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**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the “Rules and Regulations” section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: October 10, 2012.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2012-0782; FRL-9747-1]

#### Determination of Attainment for the San Francisco Bay Area Nonattainment Area for the 2006 Fine Particle Standard; California; Determination Regarding Applicability of Clean Air Act Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the San Francisco Bay Area nonattainment area in California has attained the 2006 24-hour fine particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS). This proposed 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<sub>2.5</sub> NAAQS based on the 2009–2011 monitoring period. EPA is further proposing that, if EPA finalizes this determination of attainment, 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 shall be suspended for so long as the area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS.

**DATES:** Written comments must be received on or before November 28, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2012-0782 by one of the following methods:

1. Federal eRulemaking Portal, at [www.regulations.gov](http://www.regulations.gov), please follow the on-line instructions;
2. Email to [ungvarsky.john@epa.gov](mailto:ungvarsky.john@epa.gov); or
3. Mail or delivery to John Ungvarsky, Air Planning Office, AIR-2, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](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:** John Ungvarsky, (415) 972-3963, or by email at [ungvarsky.john@epa.gov](mailto:ungvarsky.john@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. What determination is EPA making?

EPA is proposing to determine that the San Francisco Bay Area nonattainment area has clean data for the 2006 24-hour NAAQS for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, PM<sub>2.5</sub>). This determination is based upon complete, quality-assured, and certified ambient air monitoring data showing the area has monitored attainment of the 2006 PM<sub>2.5</sub> NAAQS based on 2009–2011 monitoring data. Preliminary data in EPA’s Air Quality System (AQS) for 2012 indicate that the area continues to attain the 2006 PM<sub>2.5</sub> NAAQS. Based on this determination, we are also proposing to suspend the obligations on the State of California to submit certain state implementation plan (SIP) revisions related to attainment of this standard for this area for as long as the area continues to attain the standard.

#### II. What is the background for this action?

##### A. PM<sub>2.5</sub> NAAQS

Under section 109 of the Clean Air Act (CAA or “Act”), EPA has established national ambient air quality standards (NAAQS or “standards”) for certain pervasive air pollutants (referred

to as “criteria pollutants”) and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established.

On July 18, 1997, EPA revised the NAAQS for particulate matter to add new standards for PM<sub>2.5</sub>, using PM<sub>2.5</sub> as the indicator for the pollutant. EPA established primary and secondary<sup>1</sup> annual and 24-hour standards for PM<sub>2.5</sub> (62 FR 38652). The annual standard was set at 15.0 micrograms per cubic meter (µg/m<sup>3</sup>), based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations, and the 24-hour standard was set at 65 µg/m<sup>3</sup>, based on the 3-year average of the 98th percentile of 24-hour PM<sub>2.5</sub> concentrations at each population-oriented monitor within an area.

On October 17, 2006 (71 FR 61144), EPA revised the level of the 24-hour PM<sub>2.5</sub> NAAQS to 35 µg/m<sup>3</sup>, based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA also retained the 1997 annual PM<sub>2.5</sub> standard at 15.0 µg/m<sup>3</sup> based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations, but with tighter constraints on the spatial averaging criteria.

#### B. Designation of PM<sub>2.5</sub> Nonattainment Areas

Effective December 14, 2009, EPA established the initial air quality designations for most areas in the United States for the 2006 24-hour PM<sub>2.5</sub> NAAQS. See 74 FR 58688; (November 13, 2009). Among the various areas designated in 2009, EPA designated the San Francisco Bay Area<sup>2</sup> in California as nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS.<sup>3</sup> The boundaries for this area are described in 40 CFR 81.305.

Within three years of the effective date of designations, states with areas designated as nonattainment for the 2006 PM<sub>2.5</sub> NAAQS are required to submit SIP revisions that, among other elements, provide for implementation of reasonably available control measures (RACM), reasonable further progress (RFP), attainment of the standard as expeditiously as practicable but no later than five years from the nonattainment

<sup>1</sup> For a given air pollutant, “primary” national ambient air quality standards are those determined by EPA as requisite to protect the public health, and “secondary” standards are those determined by EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. See CAA section 109(b).

