



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0752; FRL-9766-8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to determine that the Nogales nonattainment area in Arizona has attained the 2006 24-hour fine particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 24-hour PM_{2.5} NAAQS based on the 2009-2011 monitoring period. Based on the above determination, the requirements for this area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines are suspended for so long as the area continues to attain the 2006 24-hour PM_{2.5} NAAQS.

DATES: This rule is effective on [Insert date 30 days from date of publication].

ADDRESSES: EPA has established docket number EPA-R09-OAR-2012-0752 for this action. 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, multi-volume reports), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

Table of Contents

- I. Summary of Proposed Action
- II. Public Comments and EPA Responses
- III. EPA's Final Action
- IV. Statutory and Executive Order Reviews

I. Summary of Proposed Action

On October 30, 2012 (77 FR 65656), EPA proposed to determine that the Nogales nonattainment area¹ has attained the 2006 24-hour NAAQS² for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, PM_{2.5}).

In our proposed rule, we explained how EPA makes an attainment determination for the 2006 24-hour PM_{2.5} NAAQS by reference to complete, quality-assured data gathered at a State and Local Air Monitoring Station(s) (SLAMS) and entered into EPA's Air Quality System (AQS) database and by reference to 40 CFR 50.13 ("National primary and secondary ambient air quality standards for PM_{2.5}") and appendix N to [40 CFR] part 50 ("Interpretation of the National Ambient Air Quality Standards for PM_{2.5}"). EPA proposed the determination of attainment for the Nogales area based upon a review of the monitoring network operated by the Arizona Department of Environmental Quality (ADEQ) and the data collected at the one monitoring site operating during the most recent complete three-year period

¹ Covering 76.1 square miles, the Nogales PM_{2.5} nonattainment area is located within Santa Cruz County, Arizona, with the southernmost boundary of the nonattainment area and Santa Cruz County being the U.S./Mexico border.

² The 2006 24-hour PM_{2.5} NAAQS is 35 micrograms per cubic meter (µg/m³), based on a 3-year average of the 98th percentile of 24-hour concentrations.

(i.e., 2009 to 2011). Based on this review, EPA found that complete, quality-assured and certified data for the Nogales area showed that the 24-hour design value for the 2009-2011 period was equal to or less than $35 \mu\text{m}^3$ at the monitor site. See the data summary table on page 65658 of the October 30, 2012 proposed rule. We also noted that preliminary data available in AQS for 2012 indicates that the Nogales area continues to attain the NAAQS.

In our proposed rule, based on the proposed determination of attainment, we also proposed to apply EPA's Clean Data Policy to the 2006 $\text{PM}_{2.5}$ NAAQS and thereby suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for so long as the area continues to attain the 2006 24-hour $\text{PM}_{2.5}$ NAAQS. See pages 65658-65660 of our October 30, 2012 proposed rule. In proposing to apply the Clean Data Policy to the 2006 $\text{PM}_{2.5}$ NAAQS, we explained how we are applying the same statutory interpretation with respect to the implications of clean data determinations that the Agency has long applied in regulations for the 1997 8-hour ozone and $\text{PM}_{2.5}$ NAAQS and in individual rulemakings for the 1-hour ozone, PM_{10} and lead NAAQS.

Please see the October 30, 2012 proposed rule for more detailed information concerning the PM_{2.5} NAAQS, designations of PM_{2.5} nonattainment areas, the regulatory basis for determining attainment of the NAAQS, ADEQ's PM_{2.5} monitoring network, EPA's review and evaluation of the data, and the rationale and implications for application of the Clean Data Policy to the 2006 PM_{2.5} NAAQS.

II. Public Comments and EPA Responses

EPA's proposed rule provided a 30-day public comment period. During this period, we received no comments.

III. EPA's Final Action

For the reasons provided in the proposed rule and summarized herein, EPA is taking final action to determine that the Nogales nonattainment area in Arizona has attained the 2006 24-hour PM_{2.5} NAAQS based on the most recent three years of complete, quality-assured, and certified data in AQS for 2009-2011. Preliminary data available in AQS for 2012 show that this area continues to attain the standard.

EPA is also taking final action, based on the above determination of attainment, to suspend the requirements for the Nogales nonattainment area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any

other planning SIPs related to attainment of the 2006 PM_{2.5} NAAQS for so long as the area continues to attain the 2006 PM_{2.5} NAAQS. EPA's final action is consistent and in keeping with its long-held interpretation of CAA requirements, as well as with EPA's regulations for similar determinations for ozone (see 40 CFR 51.918) and the 1997 fine particulate matter standards (see 40 CFR 51.1004(c)).

Today's final action does not constitute a redesignation of the Nogales nonattainment area to attainment for the 2006 24-hour PM_{2.5} NAAQS under CAA section 107(d)(3) because we have not yet approved a maintenance plan for the Nogales nonattainment area as meeting the requirements of section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remain nonattainment for this area until such time as EPA determines that Arizona has met the CAA requirements for redesignating the Nogales nonattainment area to attainment.

If the Nogales nonattainment area continues to monitor attainment of the 2006 PM_{2.5} NAAQS, the requirements for the area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning requirements related to attainment of the 2006 PM_{2.5} NAAQS will remain

suspended. If after today's action EPA subsequently determines, after notice-and-comment rulemaking in the Federal Register, that the area has violated the 2006 PM_{2.5} NAAQS, the basis for the suspension of the attainment planning requirements for the area would no longer exist, and the area would thereafter have to address such requirements.

IV. Statutory and Executive Order Reviews

This final action makes a determination of attainment based on air quality and suspends certain federal requirements, and thus, this action would not impose additional requirements beyond those imposed by state law. For this reason, the final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249,

November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes, and thus this action will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the

finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 18, 2012

Jared Blumenfeld
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

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

Subpart D - Arizona

2. Section 52.131 is added to read as follows:

§52.131 Control Strategy and regulations: Fine Particle Matter.

(a) *Determination of Attainment:* Effective [**Insert date 30 days from date of publication**], EPA has determined that, based on 2009 to 2011 ambient air quality data, the Nogales PM_{2.5} nonattainment area has attained the 2006 24-hour PM_{2.5} NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment for as long as this area continues to attain the 2006 24-hour PM_{2.5} NAAQS. If EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 2006 PM_{2.5} NAAQS, the corresponding determination of attainment for that area

shall be withdrawn.

(b) [Reserved]

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Date: 01/07/2013]