



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2023-0540; FRL-11835-01-R5]

Air Plan Approval; Wisconsin; SIP Alignment Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve an October 27, 2023, submittal from the Wisconsin Department of Natural Resources (WDNR) to align provisions approved in the Wisconsin State Implementation Plan (SIP) with current Wisconsin administrative rules and statutes. WDNR requested that certain provisions previously approved into the Wisconsin SIP under now obsolete numbering schemes be renumbered to ensure citations in the Wisconsin SIP reflect the current numbering systems of the Wisconsin Administrative Code (WAC) and the Wisconsin Statutes (Wis. Stats.). WDNR also requested that EPA approve rule and statute provisions that have been revised since they were approved into the Wisconsin SIP. Finally, WDNR requested removal of rules and statutes from the Wisconsin SIP that are no longer in effect in Wisconsin. Approval of these changes in the Wisconsin SIP will not impact the state's air quality or ability to meet Clean Air Act (CAA) requirements.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2023-0540 at <https://www.regulations.gov>, or via email to arra.sarah@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from 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 primary submission (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 <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328, panos.christos@epa.gov. The EPA Region 5 office 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.

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

I. Background

Wisconsin’s air pollution control rules were officially submitted for SIP approval on January 14, 1972, and approved into the SIP on May 31, 1972 (37 FR 10902), under Natural Resources (NR) chapter 154 of the Wisconsin Administrative Code (WAC). On October 1, 1986 (Wisconsin Register No. 369, September 1986), the air pollution control rules were renumbered from the NR 154 series to the NR 400 series. In addition, on May 1, 1995 (Wisconsin Register No. 472, April 1995), the air pollution control rules underwent a subsequent renumbering process within the NR 400 series. This has resulted with the Wisconsin SIP consisting of rules approved using the previous NR 154 citations, some NR 400 series rules prior to being renumbered on May 1, 1995, and NR 400 series rules under the current numbering system. The SIP revision submitted by WDNR on October 27, 2023, requests that the previous SIP rules approved under the obsolete numbering systems are renumbered to ensure that all the rules in the Wisconsin SIP are aligned with the WAC’s current NR 400 numbering system.

Similarly, Wisconsin Statutes addressing air pollution were originally submitted and approved into the Wisconsin SIP under Wis. Stats. chapter 144. The Wisconsin Statutes also underwent

a renumbering under 1995 Wisconsin Act 227, where the air pollution statutes were moved from Wis. Stats. chapter 144 to Wis. Stats. chapter 285. This has resulted with the Wisconsin SIP consisting of Wisconsin air pollution statutes approved under both Wis. Stats. chapter 144 and Wis. Stats. chapter 285. The SIP revision submitted by WDNR on October 27, 2023, requests that the previously SIP statutes approved under Wis. Stats. chapter 144 are renumbered to ensure that all the rules in the Wisconsin SIP are aligned with the current numbering system under Wis. Stats. chapter 285.

Further, there are some instances where rule and statute language was revised and some provisions were not retained by Wisconsin as part of, or after, the renumbering processes. The October 27, 2023, SIP revision also requests that EPA approve revised rule or statute language into the Wisconsin SIP to replace the provisions' former citations and language and to remove some provisions from the Wisconsin SIP that are no longer in effect in Wisconsin.

II. Review of the Wisconsin Alignment SIP submittal

As previously stated, the purpose of this SIP revision is to revise the current SIP approved Wisconsin administrative rules and statute provisions so that they are consistent with the current version of the Wisconsin rules and statutes. This will provide clarity to regulators, sources, and the public as to what has been approved into the Wisconsin SIP. To accomplish this WDNR requested that EPA revise the SIP by 1) replacing

rules and statutes citations that were revised as part of, or after, the renumbering processes, and 2) approving provisions that were simply updated, but not renumbered, with the most current version of these rule or statute provisions. WDNR also requested that EPA remove certain provisions from the Wisconsin SIP that are no longer in effect in Wisconsin. These provisions were either repealed at the state level via rulemaking action, or were not retained in the WAC or Wis. Stats. during the renumbering processes. The following list identifies the most recent version of the state rules and statutes that contain all of the requested revisions:

