6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0753; FRL-9900-07-Region3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determination of Attainment of the 2006 24-Hour Fine Particulate Matter Standard for the Pittsburgh-Beaver Valley Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make a determination of attainment for the Pittsburgh-Beaver Valley, Pennsylvania fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as "the Pittsburgh Area" or "the Area"). EPA is proposing to determine that the Pittsburgh Area has attained the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS), based upon quality-assured and certified ambient air monitoring data for 2010-2012. If EPA finalizes this proposed determination of attainment, the requirements for the Pittsburgh Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to the attainment of the standard shall be suspended for so long as the Area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also proposing to approve a request submitted by the Pennsylvania Department of Environmental Protection (PADEP) dated January 17, 2013, to establish motor vehicle emission budgets for the Pittsburgh Area to meet transportation conformity requirements. This action is being taken under the Clean Air Act (CAA). This action does not constitute a redesignation to attainment under section 107(d)(3) of the CAA. The designation status of the Pittsburgh Area will remain nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA

determines that the Pittsburgh Area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2012-0753** by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov

C. Mail: **EPA-R03-OAR-2012-0753**, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2012-0753**. 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

e-mail. The www.regulations.gov website 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 e-mail comment directly to EPA without going through www.regulations.gov, your e-mail 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.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814-2036, or by e-mail at becoat.gregory@epa.gov

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I. Summary of Proposed Actions

In accordance with section 179(c)(1) of the CAA, 42 U.S.C. 7509(c)(1) and 40 CFR 51.1004(c), EPA is proposing to determine that the Pittsburgh Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. The proposal is based upon quality-assured and certified ambient air monitoring data for the 2010-2012 monitoring period, which show that the Pittsburgh Area attained the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also proposing to approve the MVEBs identified for direct $PM_{2.5}$ and nitrogen oxides (NO_X) for transportation conformity purposes. Following EPA's public comment period, responses to any comments received will be addressed.

II. Background

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) (hereby "the 2006 annual $PM_{2.5}$ NAAQS") based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour standard of 35 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. The

revised 2006 24-hour $PM_{2.5}$ standard (hereafter "the 2006 24-hour $PM_{2.5}$ NAAQS") became effective on December 18, 2006. *See* 40 CFR 50.13. The more stringent 2006 24-hour $PM_{2.5}$ NAAQS is based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to $PM_{2.5}$ at this level.

Many petitioners challenged aspects of EPA's 2006 revisions to the $PM_{2.5}$ NAAQS. *See American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). As a result of this challenge, the U.S. Court of Appeals for the District of Columbia Circuit (hereafter "the Court" or "the D.C. Circuit") remanded the 2006 annual $PM_{2.5}$ NAAQS to EPA for further proceedings. The 2006 24-hour primary and secondary $PM_{2.5}$ NAAQS were not affected by the remand and remain in effect.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. On November 13, 2009 (74 FR 58688), EPA published designations for the 2006 24-hour $PM_{2.5}$ NAAQS, which became effective on December 14, 2009. In that action, EPA designated the Pittsburgh Area as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. The Pittsburgh Area consists of Allegheny (not including the townships which are part of the Liberty-Clairton nonattainment area), Beaver, Butler, and Westmoreland Counties, and portions of Armstrong, Greene, and Lawrence Counties. This proposed action only addresses the 2006 24-hour $PM_{2.5}$ NAAQS for the Pittsburgh Area.

III. EPA's Analysis of the Relevant Air Quality Data

Today's rulemaking action proposes to determine that the Pittsburgh Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS, based on quality-assured, quality-controlled, and certified data for the 2010-2012 monitoring period. Under EPA regulations at 40 CFR 50.13(c), the 2006 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98^{th} percentile 24-hour concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 35.0 $\mu g/m^3$. Data handling conventions and computations necessary for determining whether areas have met the $PM_{2.5}$ NAAQS, including requirements for data completeness, are listed in appendix N of 40 CFR part 50.