<sup>2</sup> The San Francisco Bay Area PM<sub>2.5</sub> nonattainment area includes southern Sonoma, Napa, Marin, Contra Costa, San Francisco, Alameda, San Mateo, Santa Clara and the western part of Solano counties.

<sup>3</sup> With respect to the annual PM<sub>2.5</sub> NAAQS, this area is designated as “unclassifiable/attainment.”

designation (in this instance, no later than December 14, 2014), as well as contingency measures. See CAA section 172(a)(2), 172(c)(1), 172(c)(2), and 172(c)(9). Prior to the due date for submittal of these SIP revisions, the State of California requested that EPA make a determination that the San Francisco Bay Area<sup>4</sup> nonattainment area has attained the 2006 PM<sub>2.5</sub> NAAQS and determine that attainment-related SIP submittal requirements are not applicable for as long as the area continues to attain the standard. Today’s proposal responds to the State’s request.

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

A determination of whether an area’s air quality currently meets the PM<sub>2.5</sub> NAAQS is generally based upon the most recent three years of complete, quality-assured data gathered at established State and Local Air Monitoring Stations (SLAMS) in a nonattainment area and entered into the AQS database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in AQS when determining the attainment status of areas. See 40 CFR 50.13; 40 CFR part 50, appendix L; 40 CFR part 53; 40 CFR part 58, and 40 CFR part 58, appendices A, C, D, and E. All data are reviewed to determine the area’s air quality status in accordance with 40 CFR part 50, appendix N.

Under EPA regulations in 40 CFR part 50, section 50.13 and in accordance with appendix N, the 2006 24-hour PM<sub>2.5</sub> standard is met when the design value is less than or equal to 35 µg/m<sup>3</sup> (based on the rounding convention in 40 CFR part 50, appendix N) at each monitoring site within the area.<sup>5</sup> The PM<sub>2.5</sub> 24-hour average is considered valid when 75 percent of the hourly averages for the 24-hour period are available. Data completeness requirements for a given year are met when at least 75 percent of the

<sup>4</sup> On December 8, 2011, James Goldstene, Executive Officer of the California Air Resources Board, submitted a request to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, to find the San Francisco Bay Area PM<sub>2.5</sub> nonattainment area had attained the 2006 24-hour PM<sub>2.5</sub> NAAQS.

<sup>5</sup> The PM<sub>2.5</sub> 24-hour standard design value is the 3-year average of annual 98th percentile 24-hour average values recorded at each monitoring site [see 40 CFR part 50, appendix N, section 1.0(c)], and the 24-hour PM<sub>2.5</sub> NAAQS is met when the 24-hour standard design value at each monitoring site is less than or equal to 35 µg/m<sup>3</sup>.

scheduled sampling days for each quarter have valid data.

### III. What is EPA’s analysis of the relevant air quality data?

#### A. Monitoring Network and Data Considerations

In the San Francisco Bay Area PM<sub>2.5</sub> nonattainment area, the Bay Area Air Quality Management District (BAAQMD) is the agency responsible for monitoring ambient air quality.<sup>6</sup> BAAQMD submits annual monitoring network plans to EPA. These plans describe the monitoring network operated by BAAQMD in the San Francisco Bay Area nonattainment area and discuss the status of the air monitoring network, as required under 40 CFR 58.10.

Since 2007, EPA regularly reviews these annual plans for compliance with the applicable reporting requirements in 40 CFR part 58. With respect to PM<sub>2.5</sub>, EPA has found that the area’s network plans operated by BAAQMD meet the applicable requirements under 40 CFR part 58. See EPA letters to BAAQMD approving its annual network plans for years 2009, 2010, and 2011.<sup>7</sup> EPA also concluded<sup>8</sup> from its Technical System Audit of the BAAQMD Primary Quality Assurance Organization (conducted during the summer of 2009), that the ambient air monitoring network operated by BAAQMD currently meets or exceeds the requirements for the minimum number of SLAMS for PM<sub>2.5</sub> in the San Francisco Bay Area nonattainment area. BAAQMD annually certifies that the data it submits to AQS are complete and quality-assured.<sup>9</sup>

<sup>6</sup> The BAAQMD is one of four monitoring agencies in California designated as a Primary Quality Assurance Organization.