- Chapters 15, 110, 285 and 299, Updated 21-22 Wis. Stats., published October 4, 2023;
- NR 400 Register July 2022 No. 799, effective August 1, 2022;
- NR 415 Register April 2023 No. 808, effective May 1, 2023;
- NR 417 Register November 1999 No. 526, effective November 1, 1999;
- NR 431 Register November 2003 No. 574, effective November 1, 2003;
- NR 436 Register November 1999 No. 526, effective November 1, 1999;
- NR 445 Register March 2016 No. 723, effective April 1, 2016;
- NR 447 Register June 2004 No. 582, effective July 1, 2004;
- NR 492 Register April 2013 No. 688, effective May 1, 2013;
- NR 493 Register November 1999 No. 527, effective December 1, 1999;

- Chapter Trans 131 Register July 2023 No. 811, effective August 1, 2023.

WDNR's request was organized as follows: 1) Section 2 requests renumbering of current SIP-approved rules and statutes; 2) Section 3 requests approval of rules and statutes that were modified following initial EPA approval; and 3) Section 4 requests removal of provisions from the Wisconsin SIP that are no longer in effect.

Section 2. Renumbering Request: Update Citations in the SIP

This section of the WDNR submittal identifies citations that were previously approved into the SIP under now obsolete numbering schemes. These citations have not undergone any language revisions since they were approved into the Wisconsin SIP, making this primarily an administrative action to update the citation numbers. Table 1 of the submittal contains NR 154 provisions that were approved into the SIP prior to the October 1986. Table 2 contains NR 400 provisions that were approved into the SIP between October 1986 and May 1995. Table 3 contains Wis. Stats. Chapter 144 provisions that were approved into the SIP prior to promulgation of 1995 Wisconsin Act 227. These changes are approvable because they do not impact the stringency of the Wisconsin SIP.

Section 3. Approval Request: Incorporate Updated Provisions into the SIP

This section of the WDNR submittal identifies provisions that were previously approved into the SIP under now obsolete

numbering schemes and underwent language revisions by Wisconsin after they were approved into the SIP. This section also identifies provisions that were not renumbered, but contain language revisions since they were approved into the SIP. Approving these provisions updates the Wisconsin SIP to be consistent in both language and numbering with current Wisconsin rules and statutes. Table 4 of the submittal contains NR 154 provisions that were renumbered and revised since they were approved into the SIP. Table 5 contains NR 400 provisions that were renumbered and revised since they were approved into the SIP. Table 6 contains Wis. Stats. Provisions that were renumbered and revised since they were approved into the SIP or are being approved into the SIP for the first time. These changes are approvable because the majority of these are administrative in nature and will not impact the stringency of the Wisconsin SIP. In some instances, the changes will increase the stringency of the Wisconsin SIP by replacing current SIP limits with more stringent limits, providing clarity to previously approved SIP provisions or by filling in gaps in the currently approved SIP rules. For example, table A2-1 of the submittal identifies sources that were subject to NR 154.11(4)(b) before the provision was revised and renumbered to NR 415.06(1). In this instance, more stringent emission limits apply to the sources under NR 415.06(1) than the limit that was required under NR 154.11(4)(b). Further, the revision updates cross-references to rules that were renumbered since they were

SIP approved and improves the continuity of some rules where portions were approved under the current numbering system and other portions were approved under the old numbering system.

Section 4. Removal Request

This section of the WDNR submittal identifies provisions that were previously approved into the SIP but were not retained during the renumbering processes, were repealed at the state level, or the associated CAA requirements were revised by Congress. Removing these provisions from the SIP will ensure the Wisconsin SIP reflects the rules and statutes currently being implemented in the state. Table 7 of the submittal contains WAC rules that are being removed from the Wisconsin SIP because they were repealed at the state level. Table 8 contains Wis. Stats. provisions that are being removed from the Wisconsin SIP because they were repealed at the state level. These changes are approvable because the provisions are no longer needed or have been replaced by other approved rules in the WI SIP.

