

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

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

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

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

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

In addition, this 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

Air pollution control, Environmental protection, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 14, 2012.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2012-12804 Filed 5-24-12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2012-0234; FRL-9677-7]

#### Determination of Attainment for the Paul Spur/Douglas PM<sub>10</sub> Nonattainment Area, 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 Paul Spur/Douglas nonattainment area (NA) in Arizona is currently 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<sub>10</sub>) based on certified, quality-assured ambient air monitoring data for the years 2009–2011. Based on our proposed determination that the Paul Spur/Douglas NA is currently attaining the PM<sub>10</sub> NAAQS, EPA is also proposing to determine that Arizona'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 Paul Spur/Douglas NA continues to attain the NAAQS and that the obligation on EPA to promulgate a Federal Implementation Plan (FIP) to address the State's attainment-related requirements would also be suspended for as long as the underlying State obligation is suspended.

**DATES:** Written comments must be received on or before June 25, 2012.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2012-0234, using one of the following methods: Via the Federal eRulemaking Portal, at [www.regulations.gov](http://www.regulations.gov), please follow the on-line instructions; via Email to [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov); via mail or delivery to Jerry Wamsley, Air Planning Office, AIR-2, EPA 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](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information you consider to be CBI or otherwise protected should be clearly identified as

such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or email. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Jerry Wamsley, Air Planning Office, AIR-2, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, telephone number: (415) 947-4111, or email address, [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

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## I. Background

### A. $PM_{10}$ NAAQS

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 ( $\mu\text{g}/\text{m}^3$ ); and, an annual  $PM_{10}$  standard of  $50 \mu\text{g}/\text{m}^3$ . EPA also promulgated secondary  $PM_{10}$  standards that were identical to the primary standards. 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. 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 "exceedance"), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.<sup>1</sup> See 40 CFR 50.6 and 40 CFR part 50, appendix K.

### B. Designation and Classification of $PM_{10}$ Nonattainment Areas, Including the Paul Spur/Douglas NA

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA or "Act") were designated nonattainment for  $PM_{10}$  by operation of law and classified "moderate" upon enactment of the 1990 Clean Air Act Amendments. These areas included all former Group I  $PM_{10}$  planning areas identified in 52 FR 29383, (August 7, 1987), as further clarified in 55 FR 45799, (October 31, 1990), and any other areas violating the NAAQS for  $PM_{10}$  prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for  $PM_{10}$  upon enactment of the 1990 Amendments, known as "initial"  $PM_{10}$  nonattainment areas, was published on March 15, 1991, (56 FR 11101); and, a

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

subsequent **Federal Register** document correcting the description of some of these areas was published on August 8, 1991, (56 FR 37654).

As a former "group I" area, the Paul Spur/Douglas NA<sup>2</sup> was included in the March 1991 list of initial moderate  $PM_{10}$  nonattainment areas. Later, we codified the  $PM_{10}$  nonattainment designations and moderate area classifications in 40 CFR part 81 (56 FR 56694; November 6, 1991). For "moderate" nonattainment areas, such as the Paul Spur/Douglas NA, CAA section 188(c) of the 1990 Amended Act established an attainment date of December 31, 1994. On January 11, 2011, pursuant to section 188(b)(2) of the CAA, we determined that the Paul Spur/Douglas NA met the  $PM_{10}$  NAAQS as of the applicable attainment date, December 31, 1994 (76 FR 1532). Consequently, the Paul Spur/Douglas NA was not reclassified to a "serious"  $PM_{10}$  nonattainment area. The designation, classification, and boundaries of the Paul Spur/Douglas NA are codified at 40 CFR 81.303.

### C. How does EPA make attainment determinations?

Generally, EPA determines whether an area's air quality is meeting the  $PM_{10}$  NAAQS based upon complete,<sup>3</sup> 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, appendices 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

<sup>2</sup> The Paul Spur/Douglas NA covers approximately 220 square miles along the border with Mexico within Cochise County. Cities and towns within this area include Douglas, 2010 population 17,378, (U.S. Census) and Pirtleville, 2010 population 1,744, (U.S. Census). The 2010 population of Agua Prieta, Mexico, just across the border from Douglas, is 78,138 (Instituto Nacional de Estadística y Geografía).

<sup>3</sup> 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).

quality control criteria in 40 CFR part 58, appendix A. See 40 CFR 58.14 (2006) and 58.20 (2007)<sup>4</sup>; 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 air quality data are required to show attainment of the 24-hour  $PM_{10}$  standard. See 40 CFR part 50 and appendix K.<sup>5</sup>

To demonstrate attainment of the 24-hour  $PM_{10}$  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 percent criterion discussed earlier 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 these criteria 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.