<sup>7</sup> Letter from Joe Lapka, Acting Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Gary Kendall, Director of Technical Services, BAAQMD (December 17, 2009) (approving “2008 Air Monitoring Network Report”); Letter from Matthew Lakin, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Eric Stevenson, Director of Technical Services, BAAQMD (November 1, 2010) (approving the “2009 Air Monitoring Network Review for the Bay Area Air Quality Management District”); Letter from Matthew Lakin, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Eric Stevenson, Director of Technical Services, BAAQMD (October 31, 2011) (approving BAAQMD’s “2010 Air Monitoring Network Report”).

<sup>8</sup> Letter from Deborah Jordan, Director, Air Division, U.S. EPA Region IX, to Jack Broadbent, Air Pollution Control Officer, BAAQMD, transmitting “System Audit of the Ambient Monitoring Program: Bay Area Air Quality Management District, May 26–June 4, 2009,” with enclosure, January 18, 2011.

<sup>9</sup> See, e.g., letter from Jack Broadbent, Executive Officer, BAAQMD, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, certifying calendar year 2011 ambient air quality data and quality assurance data, April 18, 2012.

There were 10 PM<sub>2.5</sub> SLAMS located throughout the San Francisco Bay Area PM<sub>2.5</sub> nonattainment area in calendar years 2009, 2010, and 2011. EPA defines specific monitoring site types and spatial scales of representativeness to characterize the nature and location of required monitors. Eight of the sites have a spatial scale of neighborhood scale,<sup>10</sup> and the monitoring objective is population exposure. Two of the sites (i.e., Oakland (AQS ID 06-001-0009) and San Rafael (AQS ID 06-041-0001)) have a spatial scale of middle scale,<sup>11</sup> and the monitoring objective is population exposure.<sup>12</sup>

Consistent with the requirements contained in 40 CFR part 50, we have reviewed the quality-assured, and certified PM<sub>2.5</sub> ambient air monitoring data as recorded in AQS for the applicable monitoring period collected at the monitoring sites in the San Francisco Bay Area nonattainment area and have determined that the data are complete except for the PM<sub>2.5</sub> data collected at the San Rafael monitoring site.<sup>13</sup> With respect to the San Rafael site, PM<sub>2.5</sub> monitoring began in the last

quarter of 2009 and was complete for that one quarter. In 2010, valid samples were collected on only 72% of the scheduled sampling days at the San Rafael monitor during the third quarter of 2010 (July, August, and September) resulting in a data set for the third quarter that does not meet the completeness criterion of 75%. All other quarters of data collected at San Rafael in 2010, and all quarters in 2011 met data completeness requirements. Given that the BAAQMD operates more than the minimum number of PM<sub>2.5</sub> monitoring sites in the San Francisco Bay Area,<sup>14</sup> the overall completeness of data from all sites (other than the San Rafael site), and the limited nature of the incomplete data set from the San Rafael site during the low PM<sub>2.5</sub> concentration season, we believe that the data set compiled from the PM<sub>2.5</sub> monitoring network is sufficient for the purposes of determining whether the San Francisco Bay Area has attained the PM<sub>2.5</sub> NAAQS. See 40 CFR part 50, appendix N, section 4.2(b).

#### B. Evaluation of Current Attainment

EPA's evaluation of whether the San Francisco Bay Area PM<sub>2.5</sub> nonattainment area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS is based on our review of the monitoring data and takes into account the adequacy<sup>15</sup> of the PM<sub>2.5</sub> monitoring network in the nonattainment area and the reliability of the data collected by the network as discussed in the previous section of this document.

Table 1 shows the PM<sub>2.5</sub> design values for the San Francisco Bay Area nonattainment area monitors based on ambient air quality monitoring data for the most recent complete three-year period (2009–2011). The data show that the design value for the 2009–2011 period was equal to or less than 35 µg/m<sup>3</sup> at the monitors.

Therefore, we are proposing to determine, based on the complete, quality-assured data for 2009–2011, that the San Francisco Bay Area has attained the 2006 24-hour PM<sub>2.5</sub> standard. Preliminary data available in AQS for 2012 indicate that the area continues to attain the standard.

