



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

DEC 14 2004

MEMORANDUM

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

SUBJECT: Clean Data Policy for the Fine Particle National Ambient Air Quality Standards

FROM: Stephen D. Page, Director
Office of Air Quality Planning and Standards

TO: Air Division Directors, Regions I-X

Purpose

In December 2004, EPA is designating areas as nonattainment with the national ambient air quality standards (NAAQS) for fine particles. This policy memorandum addresses the requirements for those nonattainment areas that, prior to the date that their State Implementation Plans (SIPs) are due, demonstrate that they are attaining the fine particle standard. Specifically, it addresses whether such areas must submit certain portions of the plans – those addressing reasonable further progress (RFP), attainment demonstrations and contingency measures as required in section 172 (c) of the Clean Air Act (CAA). This memorandum also describes the process by which EPA will determine whether an area is attaining the PM_{2.5} standard.

Background & Policy

EPA established NAAQS for fine particles in 1997. EPA expects to make final attainment, unclassifiable, and nonattainment designations in December 2004. Nonattainment areas must submit their SIPs within 3 years of the effective date of the designations (i.e. March 2008). Areas must attain the standard as expeditiously as practicable. Presumptively, attainment should be achieved within 5 years of designation, although EPA may grant an attainment date extension of up to 5 additional years based on the severity of the nonattainment problem and the availability of emissions controls. Thus, attainment dates will range from 5 to 10 years from the date of designation (i.e. 2010 to 2015). Attainment must be determined based on the 3 calendar years prior to the attainment date.

Because PM_{2.5} exposure is linked to significant health effects, EPA encourages States to achieve reductions in PM_{2.5} and its precursor emissions as early as possible, especially in areas that are expected to be designated as nonattainment. Public health in these areas will improve as levels of fine particles decline. By meeting the standard, they will reduce the incidence of premature mortality, hospital admissions, missed days of work and school, and other adverse respiratory and cardiac effects in children and adults.

With these benefits in mind, we have reviewed the CAA to determine whether an area that is originally designated as nonattainment must still submit certain SIP requirements if the area has 3 consecutive calendar years of air quality data showing that it meets the PM2.5 standards prior to its required SIP submittal date. We believe that such areas may be exempt from making submissions for RFP, attainment demonstrations, and contingency measures – as long as those areas continue to meet the standard. However, if such an area is determined to violate the standards prior to being redesignated to attainment, the area will be required to address the pertinent requirements when it submits its SIP to EPA. EPA encourages States to take action to redesignate areas that are attaining the standard as expeditiously as practicable. In order to assist in this process, EPA will be reviewing the possibility of developing a “Limited Maintenance Plan Policy” for PM2.5 areas, which may be used in conjunction with the Clean Data Policy to assist States in getting areas redesignated to attainment in an expeditious manner.

Interpretation and Legal Rationale

The SIP provisions that are the subject of this policy are those addressing RFP, attainment demonstrations, and contingency measures. EPA previously has interpreted that the general provisions of the CAA subpart 1, part D (§§171 and 172) do not require an *ozone* nonattainment area to include these provisions in its SIP if that area meets the ozone standard. We believe it is appropriate to make the same interpretation for PM2.5. Our rationale is as follows:

- 1) **Reasonable Further Progress:** Section 171 (1) states that, for the purposes of part D, Reasonable Further Progress 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.”

If an area has 3 consecutive calendar years of air quality data showing it has attained the standard before the SIP due date, the purpose of the RFP requirement will have been fulfilled, and we believe the area does not have to address RFP in its SIP.

We took this view with respect to the general RFP requirement [CAA §172(c)(2)] in the “General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990” (General Preamble) (see 57 FR 13498, April 16, 1992), and we are now extending that interpretation to PM2.5. In the General Preamble, EPA stated that:

“requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. A showing that the State will make RFP toward attainment will, therefore, have no meaning at that point” (see 57 F R 13564).

2) Attainment Demonstrations

This interpretation also is consistent with our previous interpretation of §172(c) requirements in the General Preamble as they pertain to ozone attainment demonstrations. EPA stated that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "*attainment will have been reached*" (see 57 FR 13564; also Calcagni memorandum, September 4, 1992). If an area has attained the standard before the SIP due date, we believe the area does not have to include an attainment demonstration in its SIP.

3) Contingency Measures

Similar reasoning applies to the contingency measures SIP requirement, which is linked with both the attainment demonstration and RFP requirements. EPA previously has interpreted the contingency measures requirement of §172(c)(9) as no longer being applicable once an area has attained the standard, because those "*contingency measures are directed at ensuring RFP and attainment by the applicable date*" (see 57 FR 13564). Areas attaining the PM2.5 standard before their SIP due dates will not have to address contingency measures in their SIPs.

Each of these interpretations applies only as long as a nonattainment area continues to monitor attainment of the standard. If such an area violates the PM2.5 NAAQS, the area would again be required to submit the pertinent SIP sections. Therefore, a determination that an area need not submit one or more parts of a SIP **amounts to a suspension of the requirement as long as the area continues to attain the standard**. If EPA ultimately redesignates the area to attainment, then the area will be entirely relieved of these requirements (to the extent they are not the basis for the area's maintenance plan).