III. CAA Section 110(1)

Section 110(1) of the CAA provides that state submissions cannot be approved as SIP revisions if they interfere with applicable requirements concerning attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), reasonable further progress, or any other applicable requirement of the CAA for any of the criteria pollutants. Appendix 1 of the WDNR submittal contains CAA section 110(1) non-interference

demonstrations for each of the revised SIP provisions and of the provisions being removed from the Wisconsin SIP. More specifically, table A1-1 contains the 110(l) demonstrations for revision or removal of WAC rules and table A1-2 contains the 110(l) demonstrations for incorporation, revision, or removal of Wisconsin Statutes. In their submittal, WDNR certified that approval of the Section 3 provision updates and incorporations into the Wisconsin SIP and removal of the Section 4 provisions from the Wisconsin SIP will not result in emissions increases that will interfere with Wisconsin's attainment or maintenance of the NAAQS. Therefore, EPA finds that Wisconsin's request to revise or remove specific rules and statutes from the SIP will not interfere with attainment and maintenance of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA, nor pose a risk to the permanence and compliance with attainment/unclassifiable designations in the state.

IV. EPA action

EPA is proposing to approve the SIP revision request submitted by Wisconsin on October 27, 2023. The revisions include primarily administrative changes to existing rules and updates to material adopted by reference related to rules in WAC Chapters 400, 415, 417, 431, 436, 445, 447, 492 and 493, and Wis. Stats. Chapters 15, 110, 285 and 299. Also, EPA is proposing to approve Wisconsin's request for the removal of the previously approved WAC rules and Wis. Stats. identified in section 4 of the WDNR submittal. Most of the provisions that

WDNR has removed are from outdated Wis. Stats. that are obsolete. These provisions are no longer needed or have been replaced by other approved rules in the Wisconsin SIP.

EPA believes that the revisions improve the clarity of the rules without affecting their stringency and therefore is proposing to approve the submitted revisions as SIP strengthening measures. The changes to the Wisconsin rules are consistent with EPA regulations and will not interfere with any applicable requirement of the CAA. Further, the revisions will provide clarity to regulators, sources and the public as to what has been approved into the Wisconsin SIP.

V. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Wisconsin Administrative Code rules NR 400 as published in the Wisconsin Register July 2022 No. 799, effective August 1, 2022; NR 415 as published in the Wisconsin Register April 2023 No. 808, effective May 1, 2023; NR 417 as published in the Wisconsin Register November 1999 No. 526, effective November 1, 1999; NR 431 as published in the Wisconsin Register November 2003 No. 574, effective November 1, 2003; NR 436 as published in the Wisconsin Register November 1999 No. 526, effective November 1, 1999; NR 445 as published in the Wisconsin Register March 2016 No. 723, effective April 1, 2016; NR 447 as published in the Wisconsin Register June 2004 No. 582,

effective July 1, 2004; NR 492 as published in the Wisconsin Register April 2013 No. 688, effective May 1, 2013; NR 493 as published in the Wisconsin Register November 1999 No. 527, effective December 1, 1999; Chapter Trans 131 as published in the Wisconsin Register July 2023 No. 811, effective August 1, 2023; and Wisconsin Statutes Chapters 15, 110, 285 and 299, Updated 21-22 Wis. Stats., published October 4, 2023, discussed in section II of this preamble. 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).

Also in this document, EPA is proposing to remove EPA-Approved Wisconsin rules NR 422.02(24) and NR 493.05(5) (title) and EPA-Approved Wisconsin Statutes 144.30(9m), 144.30(9p), 144.30(9r), 144.30(17), 144.30(17m), 144.30(18), 144.30(18m), 144.30(19), 144.30(19m), 144.30(22), 144.30(22m), 144.3712(2), 144.3712(3), 144.395, 144.397(1), 144.399(2), 144.399(3) and 144.402 from the Wisconsin SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VI. 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."

WDNR did not evaluate EJ 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. 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 EJ for people of color, low-income populations and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 8, 2024.

Debra Shore,
Regional Administrator, Region 5.

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