For the Pittsburgh Area to be in attainment with respect to the 2006 24-hour $PM_{2.5}$ NAAQS, the 24-hour design value of the Pittsburgh Area must be less than the standard. The 24-hour design value determined for an area is the highest 3-year average of the annual 98^{th} percentile measured at all the monitors. Only valid and complete air quality data can be used for comparison to the 2006 24-hour $PM_{2.5}$ NAAQS. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. However, years are considered valid, notwithstanding quarters with less than complete data, if the resulting annual 98^{th} percentile value or resulting 24-hour standard design value is greater than the level of the standard.

Several monitors in the Pittsburgh Area were not meeting the completeness requirement for one or more quarters during 2010-2012 monitoring period. EPA has addressed missing data from incomplete monitors by applying either the maximum quarter substitution test ("maximum quarter test") or EPA's statistical procedure, described in EPA's April 1999 guidance document

"Guideline on Data Handling Conventions for the PM NAAQS," which is available online at http://www.epa.gov/ttn/caaa/t1/memoranda/pmfinal.pdf.

The maximum quarter data substitution test (maximum quarter test) was applied to four incomplete monitors in the Pittsburgh Area for 2010-2012. In the maximum quarter test, maximum recorded values are substituted for the missing data, and the resulting 24-hour design value is compared to the 2006 24-hour $PM_{2.5}$ NAAQS. A monitor with incomplete data passes the test if the 24-hour design value with maximum values substituted meets the 2006 24-hour $PM_{2.5}$ NAAQS. The "Complete Data" column of Table 1 below indicates which incomplete monitors passed the maximum quarter test, and therefore attain the 2006 24-hour $PM_{2.5}$ NAAQS.

One monitor in the Pittsburgh Area, the Greensburg monitor (at site 42-129-0008), did not meet the completeness requirement for one quarter of 2011. EPA has addressed missing data from the Greensburg monitor by performing a statistical analysis of the data, in which a linear regression relationship is established between the site with incomplete data and a nearby site which has more complete data in the period in which the incomplete site is missing data. The linear regression relationship is based on time periods in which both monitors were operating. The linear regression equation developed from the relationship between the monitors is used to fill in missing data for the incomplete monitor, so that the normal data completeness requirement of 75 percent of data in each quarter of the three years is met. After the missing data for the site are filled in, the results are verified through an additional statistical test. The results of EPA's statistical analysis indicated that while the Greensburg monitor had less than complete data, the data are sufficient to demonstrate that the NAAQS has been met. Additional details on data completeness issues for the Pittsburgh Area's monitoring sites can be found in the Technical

Support Document (TSD) for this action entitled, "Technical Support Document for the Pennsylvania Determination of Attainment of the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standard for the Pittsburgh-Beaver Valley Nonattainment Area," which is available online at www.regulations.gov, Docket ID No. **EPA-R03-OAR-2012-0753.**

EPA has reviewed the quality-assured, quality-controlled, and certified ambient air monitoring data recorded in EPA's Air Quality System (AQS) database for 24-hour $PM_{2.5}$ for the Pittsburgh Area during the 2010-2012 monitoring period, consistent with the requirements contained in 40 CFR part 50. Table 1 provides valid 24-hour $PM_{2.5}$ air quality data for the Pittsburgh Area for comparison to the 2006 24-hour $PM_{2.5}$ NAAQS for the 2010-2012 monitoring period.

Table 1. Pittsburgh Area's 2010-2012 24-hour $PM_{2.5}$ Air Quality Data (in µg/m^3)

County	AQS Site ID	Site Name	98th Percentile Value			2010-2012 24-hour Design Value	Complete Data?[1]
			2010	2011	2012		
Allegheny	42-003-0008	Lawrence	30	27	20	26	Yes
Allegheny	42-003-0067	S. Fayette	29	31	18	26	Yes
Allegheny	42-003-0093	North Park	27	26	16	23	Yes (Max Quarter)
Allegheny	42-003-1008	Harrison	34	30	21	28	Yes (Max Quarter)
Allegheny	42-003-1301	N. Braddock	37	34	27	33	Yes (Max Quarter)
Beaver	42-007-0014	Beaver Falls	29	30	27	29	Yes
Washington	42-125-0005	Charleroi	27	29	26	28	Yes (Max Quarter)
Washington	42-125-0200	Washington	27	27	25	27	Yes
Washington	42-125-	Florence	22	12	17	20	Yes

[1] "Max Quarter" denotes the maximum quarter data substitution test, and "Statistical" denotes that EPA's statistical procedure has been applied to address the missing data and calculate a "complete" design value.

