in the context of the PM–10 standard. *Latino Issues Forum* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir.) Memorandum Opinion, March 2, 2009. In rejecting petitioner's challenge to the Clean Data Policy for PM–10, the Court stated:

> As the EPA rationally explained, if an area is in compliance with PM–10 standards, then further progress for the purpose of ensuring attainment is not necessary.

The reasons for relieving an area that has attained the relevant standard of certain part D, subparts 1 and 2 obligations, applies equally to part D, subpart 4, which contains specific attainment demonstration and RFP provisions for PM–10 nonattainment areas. As we have explained in the Phase 2 Final Rule and our ozone and PM–2.5 clean data memoranda, EPA believes that it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with related requirements, so as not to require SIP submissions if an area subject to those requirements is already attaining the NAAQS (*i.e.* attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured air quality monitoring data). Every U.S. Circuit Court of Appeals that has considered the Clean Data Policy has upheld EPA rulemakings applying its interpretation, for both ozone and PM–10. *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,* N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion), *Latino Issues Forum,* supra.

It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

> [R]equirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

57 FR at 13564. EPA believes the same reasoning applies to the PM–10 provision of part D, subpart 4.

With respect to RFP, section 171(1) states that, for purposes of part D of title I, RFP "means 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, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM–10 areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date. Section 189(c)(1) states that:

> Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

Although this section states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable further progress "toward attainment by the applicable attainment date," as defined by section 171. Thus, it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a state that fails to achieve a milestone must submit a plan that assures that the state will achieve the next milestone or attain the NAAQS if there is no next milestone. Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

In the General Preamble, we noted with respect to section 189(c) that "the purpose of the milestone requirement is to 'provide for emission reductions adequate to achieve the standards by the applicable attainment date' (H.R. Rep. No. 490 101st Cong., 2d Sess. 267 (1990))." 57 FR 13539 (April 16, 1992). If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.[5] EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 memorandum with respect to the requirements of sections 182(b) and (c). We are extending that interpretation to the specific provisions of part D, subpart 4. In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR 13564). *See* also our September 4, 1992 memorandum from John Calcagni, entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni memo), p. 6.

Similarly, the requirements of section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that:

> Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration * * * that the milestone has been met.

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. As noted above, this is consistent with the position that EPA took with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 Seitz memorandum with respect to the requirements of section 182(b) and (c). In the May 10, 1995 Seitz memorandum, EPA also noted that section 182(g), the milestone requirement of Subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The memorandum, also citing additional provisions related to attainment demonstration and RFP requirements, stated:

> Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or

[5] Thus, we believe that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is "redesignated attainment," as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182 (c)(2), which refer to the RFP requirements as applying until the "attainment date," since section 189(c)(1) defines RFP by reference to section 171(1) of the Act. Reference to section 171(1) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required "for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." 42 U.S.C. section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(1), and incorporated in section 189(c)(1), to be a requirement that no longer applies once the standard has been attained.

182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP submission either.

1995 Seitz memorandum at 5.

With respect to the attainment demonstration requirements of section 189(a)(1)(B), an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for "a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date * * *." As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, the Page memo, and the section 182(b) and (c) requirements set forth in the Seitz memo. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR at 13564).

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of sections 172(c)(9) and 182(c)(9). We have interpreted the contingency measure requirements of sections 172(c)(9) and 182(c)(9) as no longer applying when an area has attained the standard because those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR at 13564); Seitz memo, pp. 5–6.

Both sections 172(c)(1) and 189(a)(1)(C) require "provisions to assure that reasonably available control measures" (*i.e.,* RACM) are implemented in a nonattainment area. The General Preamble, 57 FR at 13560 (April 16, 1992), states that EPA interprets section 172(c)(1) so that RACM requirements are a "component" of an area's attainment demonstration. Thus, for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable further progress or to attainment. General Preamble, 57 FR at 13498. Thus, where an area is already attaining the standard, no additional RACM measures are required.[6] EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).

Here, as in both our Phase 2 Final Rule and ozone and PM–2.5 clean data memoranda, we emphasize that the suspension of a requirement to submit SIP revisions concerning these RFP, attainment demonstration, RACM, and other related requirements exists only for as long as a nonattainment area continues to monitor attainment of the standard. If such an area experiences a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. Therefore, the area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard. However, once EPA ultimately redesignates the area to attainment, the area will be entirely relieved of these requirements to the extent the maintenance plan for the area does not rely on them.

