Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. 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 recordkeeping 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. 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. Add § 165.T05–0529 to read as follows:

§ 165.T05–0529 Safety Zone; Fireworks Display, Baltimore Harbor; Baltimore, MD.

(a) *Location.* The following areas are a safety zone: (1) All waters of Baltimore Harbor, Baltimore's Inner Harbor, within a 50 yards radius of a fireworks discharge barge in approximate position latitude 39°17′03″ N, longitude 076°36′36″ W, located southeast of Pier 1 Inner Harbor at Baltimore, Maryland; (2) all waters of Baltimore Harbor, Baltimore's Inner Harbor, within a 100 yards radius of a fireworks discharge barge in approximate position latitude 39°16′55″ N, longitude 076°36′17″ W, located southwest of Pier 6 Inner Harbor at Baltimore, Maryland; and (3) all waters of Baltimore Harbor, Baltimore's Inner Harbor, within a 200 yards radius of a fireworks discharge barge in approximate position latitude 39°16′38″ N, longitude 076°35′55″ W, located northwest of the Domino Sugar (ASR Group) refinery wharf at Baltimore, Maryland. All coordinates refer to datum NAD 1983.

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the safety zone is implemented do not have to depart the safety zone. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(c) *Definitions.* As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement period.* This section will be enforced from 7:30 p.m. through 11:30 p.m. on September 5, 2013.

Dated: June 18, 2013.

Kevin C. Kiefer,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2013–16612 Filed 7–11–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0449; FRL–9832–5]

Determination of Attainment for the West Central Pinal 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 West Central Pinal area in Arizona has attained the 2006 24-hour fine particle ($PM_{2.5}$) 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 $PM_{2.5}$ NAAQS based on the 2010–2012 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 $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before August 12, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2013–0449 by one of the following methods:

1. *Federal eRulemaking Portal,* at www.regulations.gov, please follow the on-line instructions;

2. *Email* to *vagenas.ginger@epa.gov*; or

3. *Mail or delivery* to Ginger Vagenas, 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, 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* or email. *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* 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: Ginger Vagenas, (415) 972–3964, or by email at *vagenas.ginger@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.

Table of Contents

I. What determination is EPA making?

EPA is proposing to determine that the West Central Pinal 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, $PM_{2.5}$). This determination is based upon complete, quality-assured, and certified ambient air monitoring data showing the area has monitored attainment of the 2006 $PM_{2.5}$ NAAQS based on 2010–2012 monitoring data. Preliminary data in EPA's Air Quality System (AQS) for 2013 indicate that the area continues to attain the 2006 $PM_{2.5}$ 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 1, 1987 (52 FR 24634), EPA replaced the original NAAQS for particulate matter, measured as total suspended particulate matter (''TSP'')(i.e., particles roughly 30 micrometers or less), with new NAAQS that replaced TSP as the indicator for particulate matter with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

On July 18, 1997 (62 FR 38652), EPA revised the NAAQS for particulate matter by establishing new NAAQS for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$). EPA established primary and secondary [1] annual and 24-hour standards for $PM_{2.5}$. The annual standard was set at 15.0 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and the 24-hour standard was set at 65 $\mu g/m^3$, 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 $\mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour concentrations. Herein, we refer to the 35 $\mu g/m^3$ standard as the ''2006 24-hour $PM_{2.5}$ standard.'' EPA also retained the 1997 annual $PM_{2.5}$ standard at 15.0 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, but with tighter constraints on the spatial averaging criteria.

In December 2012, EPA revised the annual $PM_{2.5}$ NAAQS to a level of 12 $\mu g/m^3$, retained the current 24-hour $PM_{2.5}$ NAAQS at a level of 35 $\mu g/m^3$, and retained the current PM_{10} NAAQS. *See* 78 FR 3086 (January 15, 2013). The proposed determination in this document concerns only the 2006 24-hour $PM_{2.5}$ NAAQS, not the 1997 24-hour $PM_{2.5}$ NAAQS or the 1997 or 2012 annual $PM_{2.5}$ NAAQS, and not the PM_{10} NAAQS.

