have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone around an OCS Facility to protect life, property and the marine environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.848 to read as follows:

§ 147.848 Olympus Tension Leg Platform Safety Zone

(a) Description. The Olympus Tension Leg Platform is in the deepwater area of the Gulf of Mexico in Mississippi Canyon Block 807B. The facility is located at 28°9′35.59″ N, 89°14′20.86″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge and the area within 500 meters (1640.4 feet) of each of the supply boat mooring buoys is a safety zone.

(b) Regulation. No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

Dated: June 28, 2013.

T.A. Sokalzuk,

Captain, U.S. Coast Guard, Acting Commander, Eighth Coast Guard District.

[FR Doc. 2013–17241 Filed 7–17–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2012–0760; FRL–9835–2]

Revision to the Washington State Implementation Plan; Approval of Motor Vehicle Emission Budgets and Determination of Attainment for the 2006 24-Hour Fine Particulate Standard; Tacoma-Pierce County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a request submitted by the Washington Department of Ecology (Ecology) dated November 28, 2012, to establish motor vehicle emission budgets for the Tacoma-Pierce County Fine Particulate Matter ($PM_{2.5}$) nonattainment area to meet transportation conformity requirements. Under the Clean Air Act (CAA), new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the State Implementation Plan (SIP). The CAA requires federal actions in nonattainment and maintenance areas to ''conform to'' the goals of SIP. This means that such actions will not cause or contribute to violations of the National Ambient Air Quality Standards (NAAQS), worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone.

Under the Transportation Conformity Rule, the EPA can approve motor vehicle emission budgets based on the most recent year of clean data if the EPA approves the request in the rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment. In September 2012, the EPA finalized an attainment finding for the Tacoma-Pierce County $PM_{2.5}$ nonattainment area (hereafter referred to as ''Tacoma-Pierce County Area'' or ''the area''). This finding, also called a clean data determination, was based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing that the area had monitored attainment of the 2006 $PM_{2.5}$ NAAQS based on the 2009–2011 data available in the EPA's Air Quality System database. This action proposes to update the previous finding of attainment with more recent 2010–2012 data and proposes to approve motor vehicle emission budgets under the Transportation Conformity Rule.

DATES: Written comments must be received on or before August 19, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2012–0760, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Email: *R10-Public_Comments@epa.gov.*
- Mail: Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- Hand Delivery/Courier: EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2012–0760. 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 the disclosure of which 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 docket are listed in the *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, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at telephone number: (206) 553–0256, email address: *hunt.jeff@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

I. Background

The 2006 $PM_{2.5}$ NAAQS set forth at 40 CFR 50.13 became effective on December 18, 2006 and promulgated a 24-hour standard of 35 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of the 98th percentile of 24-hour concentration (71 FR 61144, October 17, 2006). Effective December 14, 2009, the EPA designated Tacoma-Pierce County (partial county designation) as a nonattainment area for the 2006 24-hour $PM_{2.5}$ standard (74 FR 58688, November 13, 2009). Under 40 CFR 51.1002, states were required to submit within three years of the effective date of a nonattainment designation a revision to the SIP that meets nonattainment planning requirements. Prior to Washington's SIP revision submittal, the EPA issued a proposed finding of attainment on July 5, 2012, also called a clean data determination, based upon certified ambient air monitoring data showing that the Tacoma-Pierce County Area had met the 2006 $PM_{2.5}$ NAAQS for the most recent 2009–2011 monitoring period (77 FR 39657). The EPA received no comments on the proposal and issued a final finding of attainment on September 4, 2012 (77 FR 53772). In accordance with 40 CFR 51.1004(c), in effect at that time, the September 4, 2012 finding of attainment suspended the requirements for Washington to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and most other planning SIP revisions related to attainment of the standard for so long as the nonattainment area continues to meet the 2006 $PM_{2.5}$ NAAQS. However, a finding of attainment does not suspend the CAA section 176(c) obligation to meet transportation conformity requirements.

As described in 40 CFR 93.109(c)(5) of the Transportation Conformity Rule, a state may request that motor vehicle emissions budgets (MVEBs) calculated for the most recent year of attainment be used to satisfy the budget test as set forth in 40 CFR 93.118. Under this option, the EPA approves the MVEBs request in a rulemaking that determines the area has attained the NAAQS for which the area is designated nonattainment. In this action, the EPA is reaffirming the previous finding of attainment with updated 2010–2012 data and is proposing to approve MVEBs under 40 CFR 93.109(c)(5)(iii) for the Tacoma-Pierce County Area.

