

each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice-and-comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in Section II.B of this document, including the basis for that finding.

#### IV. Statutory Authority

The statutory authority for this action is provided by sections 110, 126 and 307 of the CAA as amended (42 U.S.C. 7410, 7426 and 7607).

#### V. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the appropriate circuit by September 23, 2016. Under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

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

Environmental protection, Administrative practices and procedures, Air pollution control, Electric utilities, Incorporation by reference, Intergovernmental relations, Sulfur dioxide.

Dated: July 14, 2016.

**Gina McCarthy,**  
Administrator.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2014-0708; FRL-9949-47-Region 9]

#### Clean Data Determination for 1997 PM<sub>2.5</sub> Standards; California—South Coast; Applicability of Clean Air Act Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to determine that the South Coast air quality planning area in California has attained the 1997 annual and 24-hour

fine particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards. This determination is based upon complete (or otherwise validated), quality-assured and certified ambient air monitoring data showing that the area has monitored attainment of the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS based on the 2011–2013 monitoring period, and that all complete data available since that time period indicate that the area continues to attain. Based on the above determination, the requirements for this area to submit certain state implementation plan (SIP) revisions related to attainment shall be suspended for so long as the area continues to attain the 1997 annual and 24-hour PM<sub>2.5</sub> standards.

**DATES:** This rule is effective on August 24, 2016.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2014-0708. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, (415) 947-4192, or by email at [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, wherever “we”, “us” or “our” are used, we mean the EPA.

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#### I. Summary of Proposed Action

On December 9, 2014 (79 FR 72999), the EPA proposed to determine that the Los Angeles-South Coast Air Basin (“South Coast”) nonattainment area had attained the 1997 annual and 24-hour national ambient air quality standards (NAAQS or “standards”) for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, PM<sub>2.5</sub>) (“1997 PM<sub>2.5</sub>

NAAQS”).<sup>1</sup> Herein, we refer to our December 9, 2014 proposed rule as the “proposed rule.”

In our proposed rule, we explained that in making an attainment determination, the EPA generally relies on complete, quality-assured and certified data gathered at State and Local Air Monitoring Stations (SLAMS) and entered into the EPA’s Air Quality System (AQS) database.<sup>2</sup> Under 40 CFR 50.7 (“National primary and secondary ambient air quality standards for PM<sub>2.5</sub>”) and appendix N to 40 CFR part 50 (“Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>”), the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS is met when each monitoring site in the area has a design value at or below the standard.<sup>3 4</sup>

The EPA proposed the determination of attainment for the South Coast area based upon a review of the monitoring network operated by the South Coast Air Quality Management District (SCAQMD) and the data collected at the monitoring sites operating during the most recent three-year period from which data was available at the time of the proposed rule (*i.e.*, 2011 to 2013). Based on this review, the EPA found that complete (or otherwise validated), quality-assured and certified data for the South Coast showed that the annual and 24-hour design values for the 2011–2013 period were equal to or less than 15 micrograms per cubic meter (µg/m<sup>3</sup>) and 65 µg/m<sup>3</sup>, respectively, at all monitoring sites and that, therefore, the South Coast had attained the 1997 PM<sub>2.5</sub> NAAQS. See the data summary tables on pages 73003 and 73004 of our proposed rule.

In conjunction with and based upon our proposed determination that the South Coast had attained the standard,

<sup>1</sup> The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County (see 40 CFR 81.305).

<sup>2</sup> AQS is EPA’s repository for ambient air quality data. Data completeness requirements for a given year are met when at least 75 percent of the scheduled sampling days for each quarter have valid data.

<sup>3</sup> The annual PM<sub>2.5</sub> standard design value is the 3-year average of annual mean concentration, and the 1997 annual PM<sub>2.5</sub> NAAQS is met when the annual standard design value at each eligible monitoring site is less than or equal to 15.0 µg/m<sup>3</sup>. In 2012, we established a more stringent annual PM<sub>2.5</sub> NAAQS of 12.0 µg/m<sup>3</sup>, 78 FR 3086 (January 15, 2013) (“2012 PM<sub>2.5</sub> NAAQS”), but the 1997 annual PM<sub>2.5</sub> NAAQS remains in effect.