TABLE 1—2009–2011 24-HOUR PM<sub>2.5</sub> MONITORING SITES AND DESIGN VALUES FOR THE SAN FRANCISCO BAY AREA NONATTAINMENT AREA

Monitoring site	AQS Site identification No.	98th Percentile (µg/m <sup>3</sup> )			2009–2011 Design values (µg/m <sup>3</sup> )
		2009	2010	2011	
Livermore .....	06-001-0007	30.7	26.5	27.0	28
Oakland .....	06-001-0009	24.7	21.7	28.0	25
Concord .....	06-013-0002	29.2	26.8	24.4	27
San Rafael .....	06-041-0001	<sup>a</sup> 34.1	<sup>b</sup> 31.0	25.0	<sup>b</sup> 30
San Francisco .....	06-075-0005	29.4	24.4	26.4	27
Redwood City .....	06-081-1001	28.0	24.8	24.2	26
Gilroy .....	06-085-0002	25.1	19.6	22.1	22
San Jose .....	06-085-0005	29.8	29.2	30.5	30
Vallejo .....	06-095-0004	33.5	22.8	31.0	29
Santa Rosa .....	06-097-0003	23.2	22.2	25.9	24

<sup>a</sup>PM<sub>2.5</sub> monitoring at the San Rafael site began in the last quarter of 2009.

<sup>b</sup>Does not meet data completeness requirements.

Source: Design Value Report, August 10, 2012 (in the docket to this proposed action).

<sup>10</sup>In this context, “neighborhood” spatial scale defines concentrations within some extended area of the city that has relatively uniform land use with dimensions in the 0.5 to 4.0 kilometers range. See 40 CFR part 58, appendix D, section 1.2.

<sup>11</sup>In this context, “middle” spatial scale defines the concentration typical of areas up to several city blocks in size with dimensions ranging from about 100 meters to 0.5 kilometer. See 40 CFR part 58, appendix D, section 1.2.

<sup>12</sup>See BAAQMD's 2010 Air Monitoring Network Report (July 1, 2011); U.S. EPA Air Quality System, Monitor Description Report, October 15, 2012.

<sup>13</sup>In March, 2012, a community group based in Marin County, California, brought to EPA's

attention PM<sub>2.5</sub> data collected in Marin County that was not available in AQS. EPA has reviewed information associated with this monitoring. The monitoring was collected with private, non-Federal Reference Method/Federal Equivalent Method (FRM/FEM) monitors over approximately three months in both winter 2010/2011 and winter 2011/2012. EPA concludes that the monitoring does not meet 40 CFR part 50, appendix L or 40 CFR part 58, and are therefore not appropriate for regulatory use. EPA acknowledges the concerns raised by the community group over wood smoke impacts in sheltered inland valleys during the winter months. Information on additional steps BAAQMD is taking to address wood smoke impacts is described in

BAAQMD's September 20, 2012 letter from Jean Roggenkamp, Deputy Air Pollution Control Officer, Bay Area Air Quality Management District, to Amy Zimpfer, U.S. EPA Region IX.

<sup>14</sup>Under EPA monitoring regulations, the minimum number of PM<sub>2.5</sub> monitoring sites in the San Francisco-Oakland-Fremont Metropolitan Statistical Area (MSA) is two, but the BAAQMD operates six such monitoring sites within the San Francisco-Oakland-Fremont MSA portion of the San Francisco Bay Area nonattainment area, including the San Rafael site.

<sup>15</sup>Meets the requirements of 40 CFR part 58.