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). Pinal County, Arizona is located within one of three areas that EPA deferred from designation at that time.[2] However, in a subsequent action on February 3, 2011, EPA designated a portion of State lands in Pinal County, Arizona (''West Central Pinal'') as nonattainment for the 2006 $PM_{2.5}$ NAAQS based on 2006–2008 data.[3] [4] For more information on the designation of West Central Pinal, please see the February 3, 2011 final rule.

Within 3 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

[1] 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).

[2] With respect to the 1997 annual $PM_{2.5}$ NAAQS, this area is designated as ''unclassifiable/attainment.'' EPA has not yet established designations for the revised annual $PM_{2.5}$ NAAQS.

[3] *See* 76 FR 6056, February 3, 2011. This action was effective March 7, 2011. On October 26, 2012, we designated nearby Indian lands belonging to the Ak Chin Indian Community and the Gila River Indian Community, which lie within the deferred area, as ''unclassifiable/attainment'' for the 2006 $PM_{2.5}$ NAAQS based on improved air quality. *See* 77 FR 65310.

[4] The boundaries for the nonattainment area are described in 40 CFR 81.303.

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 March 7, 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 West Central Pinal nonattainment area has attained the 2006 $PM_{2.5}$ NAAQS.[5] 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 μg/m^3 (based on the rounding convention in 40 CFR part 50, appendix N) at each monitoring site within the area.[6] 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

Pinal County Air Quality Control District (PCAQCD) is the governmental agency with the authority and responsibility under state law for collecting ambient air quality data within the West Central Pinal nonattainment area. Annually, PCAQCD 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 PCAQCD's annual network plans meet the applicable requirements under 40 CFR part 58.[7] Furthermore, we concluded in our *Technical System Audit Report* concerning PCAQCD's ambient air quality monitoring program that PCAQCD'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 West Central Pinal nonattainment area.[8] Also, PCAQCD annually certifies that the data it submits to AQS are quality-assured.[9]

There was one $PM_{2.5}$ SLAMS operating during the 2010–2012 period in the West Central Pinal $PM_{2.5}$ nonattainment area. This site has been monitoring $PM_{2.5}$ concentrations since 2005. Historically, this site had monitored $PM_{2.5}$ concentrations on a one-in-six day sampling frequency. In the beginning of 2012, the sampling frequency was changed to a one-in-three day schedule.

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 middle scale,[10] and its monitoring objectives (site type) are source oriented and population exposure.

For the purposes of this proposed action, we have reviewed the data for the most recent three-year period (2010–2012) for completeness, and we determined that the data collected by PCAQCD meets the completeness criterion for all 12 quarters at the West Central Pinal $PM_{2.5}$ monitor. We consider the $PM_{2.5}$ data set for 2010–2012 to be complete for the purposes of determining whether the area has attained the standard.

B. Evaluation of Current Attainment

EPA's evaluation of whether the West Central Pinal $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS is based on our review of the monitoring data and takes into account the adequacy of the $PM_{2.5}$ 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 $PM_{2.5}$ design values for the West Central Pinal nonattainment area monitor based on ambient air quality monitoring data for the most recent complete three-year period (2010–2012). The data show that the design value for the 2010–2012 period was equal to or less than 35 μg/m^3 at the monitor. Therefore, we are proposing to determine, based on the complete, quality-assured, and certified data for 2010–2012, that the West Central Pinal area has attained the 2006 24-hour $PM_{2.5}$ standard. Preliminary data available in AQS for 2013 indicate that the area continues to attain the standard.

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[5] On December 19, 2012, in an email to Colleen McKaughan, Associate Director, Air Division, U.S. EPA Region IX, Steven M. Calderon, Manager, State Implementation Plan Section, Air Quality Division, Arizona Department of Environmental Quality, requested that EPA determine whether the West Central Pinal $PM_{2.5}$ nonattainment area qualified for a determination of attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. On January 29, 2013, ADEQ provided an AQS Design Value Report in support of the request. Both of these items can be found in the docket for today's action.