<sup>4</sup> The 24-hour PM<sub>2.5</sub> standard design value is the 3-year average of annual 98th percentile 24-hour average values recorded at each eligible monitoring site, and the 1997 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 65 µg/m<sup>3</sup>. In 2006, we established a more stringent 24-hour PM<sub>2.5</sub> NAAQS of 35 µg/m<sup>3</sup>, 71 FR 61144 (October 17, 2006) (“2006 PM<sub>2.5</sub> NAAQS”), but the 1997 24-hour PM<sub>2.5</sub> NAAQS remains in effect.

the EPA also proposed to determine that the obligation under the Clean Air Act (CAA or "Act") to submit any remaining attainment-related SIP revisions arising from classification of the South Coast as a Moderate nonattainment area under subpart 4 of part D (of title I of the Act) for the 1997 PM<sub>2.5</sub> NAAQS was not applicable for so long as the area continues to attain the 1997 PM<sub>2.5</sub> NAAQS. These attainment-related requirements include, but are not limited to, the part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the reasonably available control measures (RACM) provisions of section 189(a)(1)(C) and the reasonable further progress (RFP) provisions of section 189(c). In so doing, we proposed to apply the EPA's Clean Data Policy to the 1997 PM<sub>2.5</sub> NAAQS to suspend the attainment-related SIP submittal obligations under subpart 4 of part D (of title I of the CAA), since the South Coast nonattainment area is considered a "Moderate" nonattainment area under subpart 4. See page 73005 of our proposed rule. In proposing to apply the Clean Data Policy to the 1997 PM<sub>2.5</sub> NAAQS, we explained that we are applying the same statutory interpretation with respect to the implications of clean data determinations that the Agency has long applied in regulations for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS and in individual rulemakings for the 1-hour ozone, coarse particle (PM<sub>10</sub>) and lead NAAQS.

Please see the proposed rule for more detailed information concerning the PM<sub>2.5</sub> NAAQS, designations of PM<sub>2.5</sub> nonattainment areas, the regulatory basis for determining attainment of the NAAQS, the SCAQMD's PM<sub>2.5</sub> monitoring network, the EPA's review and evaluation of the data and the rationale and implications for application of the Clean Data Policy to the 1997 PM<sub>2.5</sub> NAAQS.

## II. Evaluation of 2014 and 2015 Data

We noted in our proposed rule that, at that time, AQS included no PM<sub>2.5</sub> data for year 2014 for the South Coast, but that several quarters of preliminary data were expected to be uploaded to AQS prior to the EPA's final action. See page 73003 of the proposed rule. We also indicated that we would review the preliminary 2014 data prior to taking final action to ensure that 2014 data are consistent with the determination of attainment. In the paragraphs that follow, before we discuss the data for 2014 and 2015, we discuss changes to the SCAQMD PM<sub>2.5</sub> ambient monitoring network and the EPA's determination

regarding eligibility of data from certain collocated monitors for comparison to the NAAQS.

At the time of our proposed rule, the PM<sub>2.5</sub> monitoring network in the South Coast consisted of 18 SLAMS. Monitoring networks frequently change over time in response to changing circumstances, requirements and needs. Since our proposed rule, the SCAQMD has discontinued monitoring at three sites (Burbank, Riverside (Magnolia) and Ontario (Fire Station)) and has established near-road PM<sub>2.5</sub> monitoring sites along Route 710 in Long Beach and along Route 60 in Ontario.<sup>5</sup> During at least portions of 2014 and 2015, SCAQMD operated collocated filter-based Federal Reference Method (FRM) and Federal Equivalent Method (FEM) Beta Attenuation Method (BAM) samplers at seven sites: Anaheim, Burbank, Central Los Angeles, North Long Beach, South Long Beach, Rubidoux and Mira Loma.

With respect to the discontinued sites, SCAQMD has requested approval from the EPA to suspend monitoring at the Burbank and Riverside (Magnolia) sites until suitable replacement sites can be located.<sup>6</sup> SCAQMD is not planning to replace the Ontario (Fire Station) site but rather to consolidate measurements from that site with nearby sites and thus has requested approval from the EPA to discontinue, rather than suspend, monitoring at the Ontario (Fire Station) site. The EPA has not taken action on the requests due to insufficient information, but is working with the SCAQMD to provide the basis to resolve the requests by including sufficient information in SCAQMD's upcoming 2016 Annual Air Quality Monitoring Network Plan (due for submittal to the EPA in July 2016). None of the three discontinued sites (Burbank, Riverside (Magnolia) and Ontario (Fire Station)) was ever the design value site in the South Coast for PM<sub>2.5</sub>, and given that the determination of attainment is based on the concentrations measured at the design value site, the fact that the EPA has not yet approved the relocation or closure of the three monitoring sites does not preclude taking final action on the attainment determination.