#### IV. How does EPA's Clean Data Policy apply to this action?

##### A. Application of EPA's Clean Data Policy to the 2006 PM<sub>2.5</sub> NAAQS

In April 2007, EPA issued its PM<sub>2.5</sub> Implementation Rule for the 1997 PM<sub>2.5</sub> standard. 72 FR 20586; (April 25, 2007). In March, 2012, EPA published implementation guidance for the 2006 PM<sub>2.5</sub> standard. See Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, "Implementation Guidance for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)" (March 2, 2012). In that guidance, EPA stated its view "that the overall framework and policy approach of the 2007 PM<sub>2.5</sub> Implementation Rule continues to provide effective and appropriate guidance on the EPA's interpretation of the general statutory requirements that states should address in their SIPs. In general, the EPA believes that the interpretations of the statute in the framework of the 2007 PM<sub>2.5</sub> Implementation Rule are relevant to the statutory requirements for the 2006 24-hour PM<sub>2.5</sub> NAAQS \* \* \*." *Id.*, page 1. With respect to the statutory provisions applicable to 2006 PM<sub>2.5</sub> implementation, the guidance emphasized that "EPA outlined its interpretation of many of these provisions in the 2007 PM<sub>2.5</sub> Implementation Rule. In addition to regulatory provisions, the EPA provided substantial general guidance for attainment plans for PM<sub>2.5</sub> in the preamble to the final the [sic] 2007 PM<sub>2.5</sub> Implementation Rule." *Id.*, page 2. In keeping with the principles set forth in the guidance, and with respect to the effect of a determination of attainment for the 2006 PM<sub>2.5</sub> standard, EPA is applying the same interpretation with respect to the implications of clean data determinations that it set forth in the preamble to the 1997 PM<sub>2.5</sub> standard and in the regulation that embodies this interpretation. 40 CFR 51.1004(c).<sup>16</sup> EPA has long applied this interpretation in regulations and individual rulemakings for the 1-hour ozone and 1997 8-hour ozone standards, the PM-10 standard, and the lead standard.

##### B. History and Basis of EPA's Clean Data Policy

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the

General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble) 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS. See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the PM<sub>2.5</sub> NAAQS. See Memorandum from Steve Page, Director, EPA Office of Air Quality Planning and Standards, "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards" (December 14, 2004).

Since 1995, EPA has applied its interpretation under the Clean Data Policy in many rulemakings, suspending certain attainment-related planning requirements for individual areas, based on a determination of attainment. See 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah, 1-hour ozone); 61 FR 20458 (May 7, 1996) (Cleveland-Akron-Lorain, Ohio, 1-hour ozone); 61 FR 31832 (June 21, 1996) (Grand Rapids, Michigan, 1-hour ozone); 65 FR 37879 (June 19, 2000) (Cincinnati-Hamilton, Ohio-Kentucky, 1-hour ozone); 66 FR 53094 (October 19, 2001) (Pittsburgh-Beaver Valley, Pennsylvania, 1-hour ozone); 68 FR 25418 (May 12, 2003) (St. Louis, Missouri-Illinois, 1-hour ozone); 69 FR 21717 (April 22, 2004) (San Francisco Bay Area, California, 1-hour ozone); 75 FR 6570 (February 10, 2010) (Baton Rouge, Louisiana, 1-hour ozone); 75 FR 27944 (May 19, 2010) (Coso Junction, California, PM<sub>10</sub>).

EPA also incorporated its interpretation under the Clean Data Policy in several implementation rules. See Clean Air Fine Particle Implementation Rule, 72 FR 20586 (April 25, 2007); Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2, 70 FR 71612 (November 29, 2005). The Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld EPA's rule embodying the Clean Data Policy for the 1997 8-hour ozone standard. *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009). Other courts have reviewed and considered individual rulemakings applying EPA's Clean Data Policy, and have consistently upheld

them in every case. *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 v. EPA*, Nos. 06-75831 and 08-71238 (9th Cir. March 2, 2009 (Memorandum Opinion)).