	5001						
Westmoreland	42-129-0008	Greensburg	33	33	29	33	No (Statistical)

EPA's review of quality-assured, quality-controlled, and certified ambient $PM_{2.5}$ air monitoring data of the Pittsburgh Area during 2010-2012 indicates that the Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. Currently, all monitors are measuring concentrations averaging below the 2006 24-hour $PM_{2.5}$ NAAQS of 35 ug/m^3. The 24-hour design value of the Pittsburgh $PM_{2.5}$ Area for 2010-2012 is 33 ug/m^3, based on monitoring data collected at the North Braddock site (42-003-1301) and the Greensburg site (42-129-0008). On the basis of this review, EPA proposes to determine that the Pittsburgh Area attains the 2006 24-hour $PM_{2.5}$ based on data for the 2010-2012 monitoring period.

IV. Effect of Determination of Attainment for 2006 $PM_{2.5}$ Under Subpart 4 of Part D of Title I (Subpart 4)

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

On January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to

EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)" final rule (73 FR 28321, May 16, 2008) (collectively, "1997 $PM_{2.5}$ Implementation Rule" or "Implementation Rule"). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant solely to the general implementation provisions of subpart 1 of Part D of Title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4. The Court remanded EPA's Implementation Rule for further proceedings consistent with the Court's decision. In light of the Court's decision and its remand of the Implementation Rule, EPA in this proposed rulemaking action addresses the effect of a final determination of attainment for the Pittsburgh Area, if that area were considered a moderate nonattainment area under subpart 4.[2] As set forth in more detail below, under EPA's Clean Data Policy interpretation, a determination that the area has attained the standard suspends the state's obligation to submit attainment-related planning requirements of subpart 4 (and the applicable provisions of subpart 1) for so long as the area continues to attain the standard. These include requirements to submit an attainment demonstration, RFP, RACM, and contingency measures, because the purpose of these provisions is to help reach attainment, a goal which has already been achieved.

A. Background on Clean Data Policy

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

Over the past two decades, EPA has consistently applied its "Clean Data Policy" interpretation to attainment-related provisions of subparts 1, 2 and 4. The Clean Data Policy is the subject of several EPA memoranda and regulations. In addition, numerous individual rulemakings actions published in the Federal Register have applied the interpretation to a spectrum of NAAQS, including the 1-hour and 1997 ozone, PM_{10}, $PM_{2.5}$, carbon monoxide (CO), and lead (Pb) standards. The D.C. Circuit has upheld the Clean Data Policy interpretation as embodied in EPA's 8-hour ozone Implementation Rule, 40 CFR 51.918.[3] (*NRDC v. EPA*, 571 F. 3d 1245 (D.C. Cir. 2009)). Other U.S. Circuit Courts of Appeals that have considered and reviewed EPA's Clean Data Policy interpretation have upheld it and the rulemakings actions applying EPA's interpretation. *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, N. 04-73032 (9th Cir. June 28, 2005) (memorandum opinion), *Latino Issues Forum*, *v. EPA*, Nos. 06-75831 and 08-71238 (9th Cir.), Memorandum Opinion, March 2, 2009.

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

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

However, in light of the Court's decision, EPA sets forth here the Clean Data Policy interpretation under subpart 4, for the purpose of identifying the effects of a determination of attainment for the 2006 $PM_{2.5}$ standard for the Pittsburgh Area. EPA has previously articulated its Clean Data interpretation under subpart 4 in implementing the PM_{10} standard. *See e.g.*, (75 FR 27944,

May 19, 2010) (determination of attainment of the PM-10 standard in Coso Junction, California); (75 FR 6571, February 10, 2010), (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). Thus EPA has established that, under subpart 4, an attainment determination suspends the obligations to submit an attainment demonstration, RACM, RFP, contingency measures, and other measures related to attainment.

