Par. 2. Section 1.509(a)–4 is amended by revising paragraphs (i)(5)(ii)(B), (i)(5)(ii)(C), and (i)(8) to read as follows:

§ 1.509(a)–4 Supporting organizations.

* * * * *

(i) * * *

(5) * * *

(ii) * * *

(B) [The text of proposed amendments to § 1.509(a)–4(i)(5)(ii)(B) is the same as the text of § 1.509(a)–4T(i)(5)(ii)(B) published elsewhere in this issue of the Federal Register].

(C) [The text of proposed amendments to § 1.509(a)–4(i)(5)(ii)(C) is the same as the text of § 1.509(a)–4T(i)(5)(ii)(C) published elsewhere in this issue of the Federal Register].

* * * * *

(8) [The text of proposed amendments to § 1.509(a)–4(i)(8) is the same as the text of § 1.509(a)–4T(i)(8) published elsewhere in this issue of the Federal Register].

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.
[FR Doc. 2012–31046 Filed 12–21–12; 4:15 pm]
BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52
[40CFR52.1d–52.10]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Milwaukee-Racine Nonattainment Area; Determination of Attainment for the 2006 24-Hour Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 24, 2012, EPA proposed to determine that the Milwaukee-Racine, Wisconsin area had attained the 2006 24-hour fine particle (2006 PM$_{2.5}$) National Ambient Air Quality Standard (NAAQS). EPA received several comments on the original proposal, including one suggesting that the suspension of certain Clean Air Act (CAA) requirements cannot be applied in this instance because it only pertains to the 1997 PM$_{2.5}$ NAAQS and not to the 2006 PM$_{2.5}$ NAAQS. As a result, we are reproposing a narrow portion of our original determination to address this issue. We will address all comments received on the original proposal and this proposal in our final notice.

DATES: Comments must be received on or before January 28, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0347, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.

2. Email: aburano.douglas@epa.gov.

3. Fax: (312) 408–2279.


Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2011–0347. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. 

5. If you estimate potential costs or burdens, explain how you arrived at special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the SUPPLEMENTARY INFORMATION section of this document.

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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886–6143 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:
Gilberto Alvarez, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, alvarez.gilberto@epa.gov.

SUPPLEMENTARY INFORMATION:
Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?

II. What action is EPA taking?

III. What is the background for this action?

IV. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at.
your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What action is EPA taking?

On April 24, 2012, at 77 FR 24436, EPA proposed to determine that the Milwaukee-Racine, Wisconsin area has violated the 2006 PM standard. EPA received several comments on the original proposal, including one suggesting that 40 CFR 51.1004(c) cannot be applied in this instance because it only pertains to the 1997 PM standard. Our original proposal did not clearly explain EPA’s views on the applicability of CFR 51.1004(c) to the 2006 PM standard. As a result, in this re-proposal, EPA is explaining its views and soliciting comment on this specific issue. We will address all comments received on the original proposal and this proposal in our final notice.

III. What is the background for this action?

In April 2007, EPA issued its PM Implementation Rule for the 1997 PM standard. 72 FR 20586 (April 25, 2007). In March 2012, EPA published implementation guidance for the 2006 PM standard. See Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, “Implementation Guidance for the 2006 24-Hour Final Particle (PM2.5) National Ambient Air Quality Standards (NAAQS)” (March 2, 2012). In that guidance, EPA stated its view “that the overall framework and policy approach of the 2007 PM Implementation Rule continues to provide effective and appropriate guidance on the EPA’s interpretation of the general statutory requirements that states should address in their SIPs. In general, EPA believes that the interpretations of the statute in the framework of the 2007 PM Implementation Rule are relevant to the statutory requirements for the 2006 24-hour PM2.5 NAAQS * * *.” Id., page 1. With respect to the statutory provisions applicable to 2006 PM implementation, the guidance emphasized that “EPA outlined its interpretation of many of these provisions in the 2007 PM Implementation Rule. In addition to regulatory provisions, EPA provided substantial general guidance for attainment plans for PM2.5 in the preamble to the final the [sic] 2007 PM2.5 Implementation Rule.” Id., page 2. In keeping with the principles set forth in the guidance, and with respect to the effect of a determination of attainment for the 2006 PM standard, EPA is applying the same interpretation with respect to the implications of clean data determinations that it set forth in the preamble to the 1997 PM standard and in the regulation that embodies this interpretation. 40 CFR 51.1004(c).1 EPA has long applied this interpretation in regulations and individual rulemakings for the 1-hour ozone and 1997 8-hour ozone standards, the PM standard, and the lead standard. While EPA recognizes that the regulatory provisions of 51.1004(c) do not explicitly apply to the 2006 PM standard, the statutory interpretation that it embodies is identical for both the 1997 PM and 2006 PM standards.