EPA sets forth below a brief explanation of the statutory interpretations in the Clean Data Policy. EPA also incorporates the discussions of its interpretation set forth in prior rulemakings, including the 1997 PM<sub>2.5</sub> implementation rulemaking. See 72 FR 20586, at 20603-20605 (April 25, 2007). See also 75 FR 31288 (June 3, 2010) (Providence, Rhode Island, 1997 8-hour ozone); 75 FR 62470 (October 12, 2010) (Knoxville, Tennessee, 1997 8-hour ozone); 75 FR 53219 (August 31, 2010) (Greater Connecticut Area, 1997 8-hour ozone); 75 FR 54778 (September 9, 2010) (Baton Rouge, Louisiana, 1997 8-hour ozone); 75 FR 64949 (October 21, 2010) (Providence, Rhode Island, 1997 8-hour ozone); 76 FR 11080 (March 1, 2011) (Milwaukee-Racine and Sheboygan Areas, Wisconsin, 1997 8-hour ozone); 76 FR 31237 (May 31, 2011) (Pittsburgh-Beaver Valley, Pennsylvania, 1997 8-hour ozone); 76 FR 33647 (June 9, 2011) (St. Louis, Missouri-Illinois, 1997 8-hour ozone); 76 FR 70656 (November 15, 2011) (Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina, 1997 8-hour ozone); 77 FR 31496 (May 29, 2012) (Boston-Lawrence-Worcester, Massachusetts, 1997 8-hour ozone). See also, 75 FR 56 (January 4, 2010) (Greensboro-Winston-Salem-High Point, North Carolina, 1997 PM<sub>2.5</sub>); 75 FR 230 (January 5, 2010) (Hickory-Morganton-Lenoir, North Carolina, 1997 PM<sub>2.5</sub>); 76 FR 12860 (March 9, 2011) (Louisville, Kentucky-Indiana, 1997 PM<sub>2.5</sub>); 76 FR 18650 (April 5, 2011) (Rome, Georgia, 1997 PM<sub>2.5</sub>); 76 FR 31239 (May 31, 2011) (Chattanooga, Tennessee-Georgia-Alabama, 1997 PM<sub>2.5</sub>); 76 FR 31858 (June 2, 2011) (Macon, Georgia, 1997 PM<sub>2.5</sub>); 76 FR 36873 (June 23, 2011) (Atlanta, Georgia, 1997 PM<sub>2.5</sub>); 76 FR 38023 (June 29, 2011) (Birmingham, Alabama, 1997 PM<sub>2.5</sub>); 76 FR 55542 (September 7, 2011) (Huntington-Ashland, West Virginia-Kentucky-Ohio, 1997 PM<sub>2.5</sub>); 76 FR 60373 (September 29, 2011) (Cincinnati, Ohio-Kentucky-Indiana, 1997 PM<sub>2.5</sub>); 77 FR 18922 (March 29, 2012) (Harrisburg-Lebanon-Carlisle-York, Allentown, Johnstown and Lancaster, Pennsylvania, 1997 PM<sub>2.5</sub>).

The Clean Data Policy represents EPA's interpretation that certain requirements of subpart 1 of part D of

<sup>16</sup> While EPA recognizes that 40 CFR 51.1004(c) does not itself expressly apply to the 2006 PM<sub>2.5</sub> standard, the statutory interpretation that it embodies is identical and is applicable to both the 1997 and 2006 PM<sub>2.5</sub> standards.

the Act are by their terms not applicable to areas that are currently attaining the NAAQS.<sup>17</sup> As explained below, the specific requirements that are inapplicable to an area attaining the standard are the requirements to submit a SIP that provides for: Attainment of the NAAQS; implementation of all reasonably available control measures; reasonable further progress (RFP); and implementation of contingency measures for failure to meet deadlines for RFP and attainment.

CAA section 172(c)(1), the requirement for an attainment demonstration, provides in relevant part that SIPs “shall provide for attainment of the [NAAQS].” EPA has interpreted this requirement as not applying to areas that have already attained the standard. If an area has attained the standard, there is no need to submit a plan demonstrating how the area will reach attainment. In the General Preamble (57 FR 13564), EPA stated that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since “attainment will have been reached.” See also Memorandum from John Calcagni, “Procedures for Processing Requests to Redesignate Areas to Attainment,” (September 4, 1992), at page 6.

A component of the attainment plan specified under section 172(c)(1) is the requirement to provide for “the implementation of all reasonably available control measures as expeditiously as practicable” (RACM). Since RACM is an element of the attainment demonstration, see General Preamble (57 FR 13560), for the same reason the attainment demonstration no longer applies by its own terms, RACM also no longer applies to areas that EPA has determined have clean air. Furthermore, EPA has consistently interpreted this provision to require only implementation of such potential RACM measures that could advance attainment.<sup>18</sup> Thus, where an area is already attaining the standard, no additional RACM measures are required. EPA’s interpretation that the statute requires only implementation of the 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). See also the final rulemakings for Pittsburgh-Beaver Valley, Pennsylvania, 66 FR 53096 (October 19, 2001) and St. Louis, Missouri-Illinois, 68 FR 25418 (May 12, 2003).