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

In EPA's proposed and final rulemaking actions 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} under subpart 4. The Ninth Circuit upheld EPA's final rulemaking, and specifically EPA's Clean Data Policy, in the context of subpart 4. *Latino Issues Forum v. EPA*, *supra*. Nos. 06-75831 and 08-71238 (9th Cir.), Memorandum Opinion, March 2, 2009. In rejecting petitioner's challenge to the Clean Data Policy under subpart 4 for PM_{10}, the Ninth Circuit stated, "As EPA explained, if an area is in compliance with PM_{10} standards, then

further progress for the purpose of ensuring attainment is not necessary."

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

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

Section 189(c)(1) of subpart 4 states that:

> "Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section [171(1)] of this title, toward attainment by the applicable date."

With respect to RFP, section 171(1) states that, for purposes of part D, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM_{10} areas of subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date.

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

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

In the General Preamble, EPA 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.[4] Similarly, the requirements of section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that:

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

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. This is consistent with the position that EPA took with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 Seitz

[4] Thus, EPA believes 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.

memorandum with respect to the requirements of section 182(b) and (c). In the May 10, 1995 Seitz memorandum, EPA also noted that section 182(g), the milestone requirement of subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The memorandum, also citing additional provisions related to attainment demonstration and RFP requirements, stated:

> "Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or 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* 1995 Seitz memorandum at 5.

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

Other SIP submission requirements are linked with these attainment demonstration and RFP

requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of section 172(c)(9). EPA has interpreted the contingency measure requirements of section 172(c)(9)[5] as no longer applying when an area has attained the standard because those "contingency measures are directed at ensuring RFP and attainment by the applicable date." 57 FR 13564; Seitz memo, pp. 5-6. Section 172(c)(9) provides that SIPs in nonattainment areas:

> "shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA]."

The contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Contingency measures are implemented if reasonable further progress targets are not achieved, or if attainment is not realized by the attainment date. Where an area has already achieved attainment by the attainment date, it has no need to rely on contingency measures to come into attainment or to make further progress to attainment. As EPA stated in the General Preamble: "The section 172(c)(9) requirements for contingency measures are directed at ensuring RFP and attainment by the applicable date." *See* 57 FR 13564. Thus, these requirements no longer apply when an area has attained the standard.

Both sections 172(c)(1) and 189(a)(1)(C) require "provisions to assure that reasonably available

[5] *See* section 182(c)(9) for ozone.

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

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

[6] EPA's interpretation that the statute requires implementation only of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. EPA*, 314 F.3d 735, 743-745 (5th Cir. 2002), and by the United States Court of Appeals for the D.C. Circuit (*Sierra Club v. EPA*, 294 F.3d 155, 162-163 (D.C. Cir. 2002)).

attainment in the area, such as provisions to address pollution transport.

As set forth previously, based on our proposed determination that the Pittsburgh Area is currently attaining the 2006 24-hour $PM_{2.5}$NAAQS, EPA proposes to find that the obligations to submit planning provisions to meet the requirements for an attainment demonstration, RFP, RACM, and contingency measures are suspended for so long as the area continues to monitor attainment of the 2006 24-hour $PM_{2.5}$ NAAQS. If in the future, EPA determines after notice-and-comment rulemaking that the area again violates the 2006 24-hour $PM_{2.5}$ NAAQS, the basis for suspending the attainment demonstration, RFP, RACM, and contingency measure obligations would no longer exist. *See* 40 CFR 51.1004(c).

VI. Description of 2011 Clean Data MVEBs

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. The CAA requires Federal actions in nonattainment and maintenance areas to "conform to" the goals of the SIP. This means that such actions will not cause or contribute to violations of NAAQS; worsen the severity of an existing violation; or delay timely attainment of any NAAQS or any interim milestone.

