ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2013–0618; FRL–9900–93–Region 2]

Approval and Promulgation of Air Quality Implementation Plans; New York; Determination of Clean Data for the 1987 PM_{10} Standard for the New York County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the New York County nonattainment area in New York is attaining the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) based on certified, quality-assured ambient air monitoring data for the years 2010 through 2012. The State of New York submitted a letter dated January 14, 2013, requesting EPA to make a clean data determination for the nonattainment area of New York County.

Based on our proposed determination that the New York County nonattainment area is attaining the PM_{10} NAAQS, EPA is also proposing to determine that New York's obligation to make submissions to meet certain Clean Air Act requirements related to attainment of the NAAQS is not applicable for as long as the New York County nonattainment area continues to attain the NAAQS.

DATES: Comments must be received on or before October 15, 2013.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2013–0618, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ruvo.richard@epa.gov.*
- *Fax:* 212–637–3901.
- *Mail:* Richard Ruvo, Chief, Air Planning Section, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Richard Ruvo, Chief, Air Planning Section, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2013–0618. EPA's policy is that all comments received 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 information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposed action, please contact Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone number (212) 637–3382, fax number (212) 637–3901, email *feingersh.henry@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing?

EPA is proposing to determine that the New York County nonattainment area for particulate matter with an aerodynamic diameter equal to or less than 10 micrometers (PM_{10}) is attaining the PM_{10} National Ambient Air Quality Standards (NAAQS). This proposed determination is based upon quality-assured, quality-controlled, and certified ambient air monitoring data that show that the area has monitored attainment of the PM_{10} NAAQS. The New York County PM_{10} nonattainment area consists solely of the County of New York, also known as the borough of Manhattan. EPA is soliciting public comments on this document and these comments will be considered before taking final action.

II. What is the effect of this action?

This proposed determination, if finalized, would: (1) Suspend the requirements for New York to submit an attainment demonstration, reasonably available control measures, reasonable further progress plan, and contingency measures related to attainment of the PM_{10} NAAQS in the New York PM_{10} nonattainment area; and (2) continue until such time, if any, that EPA subsequently determines that the area has violated the PM_{10} NAAQS. If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register** (FR), that the area has violated the PM_{10} NAAQS, the basis for the suspension of the specific requirements would no longer exist, and the area

would thereafter have to address the pertinent requirements.

The determination that EPA proposes with this FR action, that the air quality data shows attainment of the PM_{10} NAAQS, is not equivalent to the redesignation of the area to attainment. EPA does not act on redesignations for revoked standards.

This proposed action is limited to a determination that the New York PM_{10} nonattainment area has attained the PM_{10} NAAQS. If this proposed determination is made final and the New York PM_{10} nonattainment area continues to monitor attainment of the PM_{10} NAAQS, the requirements for New York to submit attainment demonstrations, reasonably available control measures, reasonable further progress plans, and contingency measures related to attainment of the PM_{10} NAAQS would remain suspended, even though EPA designated this area as a nonattainment area for purposes of the PM_{10} NAAQS.

III. What is the background for this action?

A. PM_{10} NAAQS in New York County

EPA sets the NAAQS for certain ambient air pollutants at levels required to protect public health and welfare. Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, or PM_{10}, is one of these ambient air pollutants for which EPA has established health-based standards. On July 1, 1987, EPA promulgated two primary standards for PM_{10}: A 24-hour standard of 150 micrograms per cubic meter ($\mu g/m^3$); and, an annual PM_{10} standard of 50 $\mu g/m^3$. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards. See 52 FR 24634 (July 1, 1987).

Effective December 18, 2006, EPA revoked the annual PM_{10} standard but retained the 24-hour PM_{10} standard. See 71 FR 61144 (October 17, 2006). An area attains the 24-hour PM_{10} standard when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as an ''exceedance''), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.[1] See 40 CFR 50.6 and 40 CFR part 50, appendix K.

New York's ambient air monitoring network has undergone a number of changes over the years. The monitor, which originally exceeded the NAAQS in 1992, was shut down in 2010 because it showed attainment of the NAAQS since 1992. In addition, the monitor has had very low readings, well below the attainment level, since 2008. More recent PM_{10} data at other monitoring sites located in New York County shows that New York County has met both the current and revoked standards. New York has now had clean PM_{10} data since 1992.

