ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0769; FRL–9835–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determinations of Attainment of the 1997 Annual Fine Particulate Standards for the Liberty-Clairton Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two separate and independent determinations regarding the Liberty-Clairton, Pennsylvania 1997 annual fine particulate ($PM_{2.5}$) nonattainment area (the Liberty-Clairton Area). First, EPA is proposing to determine that the Liberty-Clairton Area attained the 1997 $PM_{2.5}$ annual national ambient air quality standards (NAAQS) by the applicable attainment date, December 31, 2011. This proposed determination is based on quality assured and certified ambient air quality date for the 2009–2011 monitoring period. Second, EPA is proposing that the Liberty-Clairton Area has continued to attain the 1997 annual $PM_{2.5}$ NAAQS, based on quality-assured and certified ambient air quality data for the 2010–2012 monitoring period. If EPA finalizes this latter ''clean data determination,'' the requirement for the Liberty-Clairton Area to submit an attainment demonstration, reasonably available control measures (RACM), reasonable further progress (RFP), and contingency measures related to attainment of the 1997 annual $PM_{2.5}$ NAAQS would be suspended for so long as the area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. These determinations do not constitute a redesignation to attainment. The Liberty-Clairton Area will remain designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Liberty-Clairton Area meets the Clean Air Act (CAA) requirements for redesignation to attainment, including an approved maintenance plan. These proposed actions are being taken under the CAA.

DATES: Written comments must be received on or before August 22, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0769 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0769, 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–2012–0769. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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: Maria A. Pino, (215) 814–2181, or by email at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Actions

EPA is proposing two separate and independent determinations regarding the Liberty-Clairton Area. First, pursuant to section 188(b)(2) of the CAA, EPA is proposing to make a determination that the Liberty-Clairton Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date, December 31, 2011. This proposed determination is based upon quality-assured and certified ambient air monitoring data for the 2009–2011 monitoring period that shows the area has monitored attainment of the 1997 $PM_{2.5}$ annual NAAQS as of its attainment date.

EPA is also proposing to make a determination that the Liberty-Clairton Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. This proposed ''clean data'' determination is based upon quality assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS for the 2010–2012 monitoring period. If EPA finalizes this determination, the requirement for the Liberty-Clairton Area to submit an attainment demonstration, RACM, RFP, and contingency measures related to attainment of the 1997 annual $PM_{2.5}$ NAAQS shall be suspended for so long as the area continues to attain that NAAQS.[1]

II. Background

A. The $PM_{2.5}$ NAAQS

On July 18, 1997 (62 FR 38652), EPA established a health-based $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations (''the 1997 annual $PM_{2.5}$ NAAQS'' or ''the 1997 annual standard''). At that time, EPA also established a 24-hour standard of 65 $\mu g/m^3$ (the ''1997 24-hour standard''). *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15 $\mu g/m^3$ based on a 3-year average

[1] Even if these requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted to EPA for review and approval. On June 17, 2011, the Commonwealth of Pennsylvania submitted a SIP revision for the Liberty-Clairton Area to EPA for review and approval. On November 7, 2011 (76 FR 68699), EPA proposed approval, with one condition, of Pennsylvania's SIP revision for the Liberty-Clairton Area.

of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour standard of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations (the ''2006 24-hour standard''). In response to legal challenges of the 2006 annual standard, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or the Court) remanded this standard to EPA for further consideration. *See, American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Circuit 2009). However, given that the 1997 and 2006 annual $PM_{2.5}$ standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard.

On December 14, 2012 (78 FR 3086), EPA lowered the primary annual $PM_{2.5}$ NAAQS from 15 to 12.0 μg/m³. EPA retained the 2006 24-hour $PM_{2.5}$ NAAQS, and the 1997 secondary annual $PM_{2.5}$ NAAQS. EPA also retained the existing standards for coarse particle pollution (PM_{10}). This rulemaking action proposes determinations solely for the 1997 annual $PM_{2.5}$ standard. It does not address the 1997 or 2006 24-hour $PM_{2.5}$ standards or the 2012 $PM_{2.5}$ annual NAAQS.

B. The Liberty-Clairton Area

On January 5, 2005 (70 FR 944), EPA published its air quality designations for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data for calendar years 2001–2003. These designations became effective on April 5, 2005. The Liberty-Clairton Area is comprised of the boroughs of Lincoln, Glassport, Liberty, and Port Vue and the City of Clairton, all in Allegheny County, Pennsylvania. *See* 40 CFR 81.339. The Liberty-Clairton Area is surrounded by, but separate and distinct from the Pittsburgh-Beaver Valley $PM_{2.5}$ nonattainment area.

On November 13, 2009 (74 FR 58688), EPA published the area designations for the 2006 24-hour standard. That action, effective on December 14, 2009, designated the same Liberty-Clairton Area as nonattainment for the 2006 24-hour standard and clarified that the Liberty-Clairton Area is designated as unclassifiable/attainment for the 1997 24-hour $PM_{2.5}$ standard.