[6] 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 μg/m^3.

[7] Letter from Matthew Lakin, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Donald Gabrielson, Director, PCAQCD (November 1, 2010) (approving PCAQCD's ''2010 Ambient Monitoring Network Plan and 2009 Data Summary''); Letter from Matthew Lakin, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Donald Gabrielson, Director, PCAQCD (November 1, 2011) (approving PCAQCD's ''2011 Annual Monitoring Network Plan and 2010 Data Summary''); Letter from Matthew Lakin, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Donald Gabrielson, Director, PCAQCD (March 27, 2013) (approving PCAQCD's ''2012 Annual Monitoring Network Plan and 2011 Data Summary'').

[8] Technical System Audit Report transmitted via correspondence dated June 10, 2013, from Deborah Jordan, Director, Air Division, EPA Region IX, to Donald Gabrielson, Director, PCAQCD.

[9] *See, e.g.,* the letter from Kale Walch, Deputy Director, PCAQCD to Jared Blumenfeld, Regional Administrator, EPA Region IX, dated April 26, 2013 certifying the ambient air quality data collected for year 2012.

[10] In this context, ''middle'' spatial scale defines concentrations typical of areas up to several city blocks in size with dimensions ranging from about 100 meters to 0.5 kilometers. See 40 CFR part 58, appendix D, section 1.2.

TABLE 1—2010–2012 24-HOUR $PM_{2.5}$ MONITORING SITE AND DESIGN VALUES FOR THE WEST CENTRAL PINAL NONATTAINMENT AREA

Monitoring site	98th Percentile (μg/m³)			2010–2012 Design values (μg/m³)
	2010	2011	2012	
Cowtown Road	27.1	27.2	28.9	28

Source: Design Value Report, May 23, 2013 (in the docket to this proposed action).

IV. What is the effect of a determination of attainment for the 2006 24-hour $PM_{2.5}$ NAAQS under subpart 4 of the Clean Air Act?

This section of EPA's proposal addresses the effects of a final determination of attainment for the West Central Pinal nonattainment area.

For the 1997 annual $PM_{2.5}$ standard, 40 CFR 51.1004(c) of EPA's Implementation Rule embodies EPA's ''Clean Data Policy'' interpretation under subpart 1. The provisions of § 51.1004(c) set forth the effects of a determination of attainment for the 1997 $PM_{2.5}$ standard. 72 FR 20585, 20665 (April 25, 2007). While the regulatory provisions of § 51.1004(c) do not explicitly apply to the 2006 $PM_{2.5}$ standard, the underlying statutory interpretation is the same for both standards. *See* 77 FR 76427 (Dec. 28, 2012) (proposed determination of attainment for the 2006 $PM_{2.5}$ standard for Milwaukee, WI).

On January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule'' or ''Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant solely to the general implementation provisions of subpart 1 of Part D of Title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I. The Court remanded EPA's Implementation Rule for further proceedings consistent with the Court's decision. In light of the Court's decision and its remand of the Implementation Rule, EPA in this proposed rulemaking addresses the effect of a final determination of attainment for the West Central Pinal nonattainment area, if that area were considered a moderate nonattainment area under subpart 4.[11] As set forth in more detail below, under EPA's Clean Data Policy interpretation, a determination that the area has attained the standard suspends the State's obligation to submit attainment-related planning requirements of subpart 4 (and the applicable provisions of subpart 1) for so long as the area continues to attain the standard. These include requirements to submit an attainment demonstration, RFP, RACM, and contingency measures, because the purpose of these provisions is to help reach attainment—a goal which has already been achieved.

A. Background of the Clean Data Policy

Over the past two decades, EPA has consistently applied its ''Clean Data Policy'' interpretation to attainment-related provisions of subparts 1, 2 and 4. The Clean Data Policy is the subject of several EPA memoranda and regulations. In addition, numerous individual rulemakings published in the **Federal Register** have applied the interpretation to a spectrum of NAAQS, including the 1-hour and 1997 ozone, PM_{10}, $PM_{2.5}$, CO and lead standards. The D.C. Circuit has upheld the Clean Data Policy interpretation as embodied in EPA's 8-hour ozone Implementation Rule, 40 CFR 51.918.[12] *NRDC* v. *EPA,* 571 F. 3d 1245 (D.C. Cir. 2009). Other U.S. Circuit Courts of Appeals that have considered and reviewed EPA's Clean Data Policy interpretation have upheld it and the rulemakings applying EPA's interpretation. *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,* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009 (Memorandum Opinion)).