New York made a partial PM_{10} State Implementation Plan (SIP) submission for New York County on July 20, 1995. On September 29, 1996, New York submitted the final attainment demonstration portion of the SIP. In a letter to EPA dated January 14, 2013, New York asserted that it was withdrawing its PM_{10} SIP. This proposed clean data notice will alleviate the need for New York to submit all PM_{10} SIP requirements for the New York County area, with the exception of the emission inventory. The emission inventory, a required SIP element, was included in New York's October 27, 2009 attainment SIP for particulate matter with an aerodynamic diameter equal to or less than 2.5 micrometers ($PM_{2.5}$). EPA will address the submittal of New York's emission inventories for particulate matter in a separate action.

B. Designation and Classification of New York County PM_{10} Nonattainment Area

The New York County nonattainment area was designated nonattainment for PM_{10} and classified as moderate under section 107(d)(3) of the CAA, on July 28, 1995. See 60 FR 38726 (July 28, 1995) and 40 CFR Part 81.333 (New York County). The New York County nonattainment designation became effective on September 26, 1995. This designation was based on violations of the annual PM_{10} standard only; there are no documented exceedances of the 24-hour PM_{10} standard in the State of New York. Violations of the annual PM_{10} standard were due to emissions from localized construction in the area at that time. However, New York has been attaining the annual PM_{10} standard since 1992.

C. How does EPA make attainment determinations?

Generally, EPA determines whether an area's air quality is meeting the PM_{10} NAAQS based on complete,[2] quality-assured, and certified 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, or Tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. These monitoring agencies certify annually 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 an area. See 40 CFR 50.6; 40 CFR part 50, appendix J and K; 40 CFR part 53; and, 40 CFR part 58, appendices A, C, D, and E. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided those stations meet the Federal monitoring requirements for SLAMS, including the quality assurance and quality control criteria in 40 CFR part 58, appendix A. See 40 CFR 58.14 (2006) and 58.20 (2007);[3] 71 FR 61236, 61242 (October 17, 2006). All valid data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix K.

Attainment of the 24-hour PM_{10} standard is determined by calculating the expected number of exceedances of the standard in a year. The 24-hour PM_{10} standard is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at each monitoring site within the nonattainment area. Generally, three consecutive years of complete air quality data are required to show attainment of the 24-hour PM_{10} standard. See 40 CFR part 50 and appendix K. In addition, the Annual Standard was attained when the annual arithmetic mean, averaged over 3 years, was less than or equal to 50 $\mu g/m^3$.

To demonstrate attainment of the PM_{10} standard at a monitoring site, the monitor must provide sufficient data to perform the required calculations in 40 CFR part 50, appendix K. The amount of data required varies with the sampling frequency, data capture rate, and the number of years of record. In all cases, three years of representative monitoring data that meet the 75

[1] An exceedance is defined as a daily value that is above the level of the 24-hour standard, 150 $\mu g/m^3$, after rounding to the nearest 10 $\mu g/m^3$ (i.e., values ending in five or greater are to be rounded up). Thus, a recorded value of 154 $\mu g/m^3$ would not be an exceedance since it would be rounded to 150 $\mu g/m^3$; whereas, a recorded value of 155 $\mu g/m^3$ would be an exceedance since it would be rounded to 160 $\mu g/m^3$. See 40 CFR part 50, appendix K, section 1.0.

[2] For PM_{10}, a ''complete'' set of data includes a minimum of 75 percent of the scheduled PM_{10} samples per quarter. See 40 CFR part 50, appendix K, section 2.3(a).

[3] EPA promulgated amendments to the ambient air monitoring regulations in 40 CFR parts 53 and 58 on October 17, 2006. (See 71 FR 61236.) The requirements for Special Purpose Monitors were revised and moved from 40 CFR 58.14 to 40 CFR 58.20.

percent criterion discussed in footnote 2 should be utilized, if available. More than three years may be considered, if all additional representative years of data meeting the 75 percent criterion are utilized. Data not meeting the criteria in 40 CFR part 50 may also suffice to show attainment; however, such exceptions must be approved by the appropriate Regional Administrator in accordance with EPA guidance. See 40 CFR part 50, appendix K, section 2.3.

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

EPA has reviewed the ambient air monitoring data for PM_{10}, consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA Air Quality System database for the New York PM_{10} nonattainment area, and has concluded that this area has been attaining both the current 24-Hr PM_{10} NAAQS and the revoked annual PM_{10} NAAQS since 1992. This designation was based on violations of the annual PM_{10} standard only; there are no documented exceedances of the 24-hour PM_{10} standard in the State of New York.