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

The Commonwealth of Pennsylvania submitted quality assured air quality monitoring data into the EPA Air Quality System (AQS) database for the 2009–2011 and 2010–2012 monitoring periods. Pennsylvania then certified that data. EPA's evaluation of this data shows that the Liberty-Clairton Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its 2011 attainment date, and that it continues to attain the 1997 annual $PM_{2.5}$ NAAQS. Additional information on air quality data for the Liberty-Clairton Area can be found in the technical support document (TSD) prepared for this action.

The criteria for determining if an area is attaining the 1997 annual $PM_{2.5}$ NAAQS are set out in 40 CFR 50.13 and appendix N. The 1997 annual $PM_{2.5}$ NAAQS is met when the annual design value is less than or equal to 15.0 μg/m³. Three years of valid annual means are required to produce a valid annual standard design value. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data.

There are two $PM_{2.5}$ monitors in the Liberty-Clairton Area—one in Liberty Borough and one in the City of Clairton. Both monitors had complete data for all quarters in the years 2009 through 2012, except for one calendar quarter in 2011 when the Clairton monitor had less than complete data capture due to unreliable data results via laboratory analysis.

For this monitor, EPA performed 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 is filled in, the results are verified through an additional statistical test. The results of EPA's statistical analysis indicated that while the Liberty monitor had less than complete data, the data is sufficient to demonstrate that the NAAQS has been met. Details of this analysis are set out in the TSD prepared for this action.

This proposed determination of attainment for the Liberty-Clairton Area is based on EPA's evaluation of quality-controlled, quality assured, certified annual $PM_{2.5}$ air quality data for the 2009–2011 and 2010–2012 monitoring periods. The monitoring data and calculated design values for Liberty-Clairton Area are summarized in Table 1 for the 2009–2011 monitoring period, and in Table 2 for the 2010–2012 monitoring period.

TABLE 1—2009–2011 LIBERTY-CLAIRTON AREA ANNUAL $PM_{2.5}$ MONITORING DATA & COMPLETENESS

Location	Site ID	Annual mean			2009–2011 Design value (μg/m³)		Complete quarters			Complete data?
	.....	2009	2010	2011			2009	2010	2011	
Liberty Borough	420030064	15.0	16.0	14.0	15.0		4	4	4	Yes.
City of Clairton	420033007	11.3	12.5	10.7	*11.5	**11.7	4	4	3	No.

*The annual design value for the Clairton site reflects incomplete quarterly data during 2011.
**EPA's statistical procedure was applied to address the missing data and calculate a ''complete'' design value.

TABLE 2—2010–2012 LIBERTY-CLAIRTON AREA ANNUAL $PM_{2.5}$ MONITORING DATA & COMPLETENESS

Location	Site ID	Annual mean			2010–2012 Design value (μg/m³)		Complete quarters			Complete data?
		2010	2011	2012			2010	2011	2012	
Liberty Borough	420030064	16.0	14.0	14.3	14.8		4	4	4	Yes.
City of Clairton	420033007	12.5	10.7	9.4	*10.9	**11.0	4	3	4	No.

*The annual design value for the Clairton site reflects incomplete quarterly data during 2011.
**EPA's statistical procedure was applied to address the missing data and calculate a ''complete'' design value.

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the $PM_{2.5}$ ambient air monitoring data for the monitoring periods 2009–2011 and 2010–2012 for the Liberty-Clairton Area, as recorded in the AQS database. On the basis of that review, EPA proposes to determine that the Liberty-Clairton Area (1) attained the 1997 annual $PM_{2.5}$ NAAQS by its attainment date, based on data for the 2009–2011 monitoring period, and (2) continued to attain during the 2010–2012 monitoring period.

IV. Effect of Proposed Determinations of Attainment for 1997 $PM_{2.5}$ NAAQS Under Subpart 4 of Part D of Title I of the CAA (Subpart 4)

This section and section V of EPA's proposal address the effects of a final clean data determination and a final determination of attainment by the attainment date for the Liberty-Clairton Area. For the 1997 annual $PM_{2.5}$ standard, 40 CFR 51.004 of EPA's Implementation Rule for the 1997 annual $PM_{2.5}$ standard embodies EPA's ''Clean Data Policy'' interpretation under subpart 1 of Part D of Title I of the CAA (subpart 1). The provisions of 40 CFR 51.004 set forth the effects of a determination of attainment for the 1997 $PM_{2.5}$ standard. (72 FR 20585, 20665, April 25, 2007).

On January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the DC 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, 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 Liberty-Clairton Area, as 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 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

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 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 1997 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 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 above, EPA incorporated its Clean Data Policy interpretation in both its 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.

However, in light of the Court's decision, EPA's Clean Data Policy interpretation under subpart 4 is set forth here, for the purpose of identifying the effects of a determination of attainment for the 1997 annual $PM_{2.5}$ standard for the Liberty-Clairton 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)

[2] For the purposes of evaluating the effects of this proposed determination of attainment under subpart 4, EPA is considering the Liberty-Clairton 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. Sections 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.

[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).

(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.

