



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2008-0784; FRL-10022-90-Region 5]

Air Plan Approval; Wisconsin; Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR)

Rule Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Wisconsin state implementation plan (SIP), submitted by the Wisconsin Department of Natural Resources (WDNR) on September 30, 2008. The revision updates the definition of "Replacement Unit" and clarifies a component of the emission calculation used to determine emissions under a plantwide applicability limitation (PAL) in the Wisconsin Administrative Code. Approving this revision makes Wisconsin rules consistent with Federal rules. EPA proposed to approve this action on November 9, 2020 and received no adverse comments.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2008-0784. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (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 through www.regulations.gov or 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 and facility closures due to COVID-19. We recommend that you telephone Michael Cloyd, Air Permits Section, at (312)886-1474 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Cloyd, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)886-1474, Cloyd.Michael@epa.gov.

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

I. Background Information.

On November 9, 2020 (85 FR 71295), EPA proposed to approve revisions to Wisconsin's air rules as adopted in the Wisconsin Register (July 2008, No. 631). An explanation of the Clean Air Act requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM), and will not be restated here.

The public comment period for this proposed rule ended on December 9, 2020. EPA received no comments on the proposal.

II. Final Action.

EPA is approving updates and revisions to Wisconsin's air quality SIP. Specifically, EPA is approving updates to the definition of "Replacement Unit" under NR 405.02(12)(b), NR 405.02(25k), and NR 408.02(29s), and is approving a revision to a component of the emission calculation used to determine emissions under a PAL under NR 405.18(6)(e) and NR 408.11(6)(e).

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 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, 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 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 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. 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.

Dated: April 29, 2021.

Cheryl Newton,
Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 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 adding paragraph (c)(143) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(143) On September 30, 2008 the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's air permitting program. The revisions update the definition of "Replacement Unit" and clarify a component of the emission calculation used to determine emissions under a plantwide applicability limitation.

(i) *Incorporation by reference.* (A) Wisconsin Administrative Code, NR 405.02 Definitions. NR 405.02(12)(b), and NR 405.02(25k), as published in the Wisconsin Administrative Register July 2008, No. 631, effective August 1, 2008.

(B) Wisconsin Administrative Code, NR 405.18 Plant-wide applicability limitations (PALs), NR 405.18(6)(e), as published in the Wisconsin Administrative Register July 2008, No. 631, effective August 1, 2008.

(C) Wisconsin Administrative Code, NR 408.02 Definitions. NR 408.02(29s), as published in the Wisconsin Administrative Register July 2008, No. 631, effective August 1, 2008.

(D) Wisconsin Administrative Code, NR 408.11 Plant-wide applicability limitations (PALs), NR 408.11 (6) (e), as published in the Wisconsin Administrative Register July 2008, No. 631, effective August 1, 2008.

(ii) [Reserved]

[FR Doc. 2021-09419 Filed: 5/6/2021 8:45 am; Publication Date: 5/7/2021]