EPA is presenting the last 10 years of data from New York's January 14, 2013 letter and is updating it to the present in the following tables to show how the area has been attaining both the 24-hour and revoked annual PM_{10} standard.

Tables 1 and 2 show the maximum 24-Hour PM_{10} concentrations and maximum annual average PM_{10} concentrations respectively for monitoring sites located in the New York County PM_{10} nonattainment area for the years 2002 through 2012. The PS 19 monitoring site is located at 185 1st Avenue. The Division Street monitoring site is located at 40 Division Street. The PS 59 monitoring site is located at 228 E. 57th Street. The Canal Street monitoring site is located at 350 Canal Street.

TABLE 1—MAXIMUM 24-HOUR PM_{10} CONCENTRATIONS IN NEW YORK COUNTY IN MICROGRAMS PER CUBIC METER ($\mu g/m^3$)

[The standard for the 24-hour PM_{10} NAAQS is 150 $\mu g/m^3$]

Year	Monitor name			
	PS 19 [a]	Division St. [b]	PS 59 [c]	Canal St. [d]
2002				89
2003				81
2004				61
2005				63
2006			67	60
2007		56	57	
2008		60	53	
2009	61	62		
2010	55	56		
2011	57	57		
2012	49	51		

[a] Collected data 03/2009–Present.
[b] Collected data 03/2007–Present.
[c] Collected data 04/1986–12/1998 and 10/2005–06/2008.
[d] Collected data 12/2001–03/2007.

TABLE 2—MAXIMUM ANNUAL PM_{10} CONCENTRATIONS IN NEW YORK COUNTY IN MICROGRAMS PER CUBIC METER ($\mu g/m^3$)

[The standard for the annual PM_{10} NAAQS was 50 $\mu g/m^3$]

Year	Monitor name			
	PS 19 [a]	Division St. [b]	PS 59 [c]	Canal St. [d]
2002				25.6
2003				26.5
2004				24.2
2005				26.2
2006			23.2	23.0
2007		25.3	25.5	
2008		24.0	25.9	
2009	19.8	21.1		
2010	20.2	21.0		
2011	20.0	21.6		
2012	19.4	19.7		

[a] Collected data 03/2009–Present.
[b] Collected data 03/2007–Present.
[c] Collected data 04/1986–12/1998 and 10/2005–06/2008.
[d] Collected data 12/2001–03/2007.

EPA's review of these data indicates that the New York County PM_{10} nonattainment area has met and continues to meet both the current 24-Hr PM_{10} NAAQS and the revoked annual PM_{10} NAAQS. Data from 2010 through 2012 shows that PM_{10} levels in New York County are less than 37% of the 24-hr PM_{10} NAAQS and less than 42% of the revoked annual PM_{10} NAAQS.

V. EPA's Clean Data Policy and the Applicability of the Clean Air Act Planning Requirements to the New York County Nonattainment Area [4]

The air quality planning requirements for moderate PM_{10} nonattainment areas, such as the New York County nonattainment area, are set out in part D, subparts 1 and 4, of title I of the Act. EPA has issued guidance in a General Preamble describing how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate PM_{10} nonattainment area SIP provisions.[5]

The subpart 1 requirements include, among other things, provisions for reasonably available control measures or ''RACM'', reasonable further progress or ''RFP'', emissions inventories, a permit program for construction and operation of new or modified major stationary sources in the nonattainment area or ''NSR'', contingency measures, conformity, and additional SIP revisions providing for attainment where EPA determines that the area has failed to attain the standard by the applicable attainment date.

Subpart 4 requirements in CAA section 189 apply specifically to PM_{10} nonattainment areas. The requirements for moderate PM_{10} nonattainment areas include: (1) An attainment demonstration; (2) provisions for RACM; (3) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date; and, (4) provisions ensuring that the control requirements applicable to an area's major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator has determined that such sources do not contribute significantly to PM_{10} levels exceeding the NAAQS.