Consequences for Redesignations, Sanctions and Conformity

Redesignation: A determination that an area has met the PM2.5 NAAQS is not equivalent to a redesignation to attainment. Attainment of the standard is only one of the criteria an area must satisfy in order to be redesignated [CAA §107(d)(3)(E)]. The State also must submit, and receive full approval of a request that satisfies all of the criteria for redesignation, including the requirements to:

- demonstrate that the improvement in the area's air quality is due to permanent and enforceable reductions;

- have a fully approved SIP that meets all of the applicable requirements under section 110 and part D; and
- have a fully approved maintenance plan.

The SIP submissions for RFP, attainment demonstration, and contingency measures discussed in this memorandum would not be required in order for an area's redesignation request to be approved, provided that the area is attaining the PM_{2.5} standard. However, if an area again violates the standard before EPA takes final action on that area's redesignation request, EPA could not redesignate the area, and the SIP requirements would once again apply. Areas that are redesignated are relieved of all nonattainment requirements.

Sanctions: If EPA determines that an area is attaining the PM_{2.5} standard, thereby suspending the SIP submission requirements discussed above would be suspended, and any sanction clock related to those SIP requirements would be stopped.

Conformity: An area determined to be attaining the standard under this policy will be required to use the applicable regional emissions test, as required in the transportation conformity rule at 69 FR 40004 (July 1, 2004). This rule addresses the specific emissions tests for transportation plan and TIP conformity determinations that occur before and after a PM_{2.5} SIP having motor vehicle emissions budgets is established.

New Source Review (NSR)

An attainment determination pursuant to this policy will not relieve an area of its responsibility to meet the requirements of EPA's NSR regulations. All NSR requirements would continue to apply to any area designated as nonattainment.

Process for Determining Attainment

Regional offices make determinations – EPA Regional Offices will conduct individual rulemakings for each area seeking an attainment determination under this policy. Once the area has demonstrated that it is meeting the PM_{2.5} standard, the Regional Office will issue a binding determination that the area has attained the standard and need not make the SIP submittals discussed above.

Three years of clean data required – To demonstrate that it is meeting the standard, a nonattainment area must have 3 consecutive years of air quality monitoring data (e.g. 2004-2006, for areas that have a SIP submittal date of February 2008) that show the area had clean air quality that precede the areas required SIP submittal date. The data must be complete and quality-assured, consistent with 40 CFR part 58 requirements, and other relevant EPA guidance. The State also must ensure that the data are properly submitted to the Air Quality Subsystem of

EPA's Aerometric Information Retrieval System. The State should notify its EPA Regional Office that it believes a nonattainment area is attaining the PM_{2.5} standard and petition for an attainment determination under this policy. EPA believes that the determination of attainment for an area should be consistent with the manner that the area was designated as nonattainment¹.

Entire multi-state areas must have clean air to be eligible – Multi-state nonattainment areas must demonstrate attainment for the entire nonattainment area in order for EPA to suspend any of the SIP requirements covered by this policy. EPA will not suspend any requirements based on a determination that part of a nonattainment area is monitoring attainment. If the multi-state nonattainment area involves more than one EPA Region, the appropriate Regional Offices should coordinate these efforts in making any attainment determinations.

Areas must continue to meet PM_{2.5} standard – Areas that are determined to attain the PM_{2.5} standard under this policy must continue to monitor clean air. The State must continue to operate an appropriate air quality monitoring network, in accordance with EPA regulations, to verify the attainment status of the area (see 40 CFR part 58).

A violation means SIP requirements apply – If EPA determines that an area has violated the PM_{2.5} standard, the area would again be required to submit the pertinent requirements under the SIP for the area. EPA would notify the State of that determination and would also provide notice to the public in the Federal Register. Areas subject to such a determination would receive a reasonable amount of time to address the RFP, attainment demonstration and/or contingency measure requirements and submit revisions to their SIPs. EPA would establish this SIP submittal date on a case-by-case basis, taking into account individual circumstances surrounding the particular SIP provisions at issue.

Areas remain subject to other EPA requirements – Attainment determinations under this policy do not shield an area from other required actions, such as provisions to address pollution transport, which could require emission reductions at sources or other types of emission activities contributing significantly to nonattainment in other areas or States, or interfering with maintenance in those areas. EPA has the authority to require emissions reductions as necessary and appropriate to deal with transported air pollution [see CAA §§110(a)(2)(D) and 110(a)(2)(A).]

¹ Areas that are designated based upon violations identified at specific monitors located within a given area should also be used in the determination of attainment for the area. The use of spatial averaging should only be used in determinations of attainment for an area where the technique was also used in designating the area as nonattainment initially.

If you have any questions about this policy, please contact Larry Wallace of my staff, at (919) 541-0906, or Rich Damberg at (919) 541-5592.

cc: Rob Brenner
Bill Harnett
Rich Ossias
Joe Paisie
Sally Shaver
Peter Tsirigotis
Lydia Wegman