



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2013-0502; FRL-9905-32-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Wisconsin; Total Suspended Particulate Matter SIP Revision**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Wisconsin State Implementation Plan (SIP). The SIP revision repeals an obsolete Total Suspended Particulate Matter (TSP) rule to align the State's air quality standards with the current National Ambient Air Quality Standards (NAAQS). This action makes no substantive changes to the SIP and imposes no new requirements.

DATES: This direct final rule is effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless EPA receives adverse comments by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register, informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2013-0502, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: aburano.douglas@epa.gov.
3. Fax: (312) 408-2279.
4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance 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 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2013-0502. 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 e-mail. The www.regulations.gov website 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, 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 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 AM to 4:30 PM, 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. Introduction
- II. Removal of Obsolete or Unnecessary Rule
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Introduction

The EPA is removing three sections from the State's air

quality SIP, based on a rule change made by the State to repeal its TSP air quality standard. EPA originally regulated particulate matter (PM) measured using TSP, which is particulate up to 100 micrometers in diameter. EPA tightened the PM standards, as PM_{10} and $PM_{2.5}$ in 1987 and 1997, respectively, which replaced the TSP secondary standard. Particulate matter larger than 10 micrometers generally is not inhaled into the lungs and standards based on PM_{10} and $PM_{2.5}$ are found to adequately protect human health. This action removes the sections from 40 CFR part 52 that no longer have any use or legal effect because they have been superseded by subsequently approved SIP revisions.

II. Removal of Obsolete or Unnecessary Rule

The Wisconsin Department of Natural Resources (WDNR) has requested removal of three sections of the Wisconsin administrative code from the SIP, to align the State's air quality standards with the current NAAQS for PM. EPA has reviewed the request and finds that the three sections should be removed for the reasons set forth as follows:

Section NR 404.02(11) TSP Definition

Section NR 404.02(11) defines "Total Suspended Particulates". This definition is being removed because EPA has adopted air quality standards for PM_{10} and $PM_{2.5}$, which are particulates of 10 micrometers and 2.5 micrometers,

respectively. The PM_{10} and $PM_{2.5}$ standards for smaller sized particles render the larger sized TSP particle standard obsolete.

Section NR 404.04(3) Particulate Matter Secondary Standard

The NAAQS consist of both primary standards and secondary standards. Primary NAAQS provide public health protection. Secondary NAAQS provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. Section NR 404.04(3) defines the TSP secondary standard as 150 micrograms per cubic meter, maximum 24-hour average concentration, not to be exceeded more than once per year. EPA replaced the TSP secondary standard with more protective PM_{10} and $PM_{2.5}$ standards in 1987 and 1997, respectively.

Section NR 484.04(3) TSP Reference Method

Section NR 484.04(3) incorporates by reference the test method for TSP. The reference method is used to determine particulate matter in the atmosphere. Because EPA replaced TSP air quality standards with PM_{10} and $PM_{2.5}$ standards, the reference method is obsolete.

III. Final Action

EPA has determined that the above-referenced sections should be removed at this time. EPA is publishing this rule

without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the proposed rules section of this Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are filed. This rule will be effective on [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless EPA receives relevant adverse comment by [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives relevant adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must 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.

IV. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of

the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 Clean Air Act; 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 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and it shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published

in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Total Suspended Solids, Reporting and recordkeeping requirements.

Dated: December 23, 2013

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

2. Section 52.2570 is amended by revising paragraphs (c) (64) (i) (A), (c) (65) (i) (A), (c) (73) (i) (J), and (c) (103) (i) (S), and by adding paragraph (c) (130) to read as follows:

§ 52.2570 Identification of plan.

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(c) * * *

(64) * * *

(i) * * *

(A) Wisconsin revised rules NR 439.03, NR 439.09 and NR 484.04, Wisconsin's Administrative Code, effective October 1, 1987.

Section NR 484.04(3) was repealed in 2011 and is removed without replacement; see paragraph (c) (130) of this section.

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(65) * * *

(i) * * *

(A) The rule packages revise NR 400.02, 404.02, 404.04, 405.02, 406.04, and 484.03 of the Wisconsin Administrative Code.

Sections NR 404.02(11), NR 404.04(3), and 484.04(3) were

repealed in 2011 and are removed without replacement; see paragraph (c)(130) of this section.

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(73) * * *

(i) * * *

(J) Chapter NR 484: INCORPORATION BY REFERENCE. NR 484.01 as published in the (Wisconsin) Register, May, 1992, No. 437, effective June 1, 1992. NR 484.02 as published in the (Wisconsin) Register, September, 1986, No. 369, effective October 1, 1986. NR 484.03 as published in the (Wisconsin) Register, May, 1993, No. 449, effective June 1, 1993. NR 484.04, 484.05 and 484.06 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 484.08 and 484.09 as published in the (Wisconsin) Register, October, 1992, No. 442, effective November 1, 1992. Section NR 484.04(3) was repealed in 2011 and is removed without replacement; see paragraph (c)(130) of this section.

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(103) * * *

(i) * * *

(S) NR 484.04 as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001. Section NR 484.04(3) was repealed in 2011 and is removed without

replacement; see paragraph (c)(130) of this section.

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(130) On June 20, 2013, the Wisconsin Department of Natural Resources submitted a request to remove the state's TSP air quality standard, sections NR 404.02(11), NR 404.04(3), and NR 484.04(3) of the Wisconsin Administrative Code, from the state's air quality State Implementation Plan.

(i) [Reserved]

(ii) Additional material. Wisconsin Natural Resources Board October 6, 2011, Board Order AM-23-07B to repeal the state's TSP air quality standard, as published in the Wisconsin Administrative Register November 2011, No. 671, effective December 1, 2011.

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