For nonattainment areas where EPA determines that monitored data show that the NAAQS have already been achieved, EPA's interpretation, upheld by the Courts, is that the obligation to submit certain requirements of part D, subparts 1, 2, and 4 of the Act are suspended for so long as the area continues to attain. These include requirements for attainment demonstrations, RFP, RACM, and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS. New York's NSR requirements continue and are not suspended in PM_{10} nonattainment areas. Certain other obligations for PM_{10} nonattainment areas, however, are not suspended, such as the NSR requirements.

This interpretation of the Clean Air Act is known as the Clean Data Policy. It is the subject of several EPA memoranda and regulations, and numerous rulemakings that have been published in the **Federal Register** over more than fifteen years. EPA finalized the statutory interpretation set forth in the Clean Data Policy as part of its ''Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2'' (Phase 2 Final Rule); see 40 CFR 51.918 and discussion in the preamble to the rule at 70 FR 71612, 71645–71646 (November 29, 2005). The D.C. Circuit Court upheld this Clean Data regulation as a valid interpretation of the CAA; see *NRDC* v. *EPA,* 571 F. 3d 1245 (D.C. Cir. 2009). EPA also finalized its interpretation in an implementation rule for the NAAQS for particulate matter of 2.5 microns or less ($PM_{2.5}$); see 40 CFR 51.1004(c). Thus, EPA codified the Clean Data Policy when it established final rules governing implementation of new or revised NAAQS. See 70 FR 71612, 71644–46 (November 29, 2005); 72 FR 20586, 20665 (April 25, 2007) ($PM_{2.5}$ Implementation Rule). Otherwise, EPA applies the Clean Data Policy in individual rulemakings related to specific nonattainment areas. See, e.g., 75 FR 27944 (May 19, 2010) (the determination of attainment of the PM_{10} standard in Coso Junction, California), and 75 FR 6571 (February 10, 2010) (the determination of attainment of the 1-hour ozone standard in Baton Rouge, Louisiana).

In its many applications of the Clean Data Policy interpretation to PM_{10}, EPA has explained 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''. EPA has found that such legal bases are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM_{10}. See, e.g., 77 FR 44544 (7/30/12) and 78 FR 885 (1/7/13) (Ogden Utah area); 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); 75 FR 27944 (May 19, 2010) (Coso Junction, California area); and 76 FR 21807 (April 19, 2011) (Truckee Meadows, Nevada area). EPA's interpretation that the obligation to submit an attainment demonstration, RACM, RFP, contingency measures, and other measures related to attainment under part D of title I of the Clean Air Act is suspended while the area is attaining the NAAQS, applies whether the standard is PM_{10}, ozone, or $PM_{2.5}$.

In EPA's proposed and final rulemakings determining that the San 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}. The Ninth Circuit Court subsequently upheld this rulemaking, and specifically EPA's Clean Data Policy, in the context of the PM_{10} standard. See *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.

EPA noted in its prior PM_{10} rulemakings that the reasons for relieving an area that has attained the relevant standard of certain obligations under part D, subparts 1 and 2, apply equally to part D, subpart 4, which contains specific attainment demonstration and RFP provisions for PM_{10} nonattainment areas. In EPA's Phase 2 Final Rule and ozone (Seitz) and $PM_{2.5}$ Clean Data (Page) memoranda, EPA established 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

[4] This section parallels the discussion in 77 FR 44544 (July 30, 2012), a clean data determination for the Ogden Utah nonattainment area. That rule was finalized in 78 FR 885 (Jan. 7, 2013).

[5] ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (57 FR 13498 (April 16, 1992), and supplemented at 57 FR 18070 (April 28, 1992)); hereafter referred to as the General Preamble.

NAAQS (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured, and certified 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}. See *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,* 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.

See 57 FR 13564 (April 16, 1992). EPA's prior determinations of attainment for PM_{10}, *e.g.,* for the San Joaquin Valley and Coso Junction areas in California, make clear that the same reasoning applies to the PM_{10} provisions of part D, subpart 4. See 71 FR 40952 and 71 FR 63642 (proposed and final determination of attainment for San Joaquin Valley) and 75 FR 13710 and 75 FR 27944 (proposed and final determination of attainment for Coso Junction).

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)).'' See 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.[6] EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the General Preamble and also in the Seitz memorandum with respect to the requirements of sections 182(b) and (c). In our prior applications of the Clean Data Policy to PM_{10}, we have extended that interpretation to the specific provisions of part D, subpart 4. See, e.g., 71 FR 40952 and 71 FR 63642, the proposed and final determination of attainment for San Joaquin Valley, and 75 FR 13710 and 75 FR 27944, the proposed and final determination of attainment for Coso Junction.