CAA section 172(c)(2) provides that SIP provisions in nonattainment areas must require “reasonable further progress.” The term “reasonable further progress” is defined in section 171(1) as “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, by definition, the “reasonable further progress” provision under subpart 1 requires only such reductions in emissions as are necessary to attain the NAAQS. If an area has attained the NAAQS, the purpose of the RFP requirement has been fulfilled, and since the area has already attained, showing that the State will make RFP towards attainment “[has] no meaning at that point.” General Preamble, 57 FR 13498, 13564 (April 16, 1992).

CAA section 172(c)(9) provides that SIPs in nonattainment areas “shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA].” This contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Contingency measures are implemented if reasonable further progress targets are not achieved, or if attainment is not realized by the attainment date. Where an area has already achieved attainment, 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.

It is important to note that should an area attain the 2006 PM<sub>2.5</sub> standard based on three years of data, its obligation to submit an attainment demonstration and related planning submissions is suspended only for so

long as the area continues to attain the standard. If EPA subsequently determines, after notice-and-comment rulemaking, that the area has violated the NAAQS, the requirements for the State to submit a SIP to meet the previously suspended requirements would be reinstated. It is likewise important to note that the area remains designated nonattainment pending a further redesignation action.

## V. EPA’s Proposed Action and Request for Public Comment

EPA is proposing to determine that the San Francisco Bay Area nonattainment area in California has attained the 2006 24-hour PM<sub>2.5</sub> standard based on the most recent three years of complete, quality-assured, and certified data for 2009–2011. Preliminary data available in AQS for 2012 show that this area continues to attain the standard.

EPA further proposes that, if its proposed determination of attainment is made final, the requirements for the San Francisco Bay Area 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<sub>2.5</sub> NAAQS would be suspended for so long as the area continues to attain the 2006 PM<sub>2.5</sub> NAAQS. EPA’s proposal 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)). As described below, any such determination would not be equivalent to the redesignation of the area to attainment for the 2006 PM<sub>2.5</sub> NAAQS.

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 San Francisco Bay Area 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 would remain nonattainment for this area until such time as EPA determines that California has met the CAA requirements for redesignating the San Francisco Bay Area nonattainment area to attainment.

If the San Francisco Bay Area nonattainment area continues to monitor attainment of the 2006 PM<sub>2.5</sub> NAAQS, EPA proposes that the requirements for the area to submit an

<sup>17</sup> This discussion refers to subpart 1 because subpart 1 contains the requirements relating to attainment of the 2006 PM<sub>2.5</sub> NAAQS.

<sup>18</sup> This interpretation was adopted in the General Preamble, see 57 FR 13498, and has been upheld as applied to the Clean Data Policy, as well as to nonattainment SIP submissions. See *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155 (D.C. Cir. 2002).

attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning requirements related to attainment of the 2006 PM<sub>2.5</sub> NAAQS will remain suspended. If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 2006 PM<sub>2.5</sub> 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.

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.

## VI. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality and to suspend certain federal requirements, and thus, would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

In addition, this proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

### List of Subjects in 40 CFR Part 52

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

Dated: October 15, 2012.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2012–26528 Filed 10–26–12; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket Nos. 03–123 and 10–51; DA 12–1644]

### Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on matters related to access technology and enhanced database operations for video relay service (VRS) raised in recent filings submitted by CSDVRS, LLC, a VRS provider. In order for the Commission to be in a position to set new rates as it moves forward with the next phase of VRS reform, it also seeks comment on a proposal by the Fund administrator, Rolka Loube Saltzer Associates (RLSA), to modify VRS compensation rates.

**DATES:** Comments are due on or before November 14, 2012. Reply comments are due on or before November 29, 2012.

**ADDRESSES:** You may submit comments, identified by CG Docket Nos. 03–123 and 10–51, by any of the following methods:

▪ **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission’s Electronic Comment Filing System (ECFS), through the Commission’s Web site: <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket Nos. 03–123 and 10–51. Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

▪ In addition, parties must serve one copy of each pleading with the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 559–5158 (voice/videophone), (202) 418–0431 (TTY), or email at [Gregory.Hlibok@fcc.gov](mailto:Gregory.Hlibok@fcc.gov), or