B. 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 the petitioner's challenge to the Clean Data Policy under subpart 4 for PM_{10}, the Ninth Circuit stated, ''As the 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 [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 part D, 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 EPA memorandum from John S. Seitz, ''Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for the Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' (the ''1995 Seitz memorandum'') with respect to the requirements of section 182(b) and (c).

[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 CAA. 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. 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.

In the 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 1995 Seitz memorandum. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' 57 FR 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 sections 172(c)(9). EPA has interpreted the contingency measure requirements of sections 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; 1995 Seitz memorandum, 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 control measures'' (i.e., RACM) are implemented in a nonattainment area. The General Preamble, (57 FR at 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 attainment in the area, such as provisions to address pollution transport.

As set forth previously, based on our proposed determination that the Liberty-Clairton Area is currently attaining the 1997 annual $PM_{2.5}$ NAAQS, EPA proposes to find that the obligations to submit planning provisions to meet the requirements for an attainment demonstration, reasonable further progress plans, reasonably available control measures, and contingency measures are suspended for so long as the area continues to monitor attainment of the 1997 annual $PM_{2.5}$ NAAQS. If in the future, EPA determines after notice-and-comment rulemaking that the area again violates the 1997 annual $PM_{2.5}$ NAAQS, the basis for suspending the attainment demonstration, RFP, RACM, and contingency measure obligations would no longer exist.

V. Determination of Attainment by the Attainment Date

As stated previously, 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 Liberty-Clairton Area, as if that area were considered a moderate nonattainment area under subpart 4. Pursuant to CAA section 188(c)(1), the 1997 annual $PM_{2.5}$ NAAQS attainment date for moderate areas is as expeditiously as practicable, but not later than the end of the sixth calendar year after the area's designation as nonattainment. For the purposes of evaluating attainment by attainment date, the attainment date for the Liberty-Clairton Area is December 31, 2011. Under CAA section 188(b)(2), EPA is required to make a determination that a nonattainment area has attained by its attainment date, and publish that determination in the **Federal Register**. If EPA determines that any moderate area is not in attainment after its applicable

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

[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 DC Circuit (*Sierra Club* v. *EPA,* 294 F.3d 155, 162–163 (DC Cir. 2002)).

attainment date, that area is reclassified to serious by operation of law.

EPA is proposing to make a determination that the Liberty-Clairton Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2011. Therefore, EPA has met the requirement of CAA section 188(b)(2) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date. The effect of a final determination of attainment by the area's attainment date would be to discharge EPA's obligation under CAA section 188(b)(2).

VI. Proposed Actions

Pursuant to sections 188(b)(2) of the CAA, EPA is proposing to determine that the Liberty-Clairton Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its attainment date, December 31, 2011. Separately and independently, EPA is proposing to determine, based on the most recent three years of quality-assured and certified data meeting the requirements of 40 CFR part 50, appendix N, that the Liberty-Clairton Area is currently attaining the 1997 annual $PM_{2.5}$ NAAQS. In conjunction with and based upon our proposed determination that the Liberty-Clairton Area has attained and is currently attaining the standard, EPA proposes to determine that the obligation to submit the following attainment-related planning requirements is not applicable for so long as the area continues to attain the $PM_{2.5}$ standard: The part D, 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).

These proposed determinations are based upon quality-assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS for the 2009–2011 and 2010–2012 monitoring periods. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

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

- Are 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);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);
- do 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);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are 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
- do 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 rule, proposing to determine that the Liberty-Clairton Area has attained the 1997 annual $PM_{2.5}$ NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 8, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–17688 Filed 7–22–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2013–0178; FRL_9834–3]

Notice of Data Availability Concerning Renewable Fuels Produced From Barley Under the RFS Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Data Availability (NODA).

SUMMARY: This Notice provides an opportunity to comment on EPA's draft analysis of the lifecycle greenhouse gas (GHG) emissions of ethanol that is produced using barley as a feedstock. EPA's draft analysis indicates that ethanol produced from barley has an estimated lifecycle GHG emissions reduction of 47% as compared to baseline conventional fuel when the barley ethanol is produced at a dry mill facility that uses natural gas for all process energy, uses electricity from the grid, and dries up to 100% of distillers grains. Such barley ethanol would therefore meet the minimum 20% GHG emissions reduction threshold for conventional biofuels under the Clean Air Act Renewable Fuel Standard (RFS) program. In addition, EPA analyzed two potential options for producing barley ethanol that would meet the 50% GHG emissions reduction threshold for advanced biofuels. Ethanol produced from dry-milling barley meet the advanced biofuels GHG reduction threshold if it is produced at a facility that uses no more than 30,700 Btu of natural gas for process energy, no more than 4,200 Btu of biomass from barley hulls or biogas from landfills, waste treatment plants, barley hull digesters, or waste digesters for process energy, and no more than 0.84 kWh of electricity from the grid for all electricity used at the renewable fuel production facility, calculated on a per gallon basis. Ethanol produced from dry-milling barley can also meet the advanced biofuel GHG reduction threshold if the production facility uses no more than 36,800 Btu of natural gas for process energy and also uses natural gas for on-site production of all electricity used at the facility other than up to 0.19 kWh of electricity from the grid, calculated on a per gallon basis.