With respect to the two newly-established near-road PM<sub>2.5</sub> monitoring sites, the EPA has approved the sites and has determined that, with the

addition of the near-road sites, the SCAQMD network of PM<sub>2.5</sub> monitoring sites continues to meet the minimum requirements of our monitoring regulations even in the absence of the three discontinued sites.<sup>7</sup>

With respect to the eligibility of data from collocated monitors for comparison with the NAAQS, our regulations provide that monitoring agencies must assess data from PM<sub>2.5</sub> FEM monitors using certain performance criteria where the data are identified as not of sufficient comparability to a collocated FRM, and the monitoring agency requests that the FEM data should not be used for comparison to the NAAQS.<sup>8</sup> As described on page 73003 of the proposed rule, the SCAQMD requested that the 2011–2013 data from the collocated PM<sub>2.5</sub> FEM monitors at seven monitoring sites in the PM<sub>2.5</sub> monitoring network be considered not eligible for comparison to the NAAQS as part of its 2014 Annual Air Quality Monitoring Network Plan. The EPA approved the request by letter dated September 9, 2014. Similarly, as part of the 2015 Annual Air Quality Monitoring Network Plan, the SCAQMD submitted an ineligibility determination request for data from collocated FEM monitors over the 2012–2014 period, and on May 2, 2016, the EPA approved that request.<sup>9</sup> Both determinations were made based on assessments of the data showing that bias in the FEM data (relative to collocated FRM data) exceeded EPA's performance criteria for acceptable slope and intercept as defined in 40 CFR 58.11(e).

In the South Coast, SCAQMD has designated the PM<sub>2.5</sub> FRM samplers as the primary monitors where FRM and FEM monitors are collocated at a given site. Under our regulations, comparisons with the PM<sub>2.5</sub> NAAQS are made on a site-level, not a monitor-level basis, and the default dataset for a site is based on the designated primary monitor's recorded concentrations.<sup>10</sup> Collocated monitors may be used to augment the default dataset to fill in data gaps; however, collocated monitor data are ineligible for this purpose if the EPA has approved a request from a district to approve a determination that such data

<sup>7</sup> See letter and enclosures from Gretchen Busterud, Acting Deputy Director, Air Division, EPA Region IX, to Matt Miyasato, Deputy Executive Officer, Science and Technology Advancement, SCAQMD, dated October 29, 2015.

<sup>8</sup> 40 CFR 58.11(e).

<sup>9</sup> See letter from Meredith Kurpius, Manager, Air Quality Analysis Office, Air Division, EPA Region IX, to Jason Low, Ph.D., South Coast Air Quality Management District, dated May 2, 2016.

<sup>10</sup> 40 CFR part 50, appendix N, section 3.0(d).

<sup>5</sup> See SCAQMD, Annual Air Quality Monitoring Network Plan, July 2015, pages 16 and 17. SCAQMD submitted the 2015 network plan to the EPA on July 1, 2015. See letter from Rene M. Bermudez, Principal Air Quality Instrument Specialist, SCAQMD, to Meredith Kurpius, Ph.D., EPA Region IX, July 1, 2015.

<sup>6</sup> *Id.*, at appendix D, pages 1 and 2.

are ineligible for NAAQS comparison purposes. In this instance, the EPA has approved such ineligibility requests for collocated PM<sub>2.5</sub> FEM monitoring data for both the 2011–2013 and 2012–2014 periods.

With respect to the data, all four quarters for 2014 and 2015 have now been uploaded, and the SCAQMD has certified that 2014 and 2015 data are quality-assured.<sup>11</sup> As part of the 2014 and 2015 data review process, we reviewed raw data reports for SCAQMD monitoring sites. With respect to 2014 data, we noted that significant portions of the 2014 data had been flagged with a number of Quality Assurance (QA) qualifier flags. Specifically, portions of the 2014 data in quarters one, two, three and four were flagged with “QX” (does not meet QC criteria) and portions of data in quarter four were flagged with “1” (deviation from a CFR/critical criteria requirement).<sup>12</sup> An in-depth review of the data revealed that the “1” and “QX” flags were associated with deviations from the criteria in 40 CFR part 50 appendix L, sections 8.3.6 and 8.3.5, respectively. Some of the QA issues during 2014 stem from arrangements made by SCAQMD in anticipation of the agency’s temporary closure of its weighing room to allow for an upgrade to that facility and in response to construction delays

associated with that project. The SCAQMD’s weighing room reopened on December 4, 2014, and the QA issues affecting 2014 data did not affect data collected in 2015.

The requirements in 40 CFR part 50, appendix L, section 8.3.6 state that post-sample conditioning and weighing shall not exceed 30 days. This refers to the amount of time between when the sample is collected and when the sample is post-weighed. This is commonly referred to as the “post-sample hold time requirement” and, per EPA guidance (“QA Handbook”), is considered a “critical criteria”.<sup>13</sup> Adherence to this requirement is important because loss of mass is possible with excessive post-sample hold times, which would likely bias data low.