As described in 40 CFR 93.109(c)(5) of the transportation conformity rule and the preamble of the Transportation Conformity Restructuring Amendments (77 FR 14982, March 14, 2012), any nonattainment area that EPA determines has air quality monitoring data that meet the requirements of 40 CFR parts 50 and 58 and that show attainment of a NAAQS (clean data) must

satisfy one of the following requirements: (1) The budget test and/or interim emissions tests as required by section 93.118 and 93.119; (2) the budget test as required by section 93.118, using the adequate or approved MVEBs in the submitted or applicable control strategy implementation plan for the NAAQS for which the area is designated nonattainment; or (3) the budget test as required by section 93.118, using the motor vehicle emissions in the most recent year of attainment as MVEBs, if the state or local air quality agency requests that the motor vehicle emissions in the most recent year of attainment be used as budgets, and EPA approves the request in the rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment.

On January 17, 2013, EPA received a request for the approval and establishment of MVEBs for $PM_{2.5}$ and NO_x for the Pittsburgh Area from PADEP for the year 2011. The transportation conformity rule allows the state air quality agency to request that motor vehicle emissions in the most recent year of clean data be used as budgets. EPA must approve that request in the rulemaking that determines that the area has attained the relevant NAAQS (40 CFR 93.109(c)(5)(iii)). These budgets were calculated using the Motor Vehicle Emissions Simulator emissions model (MOVES). The MOVES model is EPA's state-of-the-art tool for estimating highway emissions that incorporates the latest emissions data. For more information, see EPA's "Policy Guidance on the Use of MOVES2010 and Subsequent Minor Model Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (April 2012).

The Pittsburgh Area may establish clean data MVEBs under 40 CFR 93.109(c)(5)(iii) because

the following criteria were met: (1) The state requested that budgets be established in conjunction with EPA's determination of attainment (Clean Data) rulemaking for the 2006 24-hour $PM_{2.5}$ NAAQS, and EPA approved the request; and (2) the Pittsburgh Area has not submitted a maintenance plan for the 2006 24-hour $PM_{2.5}$ NAAQS and EPA has determined that the Area is not subject to the CAA RFP and attainment demonstration requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.

In accordance with the transportation conformity regulations at 40 CFR 93.102(b)(1) and (2)(iv) and (v), only MVEBs for $PM_{2.5}$ and NO_x for year 2011 are applicable for meeting conformity requirements in the Pittsburgh Area. The transportation conformity rule requires that before a SIP is submitted the area must address direct $PM_{2.5}$ emissions and must also address NO_x emissions unless EPA and the state have made a finding that transportation-related emissions of NO_x are not a significant contributor to the area's $PM_{2.5}$ problem. Therefore, the Commonwealth has requested that MVEBs be established for on-road emissions of direct $PM_{2.5}$ and NO_x. With regard to the remaining $PM_{2.5}$ precursors which are volatile organic compounds (VOCs), sulfur dioxide (SO_2), and ammonia (NH_3), the transportation conformity rule indicates that before a SIP is submitted, these precursors must be addressed only if either EPA or the Commonwealth makes a finding that on-road emissions of any of these precursors is a significant contributor to the area's $PM_{2.5}$ problem. Neither EPA nor the Commonwealth has made such a finding with regard to any of these precursors. Therefore, consistent with the transportation conformity rule, the Commonwealth did not request that MVEBs be established for VOCs, SO_2 or NH_3.

EPA issued conformity regulations to implement the 2006 $PM_{2.5}$ NAAQS in March 2010

(75 FR 14260, March 24, 2010). Those actions were not part of the final rule recently remanded to EPA by the D.C. Circuit in *NRDC v. EPA*, 706 F.3d 428, in which the court remanded to EPA the implementation rule for the $PM_{2.5}$ NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4, rather than solely under the general provisions of subpart 1. That decision does not affect EPA's proposed approval of the Pittsburgh Area MVEBs.

First, as noted above, EPA's conformity rules implementing the $PM_{2.5}$ NAAQS were separate actions from the overall $PM_{2.5}$ implementation rule addressed by the Court and were not considered or disturbed by the decision. Therefore, the conformity regulations were not at issue in *NRDC v. EPA*.[7] In addition, as discussed elsewhere in today's proposal, the Pittsburgh Area attained the 2006 $PM_{2.5}$ NAAQS of 35 ug/m^3 based on 2010-2012 air quality data.