II. Description of Attainment Year (Clean Data) MVEBs

The Transportation Conformity Rule allows the state air quality agency to request that motor vehicle emissions in the most recent year of clean data be used as budgets. The EPA must approve that request in the rulemaking that determines that the area has attained the relevant NAAQS (40 CFR 93.109(c)(5)(iii)). On November 28, 2012, Ecology requested that the EPA establish MVEBs for $PM_{2.5}$ and nitrogen oxide (NO_X) calculated for 2011, the first year of attainment for the Tacoma-Pierce County Area. These budgets were calculated using the Motor Vehicle Emissions Simulator emissions model (MOVES). See ''Policy Guidance on the Use of MOVES2010 and Subsequent Minor Model Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' (EPA, April 2012).

Under the Transportation Conformity Rule, 40 CFR 93.102(b)(1) and (2)(iv) and (v), only MVEBs for $PM_{2.5}$ and NO_X for the 2011 attainment year are applicable for meeting conformity requirements in the Tacoma-Pierce County Area. The Transportation Conformity Rule requires that MVEBs must address direct $PM_{2.5}$ emissions. NO_X emissions must also be included unless the EPA and state have made a finding that transportation-related emissions of NO_X are not a significant contributor to the area's $PM_{2.5}$ problem. There was no such finding in this case. Therefore, Ecology requested that MVEBs be established for on-road emissions of direct $PM_{2.5}$ and NO_X.

Under the Transportation Conformity Rule, $PM_{2.5}$ precursors volatile organic compounds (VOCs), sulfur dioxide (SO_2) and ammonia (NH_3) must be addressed before a SIP is submitted if either the EPA or the state air agency makes a finding that on-road emissions of any of these precursors is a significant contributor to the area's $PM_{2.5}$ problem. Neither the EPA nor Ecology has made such a finding with regard to any of these precursors. Therefore, consistent with the Transportation Conformity Rule, the State did not request that MVEBs be established for VOCs, SO_2 or NH_3.

The EPA promulgated conformity regulations to implement the 1997 $PM_{2.5}$ NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005). Subsequently, the EPA promulgated conformity regulations to implement the 2006 $PM_{2.5}$ NAAQS in March 2010 (75 FR 14260, March 24, 2010). Those actions were not part of the final rules remanded to the EPA by the Court of Appeals for the District of Columbia in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013) (*NRDC* v. *EPA*). The Court remanded to the 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'') because it concluded that the EPA must implement the $PM_{2.5}$ NAAQS pursuant to the PM-specific provisions of subpart 4 of part D of title I of the CAA, rather than solely under the general provisions of subpart 1. This decision does not affect the EPA's proposed approval of the Tacoma-Pierce County MVEBs. The EPA's conformity rules implementing the $PM_{2.5}$ NAAQS were separate actions from the overall $PM_{2.5}$ implementation rule addressed by the Court and were not considered or disturbed by the decision. Therefore, the conformity regulations were not at issue in *NRDC* v. *EPA*.[1]

[1] The 2004 rulemaking addressed most of the transportation conformity requirements that apply in $PM_{2.5}$ nonattainment and maintenance areas. The 2005 conformity rule included provisions addressing treatment of $PM_{2.5}$ precursors in MVEBs. *See* 40 CFR 93.102(b)(2). The 2010 rulemaking

The Transportation Conformity Rule's adequacy criteria at 40 CFR 93.118(e)(4)(i)–(v) are not directly applicable because they apply to budgets that are part of a SIP submittal and the budgets that are under review in this action were submitted under the Transportation Conformity Rule provision that allows a state to request that budgets be established through the EPA's clean data determination process. However, these criteria establish a general framework for the review of any MVEBs before those budgets are made effective for use in transportation conformity determinations. For this reason, the EPA has reviewed the direct $PM_{2.5}$ and NO_X MVEBs submitted by the State by applying the general requirements of the criteria.