As described in section 17.3.3 and appendix D of the QA Handbook, for PM<sub>2.5</sub>, critical criteria are the specific requirements in 40 CFR 50 appendix L and 40 CFR 58 appendix A that have been deemed critical to maintaining the integrity of a sample or group of samples. The QA handbook further explains that observations that do not meet each and every criterion on the Critical Criteria Table should be invalidated unless there are compelling reasons and justification for not doing so. Since a portion of the 2014 data in quarter four has not met a critical

criterion, as defined by the QA Handbook, SCAQMD has invalidated these data. Therefore these data will not be considered as valid data for the purposes of this action.<sup>14</sup> Given the extent of invalidated data, the dataset for quarter four of 2014 is incomplete from all of the monitoring sites, resulting in an incomplete year for 2014.

Unlike the data for 2014, however, the data collected during 2015 are complete (or nearly complete) for all four quarters from all monitors.<sup>15</sup> For 2015, the basin-wide high-site annual average and (98th percentile) 24-hour-average PM<sub>2.5</sub> concentrations are 14.5 µg/m<sup>3</sup> and 43 µg/m<sup>3</sup>, respectively, based on complete or nearly complete datasets for 2015. During 2015, the high site for the annual average was the near-road Ontario (Route 60) site, and the high site for the 98th percentile 24-hour concentration was the Mira Loma site. Because the concentrations fall below the relevant NAAQS (15.0 µg/m<sup>3</sup>, annual average and 65 µg/m<sup>3</sup>, 24-hour average), they are consistent with the 2011–2013 data upon which the determination of attainment is based.

Lastly, we find further support for the conclusion that the South Coast has attained the 1997 PM<sub>2.5</sub> standard in a review of the long-term trends in PM<sub>2.5</sub> concentrations in the South Coast as summarized below in Table 1.

TABLE 1—SOUTH COAST BASIN-WIDE HIGH ANNUAL AND 24-HOUR PM<sub>2.5</sub> CONCENTRATIONS, 2001–2015

Year	Annual average (µg/m <sup>3</sup> ) <sup>a</sup>	98th Percentile 24-hour average (µg/m <sup>3</sup> ) <sup>b</sup>
2001	31.0	74
2002	27.5	66
2003	24.8	77
2004	22.1	72
2005	20.9	58
2006	20.8	54
2007	20.9	71
2008	18.3	47
2009	17.2	43
2010	15.2	36
2011	15.3	37
2012	15.1	36
2013	14.1	38
2014		

<sup>11</sup> For the letter of certification of 2014 data, see the letter from Matt M. Miyasato, Ph.D., Deputy Executive Officer, Science and Technology Advancement, SCAQMD, to Jared Blumenfeld, Regional Administrator, EPA Region IX, dated May 1, 2015. For the letter of certification of 2015 data, see the letter from Laki Tisopoulos, Ph.D., P.E., Assistant Deputy Executive Officer, Science and Technology Advancement, SCAQMD, to Deborah Jordan, Air Division Director, EPA Region IX, April 29, 2016.

<sup>12</sup> See 2014 Raw Data Report (AMP 350, April 14, 2016, SouthCoast\_PM<sub>2.5</sub>\_RawDataReport\_2014.pdf).

<sup>13</sup> See EPA’s Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, May, 2013 (EPA-454/B-13-003).

<sup>14</sup> On May 5, 2016, SCAQMD replaced the data code “1” with the null data code “AR” (lab error) for post-sample hold time requirement noncompliant data and therefore removed the data from the regulatory data record. See 2014 Raw Data Report (AMP 350), May 5, 2016. SouthCoast\_PM<sub>2.5</sub>\_RawDataReport\_PostSample\_Removed.pdf.

<sup>15</sup> The data from all quarters of 2015 from all of the monitoring sites are complete (i.e., 75 percent

or greater sampling days with valid data) except for: (1) Quarter one at the Long Beach—Route 710 near-road monitor (AQS ID #06-037-4008) during which 74 percent of sampling days have valid data; and (2) quarter four at the Anaheim monitor (AQS ID # 06-059-0007) during which 43 percent of sampling days have valid data. The Long Beach—Route 710 near-road monitor began operating in 2015. The Anaheim monitor has been operating for many years but has never been the design value site within the South Coast.