Should EPA at some future time determine that an area that has attained the standard, but which has not yet been redesignated as attainment for a NAAQS, has violated the relevant standard, the area would again be required to submit the pertinent SIP requirements for the area. Attainment determinations under the policy do not shield an area from other required actions, such as provisions to address pollution transport.

As set forth above, EPA finds that because the CJNA is attaining the PM–10 NAAQS, the requirements to submit an attainment demonstration, reasonable further progress, reasonably available control measures and contingency measures no longer apply for so long as the area continues to monitor attainment of the PM–10 NAAQS.[7] If in the future EPA determines, after notice and comment rulemaking, that the CJNA violates the PM–10 NAAQS, the basis for the attainment demonstration, RFP, RACM and contingency measure requirements being suspended would no longer exist. In that event, we would notify the State that we have determined that the area is no longer attaining the PM–10 standard and provide notice to the public in the **Federal Register.**

IV. EPA's Proposed Action

Based on the most recent three years of complete, quality-assured data meeting the requirements of 40 CFR part 50, appendix K, we propose to determine that the CJNA has attained the 24-hour PM–10 NAAQS. Preliminary data indicate that the area continues to attain the standard. This proposed action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3) because we would not yet have approved a maintenance plan as required under section 175(A) 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 moderate nonattainment for this area until such time as California meets the CAA requirements for redesignation of the CJNA to attainment.

EPA also finds that, because the CJNA is attaining the NAAQS, the obligation to submit the following CAA requirements is not applicable for so long as the CJNA continues to attain the PM–10 standard: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of 189(a)(1)(C), the RFP provisions established by section 189(c)(1), and the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act.

V. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized; result in the suspension of certain Federal requirements, 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

[6] The EPA's interpretation that the statute only requires implementation of 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)).

[7] We note that our application of the Clean Data Policy to the CJNA is consistent with actions we have taken for other PM–10 nonattainment areas that we also determined were attaining the standard. *See* 71 FR 6352 (February 8, 2006) (Ajo, Arizona area); 71 FR 13021 (March 14, 2006) (Yuma, Arizona area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona area); 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California area) and 72 FR 14422 (March 28, 2007) (Miami, Arizona area).

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 the 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 Clean Air Act; 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Parts 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 15, 2010.

Jared Blumenfeld,

Regional Administrator, Region 9.

[FR Doc. 2010–6338 Filed 3–22–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 10, 11, 12, and 15

[Docket No. USCG–2004–17914]

RIN 1625–AA16

Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978

AGENCY: Coast Guard, DHS.

ACTION: Supplemental Notice of Proposed Rulemaking; next stage.

SUMMARY: The Coast Guard announces that it is revisiting the approach proposed in the Notice of Proposed Rulemaking (NPRM) on the Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as published in the **Federal Register** on November 17, 2009.

DATES: The Coast Guard published its NPRM on the Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, in the **Federal Register** on November 17, 2009 (74 FR 59354). Comments on the NPRM were due by February 16, 2010.

ADDRESSES: The docket for this rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, inserting USCG–2004–17914 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or e-mail Mayte Medina, U.S. Coast Guard; telephone 202–372–1406, e-mail *Mayte.Medina2@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The United States ratified the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention), on June 10, 1991. On November 17, 2009, the Coast Guard published a NPRM on the Implementation of the 1995 Amendments to the STCW Convention. The Coast Guard held five public meetings and received a large number of comments to the rulemaking docket in response to the NPRM.

The International Maritime Organization (IMO) is currently developing amendments to the STCW Convention that are expected to be adopted at a diplomatic conference in June 2010. If adopted, these amendments will change the minimum training requirements for seafarers. They are expected to enter into force in accordance with Article XII of the Convention on January 1, 2012 for all countries that are party to the STCW Convention.

In response to feedback we have received and to the expected adoption of the 2010 amendments to the Convention under development at the IMO, the Coast Guard is reviewing the approach outlined in the NPRM. As such, we are considering publishing a Supplemental NPRM (SNPRM) as a next step. The SNPRM would describe any proposed changes from the NPRM, and seek comments from the public on those proposed changes.

This document is issued under authority of 5 U.S.C. 552(a).

Dated: March 17, 2010.

F.J. Sturm,

Deputy Director, Office of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2010–6297 Filed 3–22–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2009–0085; MO 92210–0–0009]

RIN 1018–AW88

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Bull Trout in the Coterminous United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed revision of critical habitat for the bull trout (*Salvelinus confluentus*)