

Secretary's Order 5–2007 (72 FR 31160), and 29 CFR Part 1911.

Signed at Washington, DC, this 16th day of October 2008.

**Edwin G. Foulke, Jr.**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E8–25079 Filed 10–21–08; 8:45 am]

BILLING CODE 4510–26–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2008–0389; FRL–8711–4]

#### Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Approval of Rule Clarifications

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) on March 28, 2008. The WDNR has submitted for approval revisions to incorporate Federal regulations into the Wisconsin Administrative Code, to clarify construction permit requirements under general permits, to revise portable source relocation requirements, and to amend rule language to streamline the minor revision permit process to allow construction permits to be issued concurrently with operation permits. EPA is approving these revisions because they are consistent with Federal regulations governing State permit programs.

**DATES:** Comments must be received on or before November 21, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0389, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).
3. *Fax*: (312) 886–5824.
4. *Mail*: Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted

during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 a.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

#### FOR FURTHER INFORMATION CONTACT:

Susan Castellanos, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–2654, [castellanos.susan@epa.gov](mailto:castellanos.susan@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 21, 2008.

**Lynn Buhl,**

*Regional Administrator, Region 5.*

[FR Doc. E8–25040 Filed 10–21–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2008–0736; FRL–8732–2]

#### Approval and Promulgation of Air Quality Implementation Plans; The Metropolitan Washington Nonattainment Area; Determination of Attainment of the Fine Particle Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Metropolitan Washington, DC-MD-VA nonattainment area for the 1997 fine particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) has attained the 1997 PM<sub>2.5</sub> NAAQS. This proposed determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that show that the area has monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS since the 2004–2006 monitoring period, and continues to monitor attainment of the standard based on 2005–2007 data. In addition, quality controlled and quality assured monitoring data for 2008 that are available in the EPA Air Quality System (AQS) database, but not yet certified, show this area continues to attain the 1997 PM<sub>2.5</sub> NAAQS. If this proposed determination is made final, the requirements for this area to submit an attainment demonstration and associated reasonably available measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard shall be suspended for so long as the area continues to attain the 1997 PM<sub>2.5</sub> NAAQS.

**DATES:** Written comments must be received on or before November 21, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0736 by one of the following methods:

A. *www.regulations.gov*. Follow the online instructions for submitting comments.

B. *E-mail*: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail*: EPA–R03–OAR–2008–0736, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery*: At the previously-listed EPA Region III address. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2008-0736. 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](http://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](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://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 e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail 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 electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., 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 form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Melissa Linden, (215) 814-2096, or by e-mail at [linden.melissa@epa.gov](mailto:linden.melissa@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever

"we," "us," or "our" is used, we mean EPA.

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

- I. What Action Is EPA Taking?
- II. What Is the Effect of This Action?
- III. What Is the Background for This Action?
- IV. What Is EPA's Analysis of the Relevant Air Quality Data?
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

### **I. What Action Is EPA Taking?**

EPA is proposing to determine that the Metropolitan Washington, DC-MD-VA PM<sub>2.5</sub> nonattainment area has attained the 1997 PM<sub>2.5</sub> NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS since the 2004-2006 monitoring period, and monitoring data that continue to show attainment of the 1997 PM<sub>2.5</sub> NAAQS based on the 2005-2007 data. In addition, quality controlled and quality assured monitoring data for 2008 that are available in the EPA AQS database, but not yet certified, show this area continues to attain the 1997 PM<sub>2.5</sub> NAAQS.

### **II. What Is the Effect of This Action?**

If this determination is made final, under the provisions of EPA's PM<sub>2.5</sub> implementation rule (see 40 CFR 51.1004(c)), the requirements for the Metropolitan Washington, DC-MD-VA PM<sub>2.5</sub> nonattainment area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM<sub>2.5</sub> NAAQS would be suspended for so long as the area continues to attain the 1997 PM<sub>2.5</sub> NAAQS.

As further discussed below, the proposed determination would: (1) For the Metropolitan Washington, DC-MD-VA nonattainment area, suspend the requirements to submit an attainment demonstration and associated reasonably available control measures (RACM) (including reasonably available control technologies (RACT)), a reasonable further progress plan (RFP), contingency measures, and any other planning SIPs related to attainment of the 1997 PM<sub>2.5</sub> NAAQS; (2) continue until such time, if any, that EPA subsequently determines that the area has violated the 1997 PM<sub>2.5</sub> NAAQS; (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the

Metropolitan Washington, DC-MD-VA area based on the 2006 PM<sub>2.5</sub> NAAQS; and (4) remain in effect regardless of whether EPA designates this area as a nonattainment area for purposes of the 2006 PM<sub>2.5</sub> NAAQS. Furthermore, as described below, any such final determination would not be equivalent to the redesignation of the area to attainment based on the 1997 PM<sub>2.5</sub> NAAQS.