Briefly, our review has determined:

- The request to establish these budgets was made by the appropriate State official (letter addressed to Dennis M. McLerran, Regional Administrator, EPA Region 10, from Ted Sturdevant, Director, Washington State Department of Ecology, November 28, 2012, included in the docket for this action).
- The request for establishment of MVEBs underwent full interagency consultation including consultation with representatives from the following agencies: EPA, Federal Highway Administration, Federal Transit Administration, Washington State Department of Transportation, Puget Sound Clean Air Agency, and Puget Sound Regional Council. All meetings of the interagency air quality consultation partners were open to the public, and the EPA raised no concerns with the MVEBs or calculation methodology as part of the consultation process.
- As shown below in Table 1, the budgets are clearly identified and precisely quantified.
- The budgets are consistent with attainment of the 2006 24-hour $PM_{2.5}$ NAAQS as they have been established for 2011, which was the most recent year of clean data available at the time the submittal was made in November 2012, and the area was attaining the for the 2009–2011 period.
- The budgets are based on results from the EPA's approved motor vehicle emission factor model, MOVES2010b. The modeling analyses are based on the most recent planning information for the area and include consideration of all relevant national regulations as well as all previously established local transportation control measures.

TABLE 1—2011 MOTOR VEHICLE EMISSION BUDGETS FOR THE TACOMA-PIERCE COUNTY 2006 FINE PARTICULATE MATTER NONATTAINMENT AREA

Pollutant	Emissions (pounds per winter day)
$PM_{2.5}$	3,002
NO_X	71,598

III. Analysis of the Relevant Air Quality Data

The EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 for the Tacoma-Pierce County Area. All data considered have been recorded in the Air Quality System (AQS) database, certified as meeting quality assurance requirements, and determined to have met data completeness requirements. On the basis of this review, the EPA has concluded that the area continued to attain the 2006 24-hour $PM_{2.5}$ NAAQS during the 2010–2012 monitoring period. The EPA regulations at 40 CFR 50.7 provide that ''The 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration, as determined in accordance with appendix N of this part, is less than or equal to 35 μg/m3.'' This calculation, made in accordance with 40 CFR part 50, appendix N for determining compliance with the 2006 24-hour $PM_{2.5}$ NAAQS, is commonly called a design value. Because the 2010–2012 design value at the Federal Reference Method monitor (Tacoma South L Street) is 28 $\mu g/m^3$, the EPA is proposing to determine that the area continues to have monitored attainment for this NAAQS. Additional information about design values for the Tacoma-Pierce County Area can be found at *http://www.epa.gov/airtrends/values.html.*

IV. Effect of Determination of Attainment for 2006 $PM_{2.5}$ Under Subpart 4

This section of the EPA's proposal addresses the effects of a final determination of attainment for the Tacoma-Pierce County Area. For the 1997 $PM_{2.5}$ standard, 40 CFR 51.004 of the EPA's Implementation Rule sets forth the EPA's ''Clean Data Policy'' interpretation under subpart 1 and the effects of a determination of attainment with that standard (72 FR 20585, 20665, April 25, 2007). While the regulatory provisions of § 51.1004(c) do not explicitly apply to the 2006 $PM_{2.5}$ standard, the underlying statutory interpretation is the same for both standards. See 77 FR 76427, December 28, 2012 (proposed determination of attainment for the 2006 $PM_{2.5}$ standard for Milwaukee, Wisconsin).

As noted above, the D.C. Circuit Court of Appeals recently remanded to the EPA the 1997 $PM_{2.5}$ Implementation Rule. The Court directed the EPA to re-promulgate the 1997 $PM_{2.5}$ Implementation Rule consistent with the Court's opinion. *NRDC* v. *EPA,* 706 F.3d 428. The Court found that the EPA erred in limiting implementation of the 1997 $PM_{2.5}$ NAAQS to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of part D of title I. In light of the remand of the Implementation Rule, in the immediate action, the EPA addresses the effect of a final determination of attainment for the Tacoma-Pierce County Area, assuming the area is classified as a moderate nonattainment area under subpart 4.[2] As set forth in more detail below, under the EPA's Clean Data Policy, a determination that the area has attained the standard suspends the State's obligation to submit attainment-related planning requirements of subpart 4 (and the applicable provisions of subpart 1) so long as the area continues to attain the standard. The suspended requirements include submission of an attainment demonstration (CAA section 189(a)(1)(B)), meeting quantitative milestones demonstrating reasonable further progress (RFP) toward attainment by the applicable attainment date (CAA section 189(c)), provisions for reasonably available control measures (RACM) (CAA section 189(a)(1)(C)), and contingency measures (CAA section 172(c)(9). These requirements are suspended because

addressed requirements for the 2006 $PM_{2.5}$ NAAQS. While none of these provisions were challenged in the *NRDC* v. *EPA* case, the EPA also notes that the court declined to address challenges to the EPA's presumptions regarding $PM_{2.5}$ precursors in the $PM_{2.5}$ implementation rule. *NRDC* v. *EPA,* 706 F.3d 437.