TABLE 1—SOUTH COAST BASIN-WIDE HIGH ANNUAL AND 24-HOUR PM<sub>2.5</sub> CONCENTRATIONS, 2001–2015—Continued

Year	Annual average (µg/m <sup>3</sup> ) <sup>a</sup>	98th Percentile 24-hour average (µg/m <sup>3</sup> ) <sup>b</sup>
2015	14.5	43

<sup>a</sup> Basin-wide high annual-average concentration is from the Rubidoux site for 2001–2005, the Mira Loma site from 2006–2013, and the Ontario (Route 60) site for 2015. **Bold** values represent exceedances of the applicable 1997 standard.

<sup>b</sup> Basin-wide high 98th percentile 24-hour average concentration is from the Rubidoux site for 2001–2003, 2005, and 2006; the San Bernardino site for 2004 and 2007; the Mira Loma site for 2008, 2010, 2011, 2013, and 2015; the Azusa site for 2009; and the Fontana site for 2012. **Bold** values represent exceedances of the applicable 1997 standard.

**Source:** AQS Design Value Reports, dated October 6, 2014, October 7, 2014, and May 5, 2016.

As shown in Table 1, basin-wide high-site PM<sub>2.5</sub> concentrations in the South Coast declined rapidly from 2001 to 2009. In more recent years, the decline has been more gradual and has even started to level out; however, the level reached in recent years are below the 1997 PM<sub>2.5</sub> NAAQS of (less than or equal to) 15.0 µg/m<sup>3</sup> (annual average) and 65 µg/m<sup>3</sup> (98th percentile 24-hour average). We have concluded that South Coast attained the 1997 PM<sub>2.5</sub> standard by the end of 2013, and this conclusion is supported by the data collected during 2015 and the long-term trend data of PM<sub>2.5</sub> concentrations in the South Coast that show signs of leveling out at a level consistent with attainment of that standard.

### III. Public Comments and the EPA's Responses

The EPA's proposed rule provided a 30-day public comment period. Upon request, we extended the comment period 14 days, from January 8th to January 22nd, 2015.<sup>16</sup> We received one set of comments on our proposed rule, a letter from Earthjustice on behalf of a group that Earthjustice refers to collectively as "Health Advocates".<sup>17</sup> We summarize the comments from Health Advocates and respond to them below.

*Comment #1:* Health Advocates assert that 2014 monitoring data demonstrate

that the South Coast is not attaining the 1997 PM<sub>2.5</sub> standards, and because the South Coast is not attaining the standard, suspension of attainment-related SIP submittal requirements, as proposed by the EPA, is inappropriate.

In support of their assertion, Health Advocates present annual average PM<sub>2.5</sub> data for six monitoring sites in the South Coast for year 2014 downloaded from the California Air Resources Board's (CARB's) Air Quality and Meteorological Information System (AQMIS) Web site (<http://www.arb.ca.gov/aqmis2/aqmis2.php>). Specifically, Health Advocates present the following data downloaded from AQMIS:

Monitoring site	2014 Annual mean (µg/m <sup>3</sup> )
Central Los Angeles—Los Angeles (Main Street) .....	18.8
Metropolitan Riverside County—Rubidoux .....	15.6
Riverside—Magnolia .....	16.3
Mira Loma—Mira Loma (Van Buren) .....	19.2
Burbank—W Palm Ave .....	19.8
San Bernardino—Upland .....	17.9

Lastly, Health Advocates assert that, in light of 2014 data showing violations of the 1997 PM<sub>2.5</sub> standard, the EPA must reclassify the South Coast as a "Serious" nonattainment area under CAA section 188(b)(2) and require the South Coast to prepare a "Serious" area plan.

*Response to Comment #1:* We note that Health Advocates do not challenge our evaluation of South Coast PM<sub>2.5</sub> data for 2011–2013, our proposed determination that the design values in the South Coast for that period are less than the 1997 PM<sub>2.5</sub> standards or our proposed suspension of any remaining SIP submittal requirements for the 1997 PM<sub>2.5</sub> standards. Rather, Health Advocates assert that data for 2014 made available since publication of our proposed rule precludes our final determination of attainment because the 2014 data purportedly shows that the

South Coast is not currently attaining the 1997 PM<sub>2.5</sub> standards. We disagree.