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.'' See 57 FR 13564 (April 16, 1992). See also our September 4, 1992 memorandum from John Calcagni, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni memorandum), at page 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 General Preamble and also in the Seitz memorandum with respect to the requirements of section 182(b) and (c). In the 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 Seitz 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.

See Seitz memorandum at page 5.

With respect to the attainment demonstration requirements of section 189(a)(1)(B), an analogous rationale leads to the same result. Section

[6] 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.

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, 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.'' See 57 FR at 13564 (April 16, 1992).

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.'' See 57 FR 13564 (April 16, 1992) and Seitz memorandum, pages 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 states that EPA interprets section 172(c)(1) so that RACM requirements are a ''component'' of an area's attainment demonstration. See 57 FR 13560 (April 16, 1992). 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. See the General Preamble at 57 FR 13498 (April 16, 1992). Thus, where an area is already attaining the standard, no additional RACM measures are required.[7] EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).

We emphasize that the suspension of the obligation to submit SIP revisions concerning these RFP, attainment demonstration, RACM, and other related requirements exists only for as long as the New York County nonattainment area continues to monitor attainment of the PM_{10} standard. If EPA determines, after notice-and-comment rulemaking, that the area has monitored a violation of the PM_{10} NAAQS, the basis for suspending the requirements would no longer exist. As a result, the New York County nonattainment 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 after EPA redesignates the area to attainment would the area be relieved of these attainment-related submission obligations. Attainment determinations under the Clean Data Policy do not suspend an area's obligations unrelated to attainment in the area, such as provisions to address pollution transport.

Based on our proposed determination that the New York County nonattainment area is currently attaining the PM_{10} NAAQS and as set forth above, we propose to find that New York's obligations to submit planning provisions to meet the requirements for an attainment demonstration, reasonable further progress plans, reasonably available control measures, and contingency measures, no longer apply for so long as the New York County nonattainment area continues to monitor attainment of the PM_{10} NAAQS. As noted earlier, on January 14, 2013, New York withdrew its previously submitted July 20, 1995 and September 29, 1996 p.m.$_{10}$ SIP, therefore EPA no longer has a PM_{10} SIP for New York County before us for review. In the future, after notice-and-comment rulemaking, if EPA determines that the area again violates the PM_{10} NAAQS, then the basis for suspending the attainment demonstration, RFP, RACM, and contingency measure requirements would no longer exist. In that event, we would notify New York that we have determined that the New York County nonattainment area is no longer attaining the PM_{10} standard and provide notice to the public in the **Federal Register**.

VI. EPA's Proposed Action

Based on the most recent three-year period of certified, quality-assured data meeting the requirements of 40 CFR part 50, appendix K, and for the reasons discussed above, we propose to find that the New York County nonattainment area is currently attaining both the 24-hour PM_{10} NAAQS and the revoked annual PM_{10} NAAQS.

In conjunction with and based upon our proposed determination that the New York County nonattainment area is currently attaining the standard, EPA proposes to determine that New York's obligation to submit the following Clean Air Act requirements is not applicable for so long as the New York County nonattainment area continues to attain the PM_{10} standard: an attainment demonstration under Clean Air Act section 189(a)(1)(B); RACM provisions under Clean Air Act section 189(a)(1)(C); RFP provisions under Clean Air Act section 189(c); and, the attainment demonstration, RACM, RFP and contingency measure provisions under Clean Air Act section 172 of the Act.

The classification and designation status in 40 CFR part 81 would remain moderate nonattainment for the New York County nonattainment area.

VII. Statutory and Executive Order Reviews

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

[7] 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)*).

Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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 in 40 CFR Part 52

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

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

Dated: September 3, 2013.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2013–22356 Filed 9–12–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0596; FRL–9900–97–Region 9]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns particulate matter (PM) and carbon monoxide (CO) emissions from Cement Kilns. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 15, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0596, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air–4), 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 *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 *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 email directly to EPA, your email 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are 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 at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), 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 in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1112.1	Emissions of Particulate Matter and Carbon Monoxide from Cement Kilns.	12/04/09	07/20/10

On August 25, 2010, EPA determined that the submittal for SCAQMD Rule 1112.1 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 1112.1 into the SIP on September 2, 1998 (63 FR 46659).