EPA has reviewed the direct $PM_{2.5}$ and NO_x MVEBs that were submitted by the Commonwealth. EPA reviewed the budgets by applying the general requirements of the transportation conformity rule's adequacy criteria (40 CFR 93.118(e)(4)(i)-(v)). These criteria are not directly applicable because they apply to budgets that are submitted as part of a SIP submittal and the budgets that are under review in this action were submitted under the transportation conformity rule provision that allows a state to request that budgets be established through the EPA's clean data determination process. However, these criteria establish a general framework for the review of

[7] The 2004 rulemaking action addressed most of the transportation conformity requirements that apply in $PM_{2.5}$ nonattainment and maintenance areas. The 2005 conformity rule included provisions addressing treatment of $PM_{2.5}$ precursors in MVEBs. *See* 40 CFR 93.102(b)(2). The 2010 rulemaking addressed requirements for the 2006 $PM_{2.5}$ NAAQS. While none of these provisions were challenged in the NRDC case, EPA also notes that the court declined to address challenges to EPA's presumptions regarding $PM_{2.5}$ precursors in the $PM_{2.5}$ implementation rule. *NRDC v. EPA*, 706 F.3d at 437 n.10.

any MVEBs before those budgets are made effective for the use in transportation conformity determinations. A more detailed evaluation of how the Pittsburgh Area satisfied the requirements for clean data MVEBs can be found in a separate TSD for this action entitled, "Technical Support Document for the Review of the Clean Data Motor Vehicle Emissions Budgets (MVEBs) for Fine Particulate Matter ($PM_{2.5}$) and Nitrogen Oxide (NO_x) for the Determination of Attainment of the 2006 24-Hour Fine Particulate Matter Standard for the Pittsburgh-Beaver Valley Nonattainment Area," which is available online at www.regulations.gov, Docket ID No. **EPA-R03-OAR-2012-0753.**

EPA is proposing to approve the following MVEBs for the 2006 24-hour $PM_{2.5}$ NAAQS in Table 2:

Table 2. Motor Vehicle Emissions Budgets

Geographic Area	Year	$PM_{2.5}$ (tons/year)	NOx (tons/year)
Pittsburgh Area	2011	961.71	28,973.05

If EPA approves these MVEBs in the final rulemaking action, the new MVEBs must be used for future transportation conformity determinations. The 2011 MVEBs, if approved in the final rulemaking action, will be effective on the date of publication of EPA's final rulemaking action in the Federal Register.

VII. Proposed Actions

EPA proposes to determine, based on the most recent three years of complete, quality-assured and certified data meeting the requirements of 40 CFR part 50, appendix N, that the Pittsburgh

Area is currently attaining the 2006 24-hour $PM_{2.5}$ NAAQS. Based upon EPA's proposed determination that Pittsburgh Area is currently attaining the standard, EPA proposes to determine that the obligation to submit the following attainment-related planning requirements are not applicable for so long as the Area continues to attain the $PM_{2.5}$ standard: Subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C), the RFP provisions of section 189(c), and related attainment demonstration, RACM, RFP, and contingency measure provisions requirements of subpart 1, section 172. This proposed rulemaking action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3).

In conjunction with this proposed finding of attainment, pursuant to 40 CFR 93.109(c)(5)(iii), as described in the transportation conformity rule and the preamble of the Transportation Conformity Restructuring Amendments (77 FR 14982, March 14, 2012), EPA is also proposing to approve the MVEBs for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VIII. Statutory and Executive Order Reviews

This rulemaking action proposes to make a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain federal requirements. This action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 proposed determination of attainment of the Pittsburgh Area with respect to the 2006 24-hour $PM_{2.5}$ NAAQS and the MVEBs, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 31, 2013

W. C. Early, Acting
Regional Administrator,
Region III.

[FR Doc. 2013-19760 Filed 08/13/2013 at 8:45 am; Publication Date: 08/14/2013]