As noted above, EPA incorporated its Clean Data Policy interpretation in both its 1997 8-hour ozone implementation rule and in its $PM_{2.5}$ Implementation Rule in 40 CFR 51.1004(c). 72 FR 20585, 20665 (April 25, 2007). While the D.C. Circuit, in its January 4, 2013 decision, remanded the 1997 $PM_{2.5}$ Implementation Rule, the court did not address the merits of that regulation, nor cast doubt on EPA's existing interpretation of the statutory provisions.

However, in light of the Court's decision, we set forth here EPA's Clean Data Policy interpretation under subpart 4, for the purpose of identifying the effects of a determination of attainment for the 2006 $PM_{2.5}$ standard for the West Central Pinal nonattainment area. EPA has previously articulated its Clean Data interpretation under subpart 4 in implementing the PM_{10} standard. *See, e.g.,* 75 FR 27944 (May 19, 2010) (determination of attainment of the PM_{10} standard in Coso Junction, California); 75 FR 6571 (February 10, 2010) and 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); 72 FR 14422 (March 28, 2007) (Miami, Arizona area). Thus EPA has established that, under subpart 4, an attainment determination suspends the obligations to submit an attainment demonstration, RACM, RFP contingency measures, and other measures related to attainment.

B. Application of the Clean Data Policy to the Attainment-Related Provisions of Subpart 4

In EPA's proposed and final rulemakings determining that the San

[11] For the purposes of evaluating the effects of this proposed determination of attainment under subpart 4, we are considering the West Central Pinal nonattainment area to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)). In addition, EPA also evaluates the applicable requirements of subpart 1.

[12] ''EPA's Final Rule to implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2 (Phase 2 Final Rule),'' 70 FR 71612, 71645–46 (November 29, 2005).

Joaquin Valley nonattainment area attained the PM_{10} standard, EPA set forth at length its rationale for applying the Clean Data Policy to PM_{10} under subpart 4. The Ninth Circuit upheld EPA's final rulemaking, and specifically EPA's Clean Data Policy, in the context of subpart 4. *Latino Issues Forum* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009 (Memorandum Opinion)). In rejecting petitioner's challenge to the Clean Data Policy under subpart 4 for PM_{10}, the Ninth Circuit stated, ''As the EPA explained, if an area is in compliance with PM_{10} standards, then further progress for the purpose of ensuring attainment is not necessary.''

The general requirements of subpart 1 apply in conjunction with the more specific requirements of subpart 4, to the extent they are not superseded or subsumed by the subpart 4 requirements. Subpart 1 contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM_{10} nonattainment areas, and under the Court's January 4, 2013 decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble''). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM_{10} requirements.'' 57 FR 13538 (April 16, 1992). These subpart 1 requirements include, among other things, provisions for attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), emissions inventories, and contingency measures.

EPA has long interpreted the provisions of part D, subpart 1 of the Act (sections 171 and 172) as not requiring the submission of RFP for an area already attaining the ozone NAAQS. For an area that is attaining, showing that the State will make RFP towards attainment ''will, therefore, have no meaning at that point.'' 57 FR at 13564. *See* 71 FR 40952 and 71 FR 63642 (proposed and final determination of attainment for San Joaquin Valley); 75 FR 13710 and 75 FR 27944 (proposed and final determination of attainment for Coso Junction).

Section 189(c)(1) of subpart 4 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 [section 171(1)] of this title, toward attainment by the applicable date.

With respect to RFP, section 171(1) states that, for purposes of part D, 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.

Although section 189(c) 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.[13]

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. 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 [14] 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 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.

