



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2015-0529; EPA-R05-OAR-2022-0685; FRL-10638-02-R5]

Air Plan Approval; Wisconsin; Emissions Reporting and Infrastructure SIP Requirements

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) revising air emissions reporting requirements codified in Chapter 438 of the Wisconsin Administrative Code (Wis. Admin. Code). Additionally, EPA is approving a related infrastructure requirement under section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter (PM_{2.5}) and 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA proposed to approve this action on March 23, 2023, and received no adverse comments.

DATES: This final rule is effective on August 23, 2023.

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA-R05-OAR-2015-0529 and EPA-R05-OAR-2022-0685. All documents in the docket are listed on the www.regulations.gov web site. 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 Olivia Davidson, Environmental Scientist, at (312) 886-0266 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Olivia Davidson, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0266, davidson.olivia@epa.gov.

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

I. Background Information.

On March 23, 2023 (88 FR 17486), EPA proposed to approve revisions to the Wisconsin Department of Natural Resources' (WDNR) air emissions reporting rules contained in Chapter 438 of the Wis. Admin. Code satisfying CAA section 110(a)(2)(F) otherwise known as "element F" for the 2012 PM_{2.5} and 2015 ozone

NAAQS. WDNR submitted Board Order AM-31-19 (Rule AM-31-19) to EPA on August 3, 2022. The submission addresses the identified reporting requirement deficiencies in NR 438 Wis. Admin. Code and updates administrative language in NR 400.03 and NR 484.06(4) Wis. Admin. Code. EPA is incorporating these revisions by reference into the Wisconsin SIP. An explanation of the CAA 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 April 24, 2023.

During the comment period, EPA received five comments. We do not consider these comments to be germane or relevant to this action and therefore not adverse to this action. The comments lack the required specificity to the proposed SIP revision and the relevant requirements of CAA section 110. Moreover, none of the comments address a specific regulation or provision in question or recommend a different action on the SIP submission from what EPA proposed. Therefore, we are finalizing our action as proposed.

II. Final Action.

EPA is approving WDNR's request to incorporate by reference the revisions to NR 400.03, NR 438, and NR 484.06(4) contained in Rule AM-31-19 into Wisconsin's SIP in order to update the emission reporting requirements. Specifically, EPA is approving NR 400.03(4)(jp), NR 438 except for 438.03(am)2., and NR

484.06(4) Table 4D Row (a), as published in the Wisconsin Register July 2022 No. 799, effective August 1, 2022. Further, EPA is approving CAA section 110(a)(2)(F) of Wisconsin's infrastructure SIP submission for the 2012 PM_{2.5} and 2015 ozone NAAQS, based on the updated rule submission. Approving this element will lead to full approval of Wisconsin's 2012 PM_{2.5} infrastructure SIP.

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 sections I and II of this preamble and set forth in the amendments to 40 CFR part 52, 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The WDNR did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require

such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area.

Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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. 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, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 13, 2023.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, title 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 adding paragraph (c)(149) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(149) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on August 3, 2022, revising Wisconsin's air emission reporting requirements of NR 438 Wisconsin Administrative Code to include reporting requirements for PM_{2.5}, and updates to administrative language in NR 400.03 and NR 484.06(4) Wisconsin Administrative Code.

(i) Incorporation by reference. The following sections of the Wisconsin Administrative Code are incorporated by reference.

(A) NR 400.03(4)(jp), as published in the Wisconsin Register, July 2022 No. 799, effective August 1, 2022.

(B) NR 438, except for 438.03(am)2., as published in the Wisconsin Register, July 2022 No. 799, effective August 1, 2022.

(C) NR 484.06(4) Table 4D Row (a), as published in the Wisconsin Register, July 2022 No. 799, effective August 1, 2022.

(ii) [Reserved]

3. Section 52.2591 is amended by revising paragraph (h) and adding paragraph (i) to read as follows:

§ 52.2591 Section 110(a)(2) infrastructure requirements.

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(h) *Approval.* In a July 13, 2015, submission, supplemented August 8, 2016, and August 3, 2022, WDNR certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2012 PM_{2.5} NAAQS.

(i) *Approval.* In an August 3, 2022, submission, WDNR certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(F) for the 2015 ozone NAAQS.

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