## II. EPA's Analysis

### A. What is the Paul Spur/Douglas NA monitoring network?

The Arizona Department of Environmental Quality (ADEQ) has operated  $PM_{10}$  monitors near the Douglas Lime Plant, formerly the Chemical Lime Plant, at Paul Spur ("Paul Spur monitor") and within the City of Douglas ("Douglas monitor") for 20 years or more. Both sites are part of the ADEQ's SLAMS network.

The Paul Spur monitor is located near the intersection of Paul Spur Road and State Route 80. This monitor was sited

<sup>4</sup> 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.

<sup>5</sup> Because the annual  $PM_{10}$  standard was revoked effective December 18, 2006, this document discusses only attainment of the 24-hour  $PM_{10}$  standard. See 71 FR 61144; (October 17, 2006).

to provide PM<sub>10</sub> concentration data at a middle scale<sup>6</sup> for the purpose of determining source impacts from the chemical lime plant. At the Paul Spur monitoring site, ADEQ replaced the dichot sampler with a partisol sampler, and added a second collocated partisol sampler for precision measurement purposes. Both monitors run on a one-day-in-six monitoring schedule. In January 2012, ADEQ replaced one of the partisol samplers with a continuous tapering element oscillating microbalance (TEOM) sampler. The TEOM sampler provides daily 24-hour average observations of PM<sub>10</sub> ambient concentrations.

Prior to 1998, the Douglas monitor was located at 15th Street Park, approximately one mile north of the border with Mexico. In 1998, ADEQ re-located the Douglas monitor to its current location, the Red Cross building just across from the park on 15th Street. The Douglas monitor was sited to provide PM<sub>10</sub> concentration data at a neighborhood scale for the purpose of determining population exposure. At the Douglas monitoring site, ADEQ replaced the dichot sampler with a partisol sampler. The Douglas monitor operates on a one-day-in six monitoring schedule.

*B. Do the Paul Spur/Douglas NA monitors meet minimum Federal ambient air quality monitoring requirements?*

ADEQ is responsible for monitoring ambient air quality outside the metropolitan areas in Arizona. Annually, ADEQ submits monitoring network plan reports to EPA. These reports 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<sub>10</sub>, we have found that ADEQ's annual network plans meet the applicable requirements under 40 CFR part 58.<sup>7</sup> Furthermore, we concluded in our *Technical System Audit Report* concerning ADEQ's ambient air quality monitoring program that ADEQ's ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for all of the criteria pollutants, and that all of the monitoring sites are properly located with respect to monitoring objectives, spatial scales and other siting criteria.<sup>8</sup> As noted above, in January 2012, ADEQ installed a continuous TEOM sampler at the Paul Spur monitoring site. ADEQ's placement of the TEOM monitor ensures

that the Paul Spur/Douglas NA monitoring network continues to meet the requirements of 40 CFR 58.12(e) for monitoring frequency. Also, ADEQ annually certifies that the data it submits to AQS are quality-assured.<sup>9</sup>

*C. What does the air quality data show for the Paul/Douglas NA?*

As noted above, we determined that the Paul Spur/Douglas NA attained the PM<sub>10</sub> NAAQS by its applicable attainment date based on our review of data collected during the 1992–1994 period. See 76 FR 1532; (January 11, 2011). Since 1994, the data from AQS indicate that only two exceedances of the PM<sub>10</sub> standard have been measured in the Paul Spur/Douglas NA; both exceedances were measured at the Paul Spur monitoring site. The first exceedance, 206 µg/m<sup>3</sup>, was observed in 2003 and the other, 159 µg/m<sup>3</sup>, was observed in 2008.<sup>10</sup> No exceedances have been recorded at the Douglas monitoring site since 1991.

For the purposes of this proposed action, we have reviewed the data for the most recent three-year period (2009–2011). Table 1 summarizes the PM<sub>10</sub> concentration data collected at the Paul Spur and Douglas monitors over the past three years. As shown in Table 1, no exceedances were recorded within the Paul Spur/Douglas NA over the 2009–2011 period.