[2] For the purposes of evaluating the effects of this proposed determination of attainment under subpart 4, we are considering the Tacoma-Pierce County 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 the EPA reclassifies the area as a ''serious'' nonattainment area or the area fails to attain the standard by the attainment date and would be reclassified to ''serious'' by operation of law. Accordingly, the 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. In addition, in reviewing Ecology's submittal the EPA also evaluates the applicable requirements of subpart 1.

their purpose is to help reach attainment, a goal which the Tacoma-Pierce County Area has already achieved.

Background on Clean Data Policy

Over the past two decades, the EPA has consistently applied its ''Clean Data Policy'' 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 policy to a spectrum of NAAQS, including the ozone, PM_{10}, $PM_{2.5}$, CO and lead standards. The D.C. Circuit Court of Appeals has upheld the Clean Data Policy as embodied in the EPA's 8-hour ozone Implementation Rule, 40 CFR 51.918.[3] See *NRDC* v. *EPA,* 571 F. 3d 1245 (D.C. Cir. 2009). Other federal Courts of Appeals that have considered and reviewed the EPA's Clean Data Policy interpretation have upheld it and the rulemakings applying the 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, the EPA incorporated its Clean Data Policy interpretation in both its 1997 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 Court of Appeal, in its January 4, 2013 opinion, remanded to the EPA the 1997 $PM_{2.5}$ Implementation Rule, the Court's opinion 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 opinion, we set forth here the EPA's Clean Data Policy interpretation under subpart 4, for the purpose of identifying the effects of a determination of attainment for the 2006 $PM_{2.5}$ standard for the Tacoma-Pierce County Area. The EPA has previously articulated its Clean Data Policy 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 (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). In these determinations the 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.

V. Application of the Clean Data Policy to Attainment-Related Provisions of Subpart 4

In the EPA's proposed and final rulemakings determining that the San Joaquin Valley nonattainment area attained the PM_{10} standard, the EPA set forth at length its rationale for applying our interpretation of the Clean Data Policy to PM_{10} under subpart 4. The Ninth Circuit upheld the EPA's final rulemaking, and specifically the EPA's application of the 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 CAA 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 opinion in *NRDC* v. *EPA,* these same statutory requirements also apply to $PM_{2.5}$ nonattainment areas. The EPA has longstanding general guidance interpreting the 1990 amendments to the CAA, for use by states in 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, the 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.

The EPA has long interpreted the provisions of part D, subpart 1 of the Act (sections 171 and 172) as not requiring the submission of RFP for an area already attaining the 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 at 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). CAA 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, CAA 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 CAA section 172(c)(2), the ozone-specific RFP requirements of CAA sections 182(b) and (c), or the specific RFP requirements for PM_{10} areas of part D, subpart 4, CAA section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date.

The General Preamble, states that with respect to CAA 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. If an area has in fact attained the standard, the stated purpose of the RFP

[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.

requirement will have already been fulfilled.[4]

Similarly, the requirements of CAA section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. CAA 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 the EPA took with respect to the general RFP requirement of CAA section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 Seitz memorandum with respect to the requirements of CAA section 182(b) and (c). In the May 10, 1995 Seitz memorandum, titled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Meeting the Ozone National Ambient Air Quality Standard,'' the EPA also noted that CAA section 182(g), the milestone requirement of subpart 2, which is analogous to provisions in CAA 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.

[4] Thus, we believe 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 Act. 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, the 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.

1995 Seitz memorandum at 5.

With respect to the attainment demonstration requirements of CAA section 172(c) and section 189(a)(1)(B), an analogous rationale leads to the same result. CAA 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, the 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 CAA section 172(c) requirements provided by the EPA in the General Preamble, the December 14, 2004 Page memorandum titled ''Clean Data Policy for the Fine Particulate National Ambient Air Quality Standards'', and the CAA section 182(b) and (c) requirements set forth in the Seitz memorandum. As the 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 CAA sections 172(c)(9). We have interpreted the contingency measure requirements of CAA 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; Seitz memorandum, pp. 5–6.