History and Basis of EPA’s Clean Data Policy

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the general preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble) 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171 and 172, and sections 182 in the General Preamble, EPA set forth what has become known as its “Clean Data Policy” for the 1-hour ozone NAAQS. See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard” (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the PM2.5 NAAQS. See Memorandum from Stephen Page, Director, EPA Office of Air Quality Planning and Standards, “Clean Data Policy for the Fine Particle National Ambient Air Quality Standards” (December 14, 2004). Since 1995, EPA has applied its interpretation under the Clean Data Policy in many rulemakings, suspending certain attainment-related planning requirements for individual areas, based on a determination of attainment. See 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah, 1-hour ozone); 61 FR 20456 (May 7, 1996) (Cleveland-Akron-Lorain, Ohio, 1-hour ozone); 61 FR 31831 (June 21, 1996) (Grand Rapids, Michigan, 1-hour ozone); 65 FR 37879 (June 19, 2000) (Cincinnati-Hamilton, Ohio-Kentucky, 1-hour ozone); 66 FR 53094 (October 19, 2001) (Pittsburgh-Beaver Valley, Pennsylvania, 1-hour ozone); 68 FR 25418 (May 12, 2003) (St. Louis, Missouri-Illinois, 1-hour ozone); 69 FR 21717 (April 22, 2004) (San Francisco Bay Area, California, 1-hour ozone), 75 FR 6570 (February 10, 2010) (Baton Rouge, Louisiana, 1-hour ozone), 75 FR 27944 (May 19, 2010) (Coso Junction, California, PM10).

EPA also incorporated its interpretation under the Clean Data Policy in several implementation rules. See Clean Air Fine Particle Implementation Rule, 72 FR 20586 (April 25, 2007); Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2, 70 FR 71612 (November 29, 2005). The Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld EPA’s rule embodying the Clean Data Policy for the 1997 8-hour ozone standard. NRDC v. EPA, 571 F.3d 1245 (D.C. Cir. 2009). Other courts have reviewed and considered individual rulemakings applying EPA’s Clean Data Policy, and have consistently upheld them in every case. 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, No. 04–73032 (9th Cir. June 28, 2005 (Memorandum Opinion)), Latino Issues Forum v. EPA, Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009 (Memorandum Opinion)).

EPA sets forth below a brief explanation of the statutory interpretations in the Clean Data Policy. EPA also incorporates the discussions of its interpretation set forth in prior rulemakings, including the 1997 PM implementation rulemaking. See 72 FR
The Clean Data Policy represents EPA’s interpretation that certain requirements of subpart 1 of part D of the CAA are by their terms not applicable to areas that are currently attaining the NAAQS. As explained below, the specific requirements that are inapplicable to an area attaining the standard are the requirements to submit a SIP that provides for: Attainment of the NAAQS; implementation of all RACM; RFP; and implementation of contingency measures for failure to meet deadlines for RFP and attainment.

CAAs section 172(c)(1), the requirement for an attainment demonstration, provides in relevant part that SIPs “shall provide for attainment of the [NAAQS].” EPA has interpreted this requirement as not applying to areas that have already attained the standard. If an area has attained the standard, there is no need to submit a plan demonstrating how the area will reach attainment. In the General Preamble (57 FR 13564), 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.”

Procedures for Processing Requests to Redesignate


This discussion refers to subpart 1 because subpart 1 contains the requirements relating to attainment of the 2006 PM2.5 NAAQS.


3 This discussion refers to subpart 1 because subpart 1 contains the requirements relating to attainment of the 2006 PM2.5 NAAQS.
• 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 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 4690, February 23, 1994). In addition, this proposed 2006 PM2.5 clean NAAQS data determination for the Milwaukee-Racine, Wisconsin area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Dated: December 17, 2012.

Susan Hedman,  
Regional Administrator, Region 5.

Instructions:

• Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0467, or EPA–R05–OAR–2012–0538 by one of the following methods:
  1. www.regulations.gov: Follow the on-line instructions for submitting comments.
  2. Email: damico.genevieve@epa.gov.
  3. Fax: [312]692–4250.

SUPPLEMENTARY INFORMATION:

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FOR FURTHER INFORMATION CONTACT:

Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8781, marcus.danny@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean...