

• 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 determination of attainment of the Philadelphia Area with respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS 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.

#### B. Submission to Congress and the Comptroller General

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

#### C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, in which EPA has determined that the Philadelphia Area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

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

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

Dated: December 10, 2012.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

Dated: December 13, 2012.

**Judith A. Enck,**

*Regional Administrator, Region II.*

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart I—Delaware

■ 2. Section 52.427 is amended by designating the existing paragraph as (a) and adding paragraph (b) to read as follows:

##### § 52.427 Control strategy: Particulate matter.

\* \* \* \* \*

(b) *Determination of Attainment.* EPA has also determined, as of January 7, 2013, that based on 2008 to 2010 and 2009 to 2011 ambient air quality data, the Philadelphia-Wilmington, PA-NJ-DE fine particulate matter (PM<sub>2.5</sub>) nonattainment area has attained the 2006 24-hour PM<sub>2.5</sub> national ambient air quality standards (NAAQS). This determination suspends the requirements for the State of DE to submit, for the Philadelphia-Wilmington, PA-NJ-DE PM<sub>2.5</sub> nonattainment area, an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour PM<sub>2.5</sub> NAAQS.

#### Subpart FF—New Jersey

■ 3. Section 52.1602 is amended by adding paragraph (e) to read as follows:

##### § 52.1602 Control strategy and regulations: PM<sub>2.5</sub>.

\* \* \* \* \*

(e) *Determination of Attainment.* EPA has determined, as of January 7, 2013, that based on 2008 to 2010 and 2009 to 2011 ambient air quality data, the Philadelphia-Wilmington, PA-NJ-DE fine particulate matter (PM<sub>2.5</sub>) nonattainment area has attained the 2006 24-hour PM<sub>2.5</sub> national ambient air quality standards (NAAQS). This determination suspends the requirements for the Philadelphia-Wilmington, PA-NJ-DE PM<sub>2.5</sub> nonattainment area, to submit an attainment demonstration, associated reasonably available control measures, a

reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour PM<sub>2.5</sub> NAAQS.

#### Subpart NN—Pennsylvania

■ 4. Section 52.2059 is amended by adding paragraph (h) to read as follows:

##### § 52.2059 Control strategy: Particulate matter.

\* \* \* \* \*

(h) *Determination of Attainment.* EPA has determined, as of January 7, 2013, that based on 2008 to 2010 and 2009 to 2011 ambient air quality data, the Philadelphia-Wilmington, PA-NJ-DE fine particulate matter (PM<sub>2.5</sub>) nonattainment area has attained the 2006 24-hour PM<sub>2.5</sub> national ambient air quality standards (NAAQS). This determination suspends the requirements for the Commonwealth of Pennsylvania to submit, for the Philadelphia-Wilmington, PA-NJ-DE PM<sub>2.5</sub> area, an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour PM<sub>2.5</sub> NAAQS.

[FR Doc. 2012–31565 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R08–OAR–2012–0446; FRL–9765–6]

#### Approval and Promulgation of Air Quality Implementation Plans; Utah; Determination of Clean Data for the 1987 PM<sub>10</sub> Standard for the Ogden Area

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a determination that the Ogden City nonattainment area in Utah is currently attaining the 24-hour National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM<sub>10</sub>) based on certified, quality-assured ambient air monitoring data for the years 2009 through 2011. The State of Utah submitted a letter dated March 30, 2000, requesting EPA to make a clean data determination for the nonattainment

area of Ogden City. Given our determination that the Ogden City nonattainment area is currently attaining the PM<sub>10</sub> NAAQS, EPA is also determining that Utah's obligation to make submissions to meet certain Clean Air Act (CAA) requirements related to attainment of the NAAQS is not applicable for as long as the Ogden City nonattainment area continues to attain the NAAQS. This action is being taken under the CAA.

**DATES:** This final rule is effective on February 6, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2012-0446. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Crystal Freeman, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6602, [freeman.crystal@epa.gov](mailto:freeman.crystal@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials *AQS* mean or refer to EPA's Air Quality System database.
- (iii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iv) The initials *NAAQS* mean or refer to National Ambient Air Quality Standard.
- (v) The initials *PM<sub>10</sub>* mean or refer to particulate matter with an aerodynamic diameter equal to or less than 10 micrometers (coarse particulate matter).

(vi) The initials *RACM* mean or refer to reasonably available control measures.

(vii) The initials *RFP* mean or refer to reasonable further progress.

(viii) The initials *SIP* mean or refer to State Implementation Plan.

(ix) The words *State* or *Utah* mean the State of Utah, unless the context indicates otherwise.

(x) The initials *UDEQ* mean or refer to Utah Department of Environmental Quality.

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**I. EPA's Proposed Action**

On July 30, 2012, EPA proposed to find that the Ogden City nonattainment area is currently attaining the 24-hour PM<sub>10</sub> NAAQS based on certified and quality-assured data from the most recent three-year period, 2009 through 2011, and to suspend certain CAA requirements related to attainment for so long as the area continues to attain the standard. See 77 FR 44544; (July 30, 2012).

To summarize our proposed rule, we described the 24-hour PM<sub>10</sub> NAAQS, which is 150 micrograms per cubic meter (µg/m<sup>3</sup>), and reviewed the designation and classification of the Ogden City nonattainment area for that standard. We then discussed how EPA makes attainment determinations for PM<sub>10</sub> and indicated that the 24-hour PM<sub>10</sub> NAAQS is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at the monitoring site within the nonattainment area. See 40 CFR part 50, appendix K.

We described Utah Department of Environmental Quality's (UDEQ's) one PM<sub>10</sub> monitoring site in the Ogden City nonattainment area. We noted that UDEQ has certified the data it submits to EPA's Air Quality System (AQS) database as quality-assured.

Next, we reviewed the ambient PM<sub>10</sub> data collected at the monitor site in the Ogden City nonattainment area for the most recent three-year period, 2009 through 2011. We concluded that the area is attaining the PM<sub>10</sub> standard because the expected number of exceedances per year for 2009 through 2011 for the Ogden City nonattainment area was equal to 1.0. For additional information on the PM<sub>10</sub> NAAQS, the designation and classification of the Ogden City nonattainment area, the monitoring site, and the data we relied

on for our clean data determination, please see 77 FR 44544.

In conjunction with, and based on, our proposed determination that the Ogden City nonattainment area is currently attaining the PM<sub>10</sub> NAAQS, EPA proposed to determine that Utah's obligation to submit revisions to the Utah State Implementation Plan (SIP) to meet the following CAA requirements is not applicable for so long as the Ogden City nonattainment area continues to attain the PM<sub>10</sub> standard: The part D, subpart 4 obligation to provide an attainment demonstration pursuant to section 189(a)(1)(B); the reasonably available control measure (RACM) requirements of section 189(a)(1)(C); the reasonable further progress (RFP) requirements of section 189(c); and the attainment demonstration, RACM, RFP, and contingency measure requirements of part D, subpart 1 contained in section 172. We proposed to suspend these SIP requirements based on application of the Clean Data Policy to the Ogden City nonattainment area. In doing so, we noted that our application of the Clean Data Policy to the Ogden City nonattainment area is consistent with a number of actions we have taken for other PM<sub>10</sub> nonattainment areas that we also determined were attaining the NAAQS. For a detailed explanation of our Clean Data Policy and its application to the Ogden City nonattainment area, please see 77 FR 44544.

**II. Response to Comments**

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

**III. EPA Action**

No comments were submitted to change our assessment of the 2009 through 2011 ambient PM<sub>10</sub> data collected in the Ogden City nonattainment area and related finding that the area is attaining the NAAQS, or our application of the Clean Data Policy as described in our proposed action. Therefore, EPA is finalizing its determination that the Ogden City nonattainment area in Utah is currently attaining the NAAQS for PM<sub>10</sub>.

EPA is also taking final action to determine that Utah's obligation to make SIP submissions to meet the following CAA requirements is not applicable for as long as the Ogden City nonattainment area continues to attain the PM<sub>10</sub> NAAQS: The part D, subpart 4 obligation to provide an attainment demonstration pursuant to section 189(a)(1)(B); the RACM requirements of section 189(a)(1)(C); the RFP

requirements of section 189(c); and the attainment demonstration, RACM, RFP, and contingency measure requirements of part D, subpart 1 contained in section 172.

This final action does not constitute a redesignation to attainment under CAA section 107(d)(3) because Utah has not submitted a maintenance plan and EPA has not approved such a plan for the Ogden City nonattainment area as meeting the requirements of section 175A of the CAA, nor has EPA determined that Utah has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remains moderate nonattainment for the Ogden City nonattainment area until such time as EPA determines that Utah has met the CAA requirements for redesignating the Ogden City nonattainment area to attainment.

#### IV. Statutory and Executive Order Reviews

With this action, we are making a determination regarding attainment of the PM<sub>10</sub> NAAQS based on air quality data and, based on this determination, suspending certain Federal requirements. Therefore, this action would not impose additional requirements beyond those imposed by State law or by the CAA. For that reason, this action:

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

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

#### 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: December 17, 2012.

**James B. Martin,**

*Regional Administrator, Region 8.*

[FR Doc. 2012–31560 Filed 1–4–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2012–0752; FRL–9766–8]

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

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective on February 6, 2013.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2012–0752 for this action. Generally, documents in the docket for this action are available electronically at [www.regulations.gov](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 at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.