First, CARB's AQMIS combines preliminary (real-time) data with official (historical) data. By their nature, preliminary data are subject to change and may be subject to adjustment, substitution or exclusion under applicable monitoring regulations. In this instance, the annual average PM<sub>2.5</sub> concentrations cited by Health Advocates at four of the monitoring sites (Central Los Angeles, Rubidoux, Mira Loma and Burbank) reflect data collected by continuous PM<sub>2.5</sub> FEM monitors for which the SCAQMD has requested an ineligibility determination (*i.e.*, for comparison to the NAAQS), and because the EPA has approved the SCAQMD's request, the continuous PM<sub>2.5</sub> FEM data are excluded from NAAQS attainment determinations. With respect to the annual average PM<sub>2.5</sub> concentrations cited by Health Advocates at the two other monitoring sites (Riverside (Magnolia) and Upland), the data reflect non-FEM methods and are therefore not eligible for comparison with the PM<sub>2.5</sub> NAAQS.<sup>18</sup>

Second, as discussed in detail in section II of this document, a review of the only complete, quality-assured data available after the 2011–2013 period, that is, the 2015 PM<sub>2.5</sub> ambient data collected in the South Coast, supports EPA's determination that the area is attaining the NAAQS. As a result, our suspension of attainment-related SIP submittal requirements is appropriate, and reclassification of the area to "Serious" for the 1997 PM<sub>2.5</sub> standards is not warranted.

Lastly, with respect to reclassification of the South Coast to Serious, we note that the EPA has reclassified the South Coast from Moderate to Serious for the more stringent 2006 (24-hour) PM<sub>2.5</sub> NAAQS. See 81 FR 1514 (January 13, 2016). As a result of that action, California is required to submit, by August 14, 2017, additional SIP

<sup>18</sup> Under 40 CFR 50.7(a)(1), the 1997 PM<sub>2.5</sub> NAAQS are defined in terms of ambient air measurements made by FRMs or FEMs.

<sup>16</sup> See 80 FR 449 (January 6, 2015).

<sup>17</sup> See letter, Elizabeth Forsyth, Earthjustice, and Maya Golden-Krasner, Communities for a Better Environment, to Wienke Tax, EPA Region IX, dated January 22, 2015. Earthjustice submitted the comments on our proposed rule on behalf of Communities for a Better Environment, Sierra Club, Center for Biological Diversity, WildEarth Guardians, Medical Advocates for Healthy Air, and Physicians for Social Responsibility—Los Angeles. Earthjustice's letter included four attachments: (1) EPA's technical support document and response to comments document for action on the 2007 South Coast Air Quality Management Plan; (2) comments on the 2011 Air Monitoring Network Plan for the South Coast Air Quality Management District; (3) a draft report prepared by Greg Gould, "Near Roadway Emissions: Measures, Exposure, and Monitoring;" and a report prepared by E.H. Pechan & Associates, Inc., "Estimating Contributions of On-Road Emissions to Near Highway PM<sub>2.5</sub> Concentrations."

revisions to satisfy the statutory requirements that apply to Serious PM<sub>2.5</sub> nonattainment areas, including the requirements of subpart 4 of part D, title I of the Act. The Serious area plan must provide for attainment of the 2006 PM<sub>2.5</sub> NAAQS in the South Coast as expeditiously as practicable, but no later than December 31, 2019, in accordance with the requirements of part D of title I of the Act.

Moreover, notwithstanding the suspension of attainment-related SIP requirements related to the 1997 PM<sub>2.5</sub> NAAQS arising from today's action, California must continue to develop such plans not just for the more stringent 2006 (24-hour) PM<sub>2.5</sub> NAAQS cited above, but also for the more stringent 2012 (annual average) PM<sub>2.5</sub> NAAQS for which the South Coast has been classified as Moderate nonattainment effective April 15, 2015. See 80 FR 2206 (January 15, 2015). The new South Coast plan addressing Moderate area requirements for the 2012 PM<sub>2.5</sub> NAAQS is due no later than October 15, 2016. See CAA section 189(a)(2)(B).

*Comment #2:* Health Advocates contend that the EPA cannot make a clean data determination for the 1997 PM<sub>2.5</sub> standards in the South Coast because the data the EPA considered for its proposed determination exclude data from near-roadway monitors. In support of their contention, Health Advocates cite CAA section 107(a), which requires states to assure air quality within the entire geographic area and note that Congress did not exempt areas near highways, where evidence cited by the commenters indicates much higher levels of PM<sub>2.5</sub> within 300 meters of the highway. Thus, they assert that the inclusion of near-roadway monitoring data is necessary to protect the people who live, work and go to school within 300 meters of a highway in the South Coast and cite changes in the EPA's monitoring regulations that require near-roadway monitoring in certain urban areas.

Health Advocates also cite a case pending in the Ninth Circuit Court of Appeals in which community and environmental groups are challenging the EPA's approval of the attainment demonstration for the 1997 PM<sub>2.5</sub> standards in the South Coast, in part, on the grounds that the attainment demonstration does not address the near-highway environment. Health Advocates contend that the EPA should not make a clean data determination

before the court has ruled on this issue.<sup>19</sup>

*Response to Comment #2:* CAA section 107(a) provides that each state shall have the primary responsibility for assuring air quality within the entire geographic area comprising such state by submitting a SIP that will specify the manner in which the NAAQS will be achieved and maintained in such state. CAA section 107(a) does not specify how the EPA must determine whether an area within a state has attained the NAAQS. Such determinations are governed by the applicable sections of 40 CFR parts 50, 53 and 58, and in the proposed rule at page 73001, the EPA identifies the specific regulations governing our proposed determination of attainment for the South Coast for the 1997 PM<sub>2.5</sub> standards.