[13] 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. 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.

[14] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995 (''Seitz memorandum'').

1995 Seitz memorandum at 5.

With respect to the attainment demonstration requirements of section 172(c) and 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 memorandum,[15] and the section 182(b) and (c) requirements set forth in the Seitz memorandum. 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). We have interpreted the contingency measure requirements of section 172(c)(9) (and section 182(c)(9) for ozone) 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 memorandum, pp. 5–6.

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 by the attainment date, 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.

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.[16] EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).

The suspension of the obligations to submit SIP revisions concerning these RFP, attainment demonstration, RACM, contingency measures and other related requirements exists only for as long as the area continues to monitor attainment of the standard. If EPA determines, after notice-and-comment rulemaking, that the area has monitored a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. In that case, 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 final determination that the area need not submit one of the pertinent SIP submittals amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard. Only if and when EPA redesignates the area to attainment would the area be relieved of these submission obligations. Attainment determinations under the Clean Data Policy do not shield an area from obligations unrelated to attainment in the area, such as provisions to address pollution transport.

As set forth above, based on our proposed determination that the West Central Pinal area is currently attaining the 2006 24-hour $PM_{2.5}$ NAAQS, we propose to find that the obligations to submit planning provisions to meet the requirements for an attainment demonstration, reasonable further progress plans, reasonably available control measures, contingency measures are suspended for so long as the area continues to monitor attainment of the 2006 24-hour $PM_{2.5}$ NAAQS. If in the future, EPA determines after notice-and-comment rulemaking that the area again violates the 2006 24-hour $PM_{2.5}$ NAAQS, the basis for suspending the attainment demonstration, RFP, RACM, and contingency measure obligations would no longer exist.

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

EPA proposes to determine, based on the most recent three years of complete, quality-assured, and certified data meeting the requirements of 40 CFR part 50, appendix N, that the West Central Pinal area is currently attaining the 2006 24-hour $PM_{2.5}$ NAAQS. In conjunction with and based upon our proposed determination that West Central Pinal has attained and is currently attaining the standard, EPA proposes to determine that the obligation to submit the following attainment-related planning requirements is not applicable for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ standard: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C), the RFP provisions of section 189(c), and related attainment demonstration, RACM, RFP and contingency measure provisions requirements of subpart 1, section 172. This proposed action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3).

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.

[15] Memorandum from Stephen 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 (''Page memorandum'').

[16] EPA's interpretation that the statute requires implementation only 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)).

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: June 26, 2013.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2013–16760 Filed 7–11–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 423

[EPA–HQ–OW–2009–0819. FRL–9832–7; EPA–HQ–RCRA–2013–0209]

RIN 2040–AF14

Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, extension of public-comment period.

SUMMARY: The EPA is extending the period for providing comments on the proposed rule entitled, ''Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category,'' published in the **Federal Register** on June 7, 2013, by 45 days.

DATES: *Comments.* The public-comment period for the proposed rule published June 7, 2013, (78 FR 34432) is being extended by 45 days to September 20, 2013, in order to provide the public additional time to submit comments and supporting information.

ADDRESSES: *Comments.* Written comments on the proposed rule may be submitted to the EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal (78 FR 34432) for the addresses and detailed instructions.

Docket. Publically available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426. The EPA has established the official public docket No. EPA–HQ–OW–2009–0819.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Jezebele Alicea-Virella, Engineering and Analysis Division, Telephone: 202–566–1755; Email: *alicea.jezebele@epa.gov.* For economic information, contact James Covington, Engineering and Analysis Division, Telephone: 202–566–1034; Email: *covington.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

In response to requests from stakeholders, the EPA is extending the previously announced public-comment period by 45 days. The public-comment period will end on September 20, 2013, rather than August 6, 2013.

List of Subjects in 40 CFR Part 423

Environmental protection, Electric power generation, Power plants, Waste treatment and disposal, Water pollution control.

Dated: July 3, 2013.

Ellen Gilinsky,

Acting Assistant Administrator.

[FR Doc. 2013–16774 Filed 7–11–13; 8:45 am]

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