If this rulemaking is finalized and 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 specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist, and the area would thereafter have to address the pertinent requirements.

The determination that EPA proposes with this **Federal Register** notice, that the air quality data shows attainment of the 1997 PM<sub>2.5</sub> NAAQS, is not equivalent to the redesignation of the area to attainment. This proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA), because we would not yet have an approved maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The designation status of the area would remain nonattainment for the 1997 PM<sub>2.5</sub> NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

This proposed action, if finalized, is limited to a determination that the Metropolitan Washington, DC-MD-VA PM<sub>2.5</sub> area has attained the 1997 PM<sub>2.5</sub> NAAQS. The 1997 PM<sub>2.5</sub> NAAQS became effective on July 18, 1997 (62 FR 36852) and are set forth at 40 CFR 50.7. The 2006 PM<sub>2.5</sub> NAAQS, which became effective on December 18, 2006 (71 FR 61144) are set forth at 40 CFR 50.13. EPA is currently in the process of making designation determinations, as required by CAA section 107(d)(1), for the 2006 PM<sub>2.5</sub> NAAQS. EPA has not made any designation determination for the Metropolitan Washington, DC-MD-VA area based on the 2006 PM<sub>2.5</sub> NAAQS. This proposed determination, and any final determination, will have no effect on, and is not related to, any future designation determination that EPA may make based on the 2006 PM<sub>2.5</sub> NAAQS for the Metropolitan Washington, DC-MD-VA area. Conversely, any future designation determination of the Metropolitan Washington, DC-MD-VA area, based on the 2006 PM<sub>2.5</sub> NAAQS, will not have

any effect on the determination proposed by this notice.

If this proposed determination is made final and the Metropolitan Washington, DC-MD-VA area continues to demonstrate attainment with the 1997 PM<sub>2.5</sub> NAAQS, the requirements for the Metropolitan Washington, DC-MD-VA area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM<sub>2.5</sub> NAAQS would remain suspended, regardless of whether EPA designates this area as a nonattainment area for purposes of the 2006 PM<sub>2.5</sub> NAAQS. Once the area is designated for the 2006 NAAQS, it will have to meet all applicable requirements for that designation.

**III. What Is the Background for This Action?**

On July 18, 1997 (62 FR 36852), EPA established a health-based PM<sub>2.5</sub> NAAQS at 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations, and a twenty-four hour standard of 65 µg/m<sup>3</sup> based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies

demonstrating that serious health effects are associated with exposures to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and State air quality agencies initiated the monitoring process for the 1997 PM<sub>2.5</sub> NAAQS in 1999, and developed all air quality monitors by January 2001. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 PM<sub>2.5</sub> NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Metropolitan Washington, DC-MD-VA (Charles, Frederick, Montgomery, Prince George’s, Alexandria, Arlington, Fairfax, Loudoun, Prince William, Falls Church, Manassas, Manassas Park, Fairfax City, and the District of Columbia) area was designated nonattainment for the 1997 PM<sub>2.5</sub> NAAQS (see 40 CFR part 81).

**IV. What Is EPA’s Analysis of the Relevant Air Quality Data?**

EPA has reviewed the ambient air monitoring data for PM<sub>2.5</sub>, consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA AQS database for the Metropolitan Washington, DC-MD-VA PM<sub>2.5</sub> nonattainment area from 2004 through

the present time. On the basis of that review, EPA has concluded that this area attained the 1997 PM<sub>2.5</sub> NAAQS since the 2004–2006 monitoring period, and continues to monitor attainment of the NAAQS based on 2005–2007 data. In addition, quality controlled and quality assured monitoring data for 2008 that are available in the EPA AQS database, but not yet certified, show this area continues to attain the 1997 PM<sub>2.5</sub> NAAQS.

Under EPA regulations at 40 CFR Part 50, § 50.7:

(1) The annual primary and secondary PM<sub>2.5</sub> standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 µg/m<sup>3</sup>.

(2) The 24-hour primary and secondary PM<sub>2.5</sub> standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 65 µg/m<sup>3</sup>.

Table 1 shows the design values for the 1997 Annual PM<sub>2.5</sub> NAAQS for the Metropolitan Washington, DC-MD-VA nonattainment area monitors for the years 2004–2006 and 2005–2007. Table 2 shows the design values for the 1997 24-Hour PM<sub>2.5</sub> NAAQS for these same monitors and the same 3-year periods.

**TABLE 1—DESIGN VALUES FOR COUNTIES IN THE METROPOLITAN WASHINGTON NONATTAINMENT AREA FOR 1997 PM<sub>2.5</sub> NAAQS—ANNUAL STANDARD**

| Location                    | AQS site ID | 1997 Annual attainment standard | 2004–2006 Design values | 2005–2007 Design values |
|-----------------------------|-------------|---------------------------------|-------------------------|-------------------------|
| District of Columbia .....  | 110010041   | 15                              | 14.4                    | 14.0                    |
| District of Columbia .....  | 110010042   | 15                              | 14.5                    | 14.2                    |
| District of Columbia .....  | 110010043   | 15                              | 14.0                    | 13.5                    |
| Montgomery County, MD ..... | 240313001   | 15                              | 12.5                    | 12.2                    |
| Prince George’s, MD .....   | 240338003   | 15                              | 13.1                    | 12.8                    |
| Arlington, VA .....         | 510130020   | 15                              | 14.2                    | 14.0                    |
| Fairfax, VA .....           | 510590030   | 15                              | 13.4                    | 13.0                    |
| Fairfax, VA .....           | 510591005   | 15                              | 13.6                    | 13.5                    |
| Fairfax, VA .....           | 510595001   | 15                              | 13.9                    | 13.7                    |
| Loudoun, VA .....           | 511071005   | 15                              | 13.6                    | 13.2                    |

**TABLE 2—DESIGN VALUES FOR COUNTIES IN THE METROPOLITAN WASHINGTON NONATTAINMENT AREA FOR 1997 PM<sub>2.5</sub> NAAQS—24-HOUR STANDARD**

| Location                    | AQS site ID | 1997 Annual 24-hour attainment standard | 2004–2006 Design values | 2005–2007 Design values |
|-----------------------------|-------------|---|-------------------------|-------------------------|
| District of Columbia .....  | 110010041   | 65                                      | 37                      | 35                      |
| District of Columbia .....  | 110010042   | 65                                      | 35                      | 33                      |
| District of Columbia .....  | 110010043   | 65                                      | 34                      | 34                      |
| Montgomery County, MD ..... | 240313001   | 65                                      | 31                      | 30                      |
| Prince George’s, MD .....   | 240338003   | 65                                      | 35                      | 32                      |
| Arlington, VA .....         | 510130020   | 65                                      | 34                      | 32                      |
| Fairfax, VA .....           | 510590030   | 65                                      | 35                      | 34                      |
| Fairfax, VA .....           | 510591005   | 65                                      | 34                      | 32                      |

TABLE 2—DESIGN VALUES FOR COUNTIES IN THE METROPOLITAN WASHINGTON NONATTAINMENT AREA FOR 1997 PM<sub>2.5</sub> NAAQS—24-HOUR STANDARD—Continued

| Location          | AQS site ID | 1997 Annual 24-hour attainment standard | 2004–2006 Design values | 2005–2007 Design values |
|-------------------|-------------|---|-------------------------|-------------------------|
| Fairfax, VA ..... | 510595001   | 65                                      | 34                      | 33                      |
| Loudoun, VA ..... | 511071005   | 65                                      | 35                      | 33                      |

EPA's reviews of these data indicate that the Metropolitan Washington, DC-MD-VA nonattainment area has met and continues to meet the 1997 PM<sub>2.5</sub> NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. Proposed Action

EPA is proposing to determine that the Metropolitan Washington, DC-MD-VA nonattainment area for the 1997 PM<sub>2.5</sub> NAAQS has attained the 1997 PM<sub>2.5</sub> NAAQS and continues to attain the standard based on data through 2008. As provided in 40 CFR 51.1004(c), if EPA finalizes this determination, it would suspend the requirements for this area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM<sub>2.5</sub> NAAQS so long as the area continues to attain the 1997 PM<sub>2.5</sub> NAAQS.

#### VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal

requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it 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).

This proposed rule also does not have tribal applications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health

Risks" (62 FR 19885, April 23, 1997) because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures to otherwise satisfy the provisions of the CAA. This proposed rule does not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Under Executive Order 12898, EPA finds that this rule, pertaining to the District of Columbia, Maryland and Virginia's determination of attainment of the fine particle standard for the Metropolitan Washington, DC-MD-VA area, involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

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

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

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

Dated: October 9, 2008.

**W.T. Wisniewski,**

*Acting Regional Administrator, Region III.*

[FR Doc. E8–25160 Filed 10–21–08; 8:45 am]

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