Health Advocates cite changes made by the EPA to the Agency's monitoring regulations to require states to establish near-road PM<sub>2.5</sub> monitors in certain urban areas as support for their assertion that the EPA's proposed determination of attainment for the South Coast in essence denies thousands of people who live near highways from the protections of the Clean Air Act. We agree that the EPA's monitoring regulations have been revised to require near-road PM<sub>2.5</sub> monitoring in Core-Based Statistical Areas (CBSAs) having one million or greater persons. See 40 CFR part 58, appendix D, section 4.7.1(b), as added by the EPA's final action published at 78 FR 3086, at 3282 (January 15, 2013).

The South Coast encompasses two such areas, the Los Angeles-Long Beach-Anaheim, CA CBSA and the Riverside-San Bernardino, CA CBSA. Given that both CBSAs exceed 2.5 million people, the first PM<sub>2.5</sub> monitors specifically located to measure the near-road environment were required to be operational as of January 1, 2015. In response to the revised monitoring requirements, beginning January 1, 2015, the SCAQMD began monitoring ambient PM<sub>2.5</sub> concentrations at two near-road sites: the Long Beach Route 710 site (AQS ID 06-037-4008) is located near Route 710 in Long Beach, and the Ontario Route 60 Near-Road site (06-071-0027) is located near Route 60 in Ontario. We now have one year's worth of data from the two near-road PM<sub>2.5</sub> monitors.<sup>20</sup> At the Long Beach Route 710 site, the annual average PM<sub>2.5</sub> concentration was 12.9 μ/m<sup>3</sup> during

2015, and the 98th percentile 24-hour PM<sub>2.5</sub> concentration was 36 μ/m<sup>3</sup>. At the Ontario Route 60 site, the corresponding concentrations were 14.5 μ/m<sup>3</sup> and 40 μ/m<sup>3</sup>, respectively. In summary, the ambient concentrations were less than the corresponding 1997 PM<sub>2.5</sub> NAAQS and are consistent with continued attainment of the 1997 PM<sub>2.5</sub> NAAQS in the South Coast.

Also, as noted in our proposed rule, the EPA's evaluation of whether the South Coast PM<sub>2.5</sub> nonattainment area has attained the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS is based in part on our review of the adequacy of the PM<sub>2.5</sub> monitoring network in the nonattainment area and the reliability of the data collected by the network. During the relevant time period in which the data that we relied upon for the proposed determination of attainment were collected (*i.e.*, 2011–2013), the PM<sub>2.5</sub> monitoring network in the South Coast was not required to include near-road PM<sub>2.5</sub> monitors. Therefore, the lack of a near-road PM<sub>2.5</sub> monitor during the 2011–2013 period does not undermine our determination of attainment of the standard based on the data collected during those years. Moreover, as noted above, the near-road ambient PM<sub>2.5</sub> data that are now available are consistent with continued attainment of the 1997 PM<sub>2.5</sub> NAAQS in the South Coast.

Lastly, Health Advocates are correct that a lawsuit was filed in the Ninth Circuit Court of Appeals, in which near-road PM<sub>2.5</sub> concentrations were at issue. See *Physicians for Social Responsibility—Los Angeles v. EPA*, Ninth Circuit, No. 12–70079. However, the action that is challenged in that case is the EPA's approval of the attainment demonstration for the 1997 PM<sub>2.5</sub> standards in the South Coast that relies on modeling results to predict future ambient concentrations. Today's action does not rely on future modeled concentrations but rather on past monitored concentrations collected by a monitoring network that, as explained above, is adequate and consistent with the EPA's monitoring requirements for the relevant period.

In any event, on June 9, 2015, the court issued a memorandum denying the petition for review in the *Physicians for Social Responsibility* case. As relevant here, the court held that the South Coast PM<sub>2.5</sub> plan does not impermissibly ignore pollution in the near-highway areas because the monitoring guidelines explicitly specify that states generally need not monitor “microscale” or “middle scale” areas, which include “traffic corridors” and areas “along traffic corridors.” See

<sup>19</sup> The case cited is *Physicians for Social Responsibility—Los Angeles v. EPA*, 9th Cir., No. 12–70079.

<sup>20</sup> See AQS Design Value Report, dated May 5, 2016.

*Physicians for Social Responsibility—Los Angeles v. EPA*, No. 12–70079, memorandum opinion at 3 (9th Cir., June 9, 2015). Thus, the case presents no reason to delay final action on the determination of attainment for the South Coast for the 1997 PM<sub>2.5</sub> standards.

#### IV. Final Action

For the reasons stated above, the EPA is taking final action to determine that the South Coast nonattainment area in California has attained the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS based on complete (or otherwise validated), quality-assured and certified data in AQS for 2011–2013. We also find that the most recent quality-assured and certified data in AQS show that this area continues to attain the standards.

In conjunction with and based upon our final determination that the South Coast has attained and is currently attaining the standard, the EPA is taking final action to determine that the obligation to submit any remaining attainment-related SIP revisions arising from classification of the South Coast as a Moderate nonattainment area under subpart 4 of part D (of title I of the Act) for the 1997 PM<sub>2.5</sub> NAAQS is not applicable for so long as the area continues to attain the 1997 PM<sub>2.5</sub> NAAQS. These attainment-related requirements include, but are not limited to, 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) and the RFP provisions of section 189(c).

Today's final action does not constitute a redesignation of the South Coast nonattainment area to attainment for the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS under CAA section 107(d)(3) because we have not yet approved a maintenance plan for the South Coast 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 remains Moderate nonattainment for this area until such time as the EPA determines that California has met the CAA requirements for redesignating the South Coast nonattainment area to attainment.

If the South Coast nonattainment area continues to monitor attainment of the 1997 PM<sub>2.5</sub> NAAQS, the requirements for the area to submit an attainment demonstration and associated RACM, an RFP plan, contingency measures and any other planning requirements related to attainment of the 1997 PM<sub>2.5</sub> NAAQS

will remain suspended. If, after today's action, the EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 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.

#### V. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not

apply to Indian Tribes, and thus this action will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

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

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

Dated: July 8, 2016.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

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

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

#### Subpart F—California

- 2. Section 52.247 is amended by adding paragraph (g) to read as follows:

**§ 52.247 Control strategy and regulations: Fine Particle Matter.**

\* \* \* \* \*

(g) *Determination of Attainment:* Effective August 24, 2016, the EPA has determined that, based on 2011 to 2013 ambient air quality data, the South Coast PM<sub>2.5</sub> nonattainment area has attained the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures and other planning SIPs related to attainment for as long as this area continues to attain the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS. If the EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 1997 PM<sub>2.5</sub> NAAQS, the corresponding determination of attainment for the area shall be withdrawn.

[FR Doc. 2016-17410 Filed 7-22-16; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[EPA-HQ-OAR-2011-0817; FRL-9949-46-OAR]

RIN 2060-AS98

**National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to amend the National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry. This direct final rule provides, for a period of 1 year, an additional compliance alternative for sources that would otherwise be required to use an HCl CEMS to demonstrate compliance with the HCl emissions limit. This compliance alternative is needed due to the current unavailability of a calibration gas used for quality assurance purposes. This direct final rule also restores regulatory text requiring the reporting of clinker production and kiln feed rates that was deleted inadvertently.

**DATES:** This rule is effective on September 8, 2016 without further notice, unless the EPA receives significant adverse comment by August

24, 2016. If the EPA receives significant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2011-0817, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharon Nizich, Sector Policies and Programs Division (D243-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541-2825; fax number: (919) 541-5450; and email address: [nizich.sharon@epa.gov](mailto:nizich.sharon@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Organization of This Document.* The information in this preamble is organized as follows:

- I. General Information
  - A. Why is the EPA using a direct final rule?
  - B. Does this direct final rule apply to me?
  - C. What should I consider as I prepare my comments for the EPA?
- II. What are the amendments made by this direct final rule?
- III. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. Paperwork Reduction Act (PRA)
  - C. Regulatory Flexibility Act (RFA)
  - D. Unfunded Mandates Reform Act (UMRA)
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act (NTTAA)
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act (CRA)

**I. General Information**

*A. Why is the EPA using a direct final rule?*

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and do not anticipate significant adverse comment. However, in the “Proposed Rules” section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to amend the National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry, if EPA receives significant adverse comments on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives significant adverse comment on all or a distinct portion of this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

*B. Does this direct final rule apply to me?*

Categories and entities potentially regulated by this direct final rule include:

Category	NAICS Code <sup>1</sup>
Portland cement manufacturing facilities .....	327310

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this direct final rule. To determine whether your facility is affected, you should examine the applicability criteria in 40 CFR 63.1340. If you have questions regarding the applicability of any aspect of this action