TABLE 1—SUMMARY OF 2009–2011 PM<sub>10</sub> MONITORING DATA FOR PAUL SPUR/DOUGLAS NONATTAINMENT AREA <sup>a</sup>

Monitoring site	Highest 24-hour PM <sub>10</sub> concentration (µg/m <sup>3</sup> )			Expected exceedances per year
	2009	2010	2011	2009–2011
Douglas Lime Plant at Paul Spur .....	49	46	85	0.0
Douglas (15th Street Park) .....	97	83	138	0.0

PM<sub>10</sub> NAAQS = 150 µg/m<sup>3</sup>.

<sup>a</sup> Source: AQS QuickLook report dated March 19, 2012.

During the 2009–2011 time period, the data collected by ADEQ meets the completeness criterion for all quarters at the Paul Spur monitor and for ten of twelve quarters at the Douglas monitor. The two incomplete quarters at the Douglas monitor were the first quarter of 2010 and the fourth quarter of 2011. During the first quarter of 2010, the

Douglas monitor was three samples short of the 75 percent criterion, for a 60 percent (9 of 15 samples) reporting rate, and during the fourth quarter of 2011, the Douglas monitor was one sample short of the 75 percent criterion, for a 73 percent (11 of 15 samples) reporting rate.

To be considered “complete,” valid measurements must be made for 75 percent of all the scheduled sampling dates in each quarter of the year, and generally, three years of representative monitoring data that meet the 75 percent criterion should be utilized, where available. As noted above, however, EPA may find that data not

<sup>6</sup> In this context, “middle scale” refers to conditions characteristic of areas from 100 meters to several kilometers. See 40 CFR part 58, appendix D, section 4.6.

<sup>7</sup> See EPA letters to ADEQ concerning ADEQ's annual network plan reports for years 2009, 2010, and 2011. These letters are in the docket for this rulemaking.

<sup>8</sup> See Technical System Audit Report transmitted via correspondence dated September 23, 2010, from Deborah Jordan, Director, Air Division, EPA Region IX, to Eric Massey, Air Division, ADEQ.

<sup>9</sup> See, e.g., the letter from Eric C. Massey, Director, Air Quality Division, ADEQ to Jared Blumenfeld, Regional Administrator, EPA Region IX, dated February 28, 2012 certifying the ambient air quality

data collected at the Paul Spur and Douglas sites for year 2011.

<sup>10</sup> ADEQ flagged the 2003 and 2008 exceedances as exceptional events. EPA has not taken action to evaluate whether these exceedances qualify as exceptional events.

meeting the completeness criterion suffice to show attainment of a given NAAQS. See 40 CFR part 50, appendix K, section 2.3(b). Relevant considerations that we take into account when evaluating whether data not meeting the completeness criterion would suffice include, but are not limited to, monitoring site closures/moves, monitoring diligence, consistency and levels of the valid concentration measurements that are available, and nearby observed ambient concentrations.

After reviewing the Paul Spur/Douglas NA data for the 2009–2011 period, for the three reasons discussed below, we find that the available data are sufficient to determine whether the Paul Spur/Douglas NA attained the PM<sub>10</sub> standard by December 31, 2011; notwithstanding that the Douglas' monitor data did not meet the 75 percent completeness criterion for two of twelve quarters. First, we note the extent to which the maximum monitored levels during the 2009–2011 period, 85 µg/m<sup>3</sup> at the Paul Spur monitor and 138 µg/m<sup>3</sup> at the Douglas monitor, clearly fall below the applicable standard of 150 µg/m<sup>3</sup>. Second, we note that twelve of twelve quarters were complete at the Paul Spur monitor and ten of twelve quarters were complete at the Douglas monitor. Lastly, we note that the Douglas monitor has been in operation for over 20 years and has not recorded an exceedance of the PM<sub>10</sub> standard since 1991. The only two exceedances recorded in the Paul Spur/Douglas NA since 1991 have been at the Paul Spur monitoring site; the site for which we have a complete data set for 2009–2011.

Therefore, based on our review of the certified, quality-assured data for 2009–2011, we find that the expected number of exceedances per year for the Paul Spur/Douglas NA for the most recent three-year period (i.e., 2009 to 2011) was 0.0 days per year. With an annual expected exceedance rate for the 24-hour PM<sub>10</sub> NAAQS of less than 1.0, these data represent attainment of the PM<sub>10</sub> standard. Consequently, EPA proposes to determine that the Paul Spur/Douglas NA is attaining the PM<sub>10</sub> NAAQS. Prior to taking final action on this proposal, we will review any preliminary data for 2012 submitted by ADEQ to AQS for the Paul Spur/Douglas NA to ensure that such preliminary data shows continued attainment of the standard.

### III. EPA's Clean Data Policy and the Applicability of Clean Air Act Planning Requirements to the Paul Spur/Douglas NA

The air quality planning requirements for moderate PM<sub>10</sub> nonattainment areas, such as the Paul Spur/Douglas NA, 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 state implementation plans (SIPs) and SIP revisions submitted under title I of the Act, including those containing moderate PM<sub>10</sub> nonattainment area SIP provisions.<sup>11</sup>

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<sub>10</sub> nonattainment areas. The requirements for moderate PM<sub>10</sub> 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<sub>10</sub> also apply to major stationary sources of PM<sub>10</sub> precursors, except where the Administrator has determined that such sources do not contribute significantly to PM<sub>10</sub> 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. Certain other obligations for PM<sub>10</sub> nonattainment areas, however, are not

suspended, such as the NSR requirements.

This interpretation of the CAA 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 in its final 8-hour ozone implementation rule, 40 CFR 51.918, as part of its "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2" (Phase 2 Final Rule); see discussion in the preamble to the rule at 70 FR 71612, 71645–71646; (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<sub>2.5</sub>); see 40 CFR 51.1004(c). Thus, EPA has codified the Clean Data Policy when it established final rules governing implementation of new or revised NAAQS for the pollutants. See 70 FR 71612, 71644–46 (November 29, 2005); 72 FR 20586, 20665 (April 25, 2007) (PM<sub>2.5</sub> 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<sub>10</sub> 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<sub>10</sub>, EPA has explained that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," our PM<sub>2.5</sub> Implementation Rule, and our December 14, 2004 memorandum from Stephen D. Page entitled "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards," are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM<sub>10</sub>. See, e.g., 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

<sup>11</sup> "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.

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 CAA, pertains whether the standard is PM<sub>10</sub>, ozone or PM<sub>2.5</sub>.

In our proposed and final rulemakings determining that the San Joaquin Valley nonattainment area attained the PM<sub>10</sub> standard, EPA set forth at length our rationale for applying the Clean Data Policy to PM<sub>10</sub>. The Ninth Circuit Court subsequently upheld this rulemaking, and specifically EPA's Clean Data Policy in the context of the PM<sub>10</sub> 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<sub>10</sub>, the Court stated:

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

EPA noted in its prior PM<sub>10</sub> 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<sub>10</sub> nonattainment areas. In EPA's Phase 2 Final Rule and ozone (Seitz) and PM<sub>2.5</sub> 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 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<sub>10</sub>. 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.

57 FR 13564; (April 16, 1992). EPA's prior determinations of attainment for PM<sub>10</sub>, e.g., for the San Joaquin Valley and Coso Junction areas in California, make clear that the same reasoning applies to the PM<sub>10</sub> provision 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<sub>10</sub> areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date. Section 189(c)(1) states that:

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

Although this section states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable further progress “toward attainment by the applicable attainment date,” as defined by section 171. Thus, it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a State that fails to achieve a milestone must submit a plan that assures that the State will achieve the next milestone or attain the NAAQS if there is no next milestone. Section

189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

In the General Preamble, we noted with respect to section 189(c) that the purpose of the milestone requirement “is ‘to provide for emission reductions adequate to achieve the standards by the applicable attainment date’ (H.R. Rep. No. 490, 101st Cong., 2d Sess. 267 (1990)).” 57 FR 13539; (April 16, 1992). If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.<sup>12</sup> 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<sub>10</sub>, 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.” 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

<sup>12</sup> 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.

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 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.” 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.<sup>13</sup> 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 Paul Spur/Douglas NA continues to monitor attainment of the PM<sub>10</sub> standard. If EPA determines, after notice-and-comment rulemaking, that the area has monitored a violation of the PM<sub>10</sub> NAAQS, the basis for suspending the requirements would no longer exist. As a result, the Paul Spur/Douglas NA 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

<sup>13</sup> 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)).

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 Paul Spur/Douglas NA is currently attaining the PM<sub>10</sub> NAAQS (see section II.C above) and as set forth above, we propose to find that Arizona’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 Paul Spur/Douglas NA continues to monitor attainment of the PM<sub>10</sub> NAAQS.<sup>14</sup> In the future, after notice-and-comment rulemaking, if EPA determines that the area again violates the PM<sub>10</sub> 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 Arizona that we have determined that the Paul Spur/Douglas NA is no longer attaining the PM<sub>10</sub> standard and provide notice to the public in the **Federal Register**.

Lastly, suspension of Arizona’s obligation to make submissions of certain attainment-related requirements for as long as the Paul Spur/Douglas NA continues to attain the standard would also serve to suspend any EPA obligation to promulgate a Federal Implementation Plan (FIP) to address the same attainment-related requirements because the deficiency that had led to the FIP obligation would no longer exist, i.e., for so long as the related State obligation continues to be suspended. In this instance, in 1991, EPA made a finding of failure to submit a moderate area PM<sub>10</sub> plan for the

<sup>14</sup> We note that our application of the Clean Data Policy to the Paul Spur/Douglas NA is consistent with actions we have taken for other PM<sub>10</sub> nonattainment areas that we also determined were attaining the standard. See, e.g., 71 FR 6352 (February 8, 2006), for the Ajo, Arizona area; 71 FR 13021 (March 14, 2006) for the Yuma, Arizona area; 71 FR 40023 (July 14, 2006) for the Weirton, West Virginia area; 71 FR 44920 (August 8, 2006) for the Rillito, Arizona area; 71 FR 63642 (October 30, 2006) for the San Joaquin Valley, California area; 72 FR 14422 (March 28, 2007) for the Miami, Arizona area; 75 FR 27944 (May 19, 2010) for the Coso Junction, California area; and 76 FR 21807 (April 19, 2011) for the Truckee Meadows, Nevada area.

Douglas portion of the Paul Spur/Douglas NA, thereby triggering a FIP clock during which EPA had two years under section 110(c) of the CAA to promulgate a moderate area PM<sub>10</sub> FIP for the Douglas portion of the Paul Spur/Douglas NA.<sup>15</sup> See 57 FR 19906; (May 8, 1992). If finalized as proposed, today's proposed action would suspend this FIP obligation for so long as the State obligation is suspended, or until the area is redesignated to attainment, at which time the FIP obligation triggered in 1992 would end permanently.

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

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 Paul Spur/Douglas NA is currently attaining the 24-hour PM<sub>10</sub> NAAQS.

In conjunction with and based upon our proposed determination that the Paul Spur/Douglas PM<sub>10</sub> NA is currently attaining the standard, EPA proposes to determine that Arizona's obligation to submit the following CAA requirements is not applicable for so long as the Paul Spur/Douglas NA continues to attain the PM<sub>10</sub> standard: the part D, subpart 4 obligation 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, the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act. Furthermore, the obligation on EPA to promulgate a FIP to address the same attainment-related requirements would also be suspended.

Any final action resulting from this proposal would not constitute a redesignation to attainment under CAA section 107(d)(3) because we have not yet approved a maintenance plan for the Paul Spur/Douglas NA as meeting the requirements of section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 would remain moderate nonattainment

<sup>15</sup> EPA has been sued to promulgate a FIP for the Douglas portion of the Paul Spur/Douglas PM<sub>10</sub> nonattainment area. *Center for Biological Diversity v. Jackson*, No. 10-cv-1846-MMC (N.D. Cal.). In settling this case, EPA agreed to promulgate a FIP by July 27, 2012 unless certain other actions (e.g., SIP approval or redesignation) are taken prior to that date. See 75 FR 82009; (December 29, 2010). The settlement agreement also acknowledges the potential for EPA to make a clean data determination for the area in lieu of promulgating a FIP and states that such a determination will not constitute a violation of the settlement agreement.

for the Paul Spur/Douglas NA until such time as EPA determines that Arizona has met the CAA requirements for redesignating the Paul Spur/Douglas NA to attainment.

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.

#### V. Statutory and Executive Order Reviews

With this action, we propose to make a determination regarding attainment of the PM<sub>10</sub> NAAQS based on air quality data and, if finalized, this proposed action would result in suspension of certain Federal requirements, and would not impose additional requirements beyond those imposed by State law or by the CAA. 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 Clean Air Act; 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 will not impose substantial direct costs on Tribal governments or preempt Tribal law.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 14, 2012.

**Jared Blumenfeld,**

*Regional Administrator, EPA Region IX.*

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#### DEPARTMENT OF TRANSPORTATION

##### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 171, 172, 173, 175, 176 and 178

[Docket No. PHMSA-2009-0126 (HM-215K)]

RIN 2137-AE83

#### Hazardous Materials: Harmonization With the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document responds to administrative appeals and solicits public comment on proposals generated as a result of certain amendments adopted in an international harmonization final rule published in the **Federal Register**. The final rule amended the Hazardous Materials Regulations (HMR) by revising, removing or adding proper shipping names, the hazard class of a material, packing group assignments, special provisions, packaging authorizations, packaging sections, air transport quantity limitations, and vessel stowage requirements. The amendments were