



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0280; FRL-9969-89-Region 5]

Air Plan Approval; Wisconsin; 2017 Revisions to NR 400 and 406

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) submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on May 16, 2017. The revision replaces the definition of "emergency electric generator" with a broader definition of "restricted internal combustion engine". In addition, the revision makes amendments to procedures for revoking construction permits as well as language changes and other administrative updates. Lastly, WDNR is removing from the SIP two Wisconsin Administrative Code provisions that affect eligibility of coverage under general and construction permits.

DATES: This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after 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-2017-0280 at <http://www.regulations.gov> or via email to damico.genevieve@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the official comment (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Radhica Kanniganti, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-8097, kanniganti.radhica@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. Review of State Submittals
- II. What Action is EPA Taking?
- III. Incorporation by Reference.
- IV. Statutory and Executive Order Reviews.

I. Review of State Submittals

This final rulemaking addresses the May 16, 2017, WDNR submittal for SIP revision, revising the rules in the Wisconsin SIP to align them with Federal requirements. WDNR's submittal includes changes to the term "electric generator", replacing it with "restricted internal combustion engine" as well as other minor language and administrative changes. Specifically, NR

400.02(136m) replaces the existing definition of emergency "electric generator" with a broader definition of "restricted internal combustion engine" and NR 406.04(1)(w) amends the exemption language for "emergency electric generators", replacing it with exemption for "restricted use reciprocating internal combustion engines". NR 406.08(1) and NR 406.10 involve minor changes to language, and NR 406.11(1) amends procedures for revoking construction permits. These changes serve the purpose of aligning the state and Federal regulations and are consistent with the Federal program. WDNR is also requesting the removal of two provisions from the SIP. NR 406.16(2)(d) and NR 406.17(3)(e) affect the eligibility of coverage under general and registration construction permits based on whether the project constituted a Type 2 action under the previous ch. NR 150. However, the current ch. NR 150 was amended and no longer defines or sets requirements for Type 2 actions. Removing these provisions from Wisconsin's SIP ensures consistency with Wisconsin Environmental Protection Act (WEPA) laws and does not affect consistency with the CAA. It is also consistent with Section 110(1) of the CAA. Sources covered under registration and general permits are still subject to all emission caps and applicable requirements set out in those

permits.

II. What Action is EPA Taking?

EPA is approving revisions to Wisconsin's rules NR 400 and NR 406. EPA finds WDNR's submittal to be consistent with the CAA and applicable Federal requirements. WDNR's May 16, 2017, submittal requests that EPA approve the following rules into Wisconsin's SIP: (1) NR 400.02 (136m), NR 406.04 (1) (w), NR 406.08 (1), NR 406.10 and NR 406.11 (1). The submittal also requests removal of NR 406.16 (2) (d) and NR 406.17 (3) (e) from the SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will

withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. 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. If we do not receive any comments, this action will be effective **[insert date 60 days after date of publication in the Federal Register]**.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more

information).

IV. 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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 CAA, 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 after date of publication 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 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 this 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,
Reporting and recordkeeping requirements.

Dated: October 6, 2017.

Robert A. Kaplan,
Acting 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 paragraph (c) (113) (i) (D) and by adding paragraph (c) (137) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(113) * * *

(i) * * *

(D) NR 400.02(73m) and (131m), 406.02(1) and (2), 406.04(2m), NR 406.11(1)(g)(1), 406.11(3), 406.16, 406.17, 406.18, 407.02(3m), 407.105, 407.107, 407.14 Note, 407.14(4)(c), 407.15(8)(a) and 410.03(1)(a)(6) and (7) as created and published in the (Wisconsin) Register, August 2005, No. 596, effective September 1, 2005. Sections NR 406.16(2)(d) and NR 406.17(3)(e) were repealed in 2015 and are removed without replacement; see paragraph (c)(137) of this section.

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(137) On May 16, 2017, the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's air permitting rules NR 400.02(136m), NR 406.04(1)(w), NR 406.08(1), NR 406.10 and NR 406.11(1). These revisions replace the existing definition of "emergency electric generator" with a broader definition of "restricted internal combustion engine", amend procedures for revoking construction permits and include minor language changes and other administrative updates to ensure consistency with State and Federal regulations. Wisconsin has also requested to remove from the SIP NR 406.16(2)(d) and NR 406.17(3)(e), provisions affecting eligibility of coverage under general and registration construction permits, previously approved in paragraph (c)(113) of this section. This action ensures consistency with Wisconsin Environmental Protection Act (WEPA) laws.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, NR 400.02(136m) as published in the Wisconsin Administrative Register November 2015 No. 719A1, effective December 1, 2015.

(B) Wisconsin Administrative Code, NR 406.04(1)(w), NR 406.08(1), NR 406.10 and NR 406.11(1) as published in the

Wisconsin Administrative Register November 2015 No. 719A1,
effective December 1, 2015.

(ii) [Reserved]

[FR Doc. 2017-23048 Filed: 11/6/2017 8:45 am; Publication Date: 11/7/2017]