CAA section 172(c)(9) provides that SIPs in nonattainment areas

> shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA].

The contingency measure requirement is inextricably tied to the RFP and attainment demonstration requirements. Contingency measures are implemented if RFP targets are not achieved, or if attainment is not realized by the attainment date. Where an area has already achieved attainment, it has no need to rely on contingency measures to come into attainment or to make further progress to attainment. As the 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.'' 57 FR 13564. Thus these requirements no longer apply when an area has attained the standard.

Both CAA 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 13560) states that the EPA interprets CAA 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. The EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable further progress or to attainment. 57 FR 13498. Thus, where an area is already attaining the standard, no additional RACM measures are required.[6] The EPA is interpreting CAA section 189(a)(1)(C) consistent with its interpretation of CAA 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 the EPA determines, after notice-and-comment rulemaking, that the area has a monitored violation of the NAAQS, the basis for the requirements being suspended would no longer exist. Only if and when the 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.

As set forth above, based on our proposed determination that the Tacoma-Pierce County Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS, we propose to find that the obligations to submit planning provisions to meet the requirements for an attainment demonstration, RFP, RACM, and

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

[6] The 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 D.C. Circuit (*Sierra Club* v. *EPA,* 294 F.3d 155, 162–163 (D.C. Cir. 2002)).

contingency measures continue to be suspended for so long as the area continues to monitor attainment of the 2006 24-hour $PM_{2.5}$ NAAQS. If, in the future, the EPA determines after notice-and-comment rulemaking that the area again violates the 2006 24-hour $PM_{2.5}$ NAAQS, the basis for suspending the attainment demonstration, RFP, RACM, and contingency measure obligations would no longer exist.

VI. Proposed Action

The EPA proposes to determine, based on the most recent three years of complete, quality-assured data meeting the requirements of 40 CFR part 50, appendix N, that the Tacoma-Pierce County Area is currently attaining the 2006 24-hour $PM_{2.5}$ NAAQS. In conjunction with and based upon our proposed determination that Tacoma-Pierce County Area is attaining the standard, the EPA proposes to determine that the obligation to submit the following attainment-related planning requirements are 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 CAA section 189(a)(1)(B), the RACM provisions of CAA section 189(a)(1)(C), the RFP provisions of CAA section 189(c), and related attainment demonstration, RACM, RFP and contingency measure provisions requirements of subpart 1, CAA section 172. This proposed action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3). In conjunction with this proposed finding of attainment, the EPA is proposing to approve MVEBs calculated for the 2011 attainment year, the year that the Tacoma-Pierce County first attained the 2006 24-hour $PM_{2.5}$ NAAQS. The EPA is proposing approval of MVEBs pursuant to 40 CFR 93.109(c)(5)(iii), as described in the Transportation Conformity Rule and the preamble of the Transportation Conformity Restructuring Amendments (77 FR 14982, March 14, 2012).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian country located in the State, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area and the EPA is therefore approving this SIP on such lands. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated December 11, 2012. The EPA did not receive a request for consultation.

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.

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

Dated: July 8, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2013–17267 Filed 7–17–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–OEI–2011–0979; FRL–9825–9]

RIN 2025–AA36

Community Right-to-Know; Adoption of 2012 North American Industry Classification System (NAICS) Codes for Toxics Release Inventory (TRI) Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to update the list of North American Industry Classification System (NAICS) codes subject to reporting under the Toxics Release Inventory (TRI) to reflect the Office of Management and Budget (OMB) 2012 NAICS revision. Facilities would be required to use 2012 NAICS codes when reporting to TRI beginning with TRI reporting forms that are due on July 1, 2014, covering releases and other waste management quantities for the 2013 calendar year. In the ''Rules and Regulations'' section of today's **Federal Register**, we are simultaneously publishing the 2012 OMB NAICS revisions for TRI Reporting as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule. We will withdraw this proposed rule, and the direct final rule will become effective as specified in that rule. If, however, we do receive adverse comment in response to this proposed rule or in response to the direct final rule, then we will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. In that case, we would address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in