

TABLE 2c TO APPENDIX A OF SUBPART A—DATA ELEMENTS FOR REPORTING ON EMISSIONS FROM ONROAD MOBILE SOURCES, WHERE REQUIRED BY 40 CFR 51.30—Continued

Data elements	Every-year reporting	Three-year reporting
6. FIPS code	✓	✓
7. SCC	✓	✓
8. Emission factor	✓	✓
9. Activity (VMT by SCC)	✓	✓
10. Pollutant code	✓	✓
11. Ozone season emissions (if applicable)	✓	✓
12. Summer day emissions (if applicable)	✓	✓
13. Annual emissions	✓	✓
14. Winter throughput (percent)	✓	✓
15. Spring throughput (percent)	✓	✓
16. Summer throughput (percent)	✓	✓
17. Fall throughput (percent)	✓	✓
18. Winter work weekday emissions of CO (if applicable)	✓	✓

Subpart G—[Amended]

■ 3. Section 51.122 is revised to read as follows:

§ 51.122 Emissions reporting requirements for SIP revisions relating to budgets for NO_x emissions.

(a) As used in this section, words and terms shall have the meanings set forth in § 51.50.

(b) For its transport SIP revision under § 51.121, each state must submit to EPA NO_x emissions data as described in this section.

(c) Each revision must provide for periodic reporting by the state of NO_x emissions data to demonstrate whether the state's emissions are consistent with the projections contained in its approved SIP submission.

(1) For the every-year reporting cycle, each revision must provide for reporting of NO_x emissions data every year as follows:

(i) The state must report to EPA emissions data from all NO_x sources within the state for which the state specified control measures in its SIP submission under § 51.121(g), including all sources for which the state has adopted measures that differ from the measures incorporated into the baseline inventory for the year 2007 that the state developed in accordance with § 51.121(g).

(ii) If sources report NO_x emissions data to EPA for a given year pursuant to a trading program approved under § 51.121(p) or pursuant to the monitoring and reporting requirements of 40 CFR part 75, then the state need not provide an every-year cycle report to EPA for such sources.

(2) For the three-year cycle reporting, each plan must provide for triennial (*i.e.*, every third year) reporting of NO_x emissions data from all sources within the state.

(3) The data availability requirements in § 51.116 must be followed for all data submitted to meet the requirements of paragraphs (b)(1) and (2) of this section.

(d) The data reported in paragraph (b) of this section must meet the requirements of subpart A of this part.

(e) Approval of ozone season calculation by EPA. Each state must submit for EPA approval an example of the calculation procedure used to calculate ozone season emissions along with sufficient information to verify the calculated value of ozone season emissions.

(f) Reporting schedules.

(1) Data collection is to begin during the ozone season 1 year prior to the state's NO_x SIP Call compliance date.

(2) Reports are to be submitted according to paragraph (b) of this section.

(3) Through 2011, reports are to be submitted according to the schedule in Table 1 of this paragraph. After 2011, triennial reports are to be submitted every third year and annual reports are to be submitted each year that a triennial report is not required.

TABLE 1—SCHEDULE FOR SUBMITTING REPORTS

Data collection year	Type of report required
2005	Triennial.
2006	Annual.
2007	Annual.
2008	Triennial.
2009	Annual.
2010	Annual.
2011	Triennial.

(4) States must submit data for a required year within the time specified after the end of the inventory year for which the data are collected. The first inventory (the 2009 inventory year) and all subsequent years will be due 12

months following the end of the inventory year, *i.e.*, the 2009 inventory must be reported to EPA by December 31, 2010.

(g) Data reporting procedures are given in subpart A. When submitting a formal NO_x Budget Emissions Report and associated data, states shall notify the appropriate EPA Regional Office.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0609; FRL–8749–1]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; New Source Review Reform “Linkage” Rule, Rule AM–32–04b

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving as a revision to the Wisconsin State Implementation Plan (SIP) changes to the minor New Source Review (NSR) construction permit program and permits fees schedule, through rule AM–32–04b. The purpose of rule AM–32–04b is to update Wisconsin's minor NSR construction permit program to include changes to implement some of the new elements of the Federal NSR Reform Rule for sources that meet certain provisions within the new major NSR permitting requirements. Rule AM–32–04b has been created to accompany Wisconsin's NSR Reform rules and is necessary to effectively implement them. Elsewhere in this **Federal Register**, EPA is approving Wisconsin's NSR Reform rules. The

Wisconsin Department of Natural Resources (WDNR) has also established a new fee schedule that will apply to facilities that meet the criteria in rule AM-32-04b.

DATES: This final rule is effective on January 16, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2006-0609. 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 electronically through 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 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Danny Marcus, Environmental Engineer, at (312) 353-8781 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8781, marcus.danny@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. What Is Being Addressed in This Action?
- II. What Are the Changes That EPA Is Approving?
- III. What Action Is EPA Taking Today?
- IV. Statutory and Executive Order Reviews

I. What Is Being Addressed in This Action?

We are approving changes to the minor NSR construction permit program and permits fees schedule for the State of Wisconsin, enacted through rule AM-32-04b. EPA granted full approval to WDNR's non-attainment new source review (NANSR) program on January 18, 1995 (60 FR 3538) and the approval became effective on February 17, 1995. The January 18, 1995, approval also included WDNR's minor NSR program, which was incorporated by reference into Wisconsin's SIP.

The rule revision being approved in this action has been created to update Wisconsin's minor NSR construction permit program to include changes to implement some of the new elements of the Federal NSR Reform Rule for sources that meet certain requirements within the new major NSR permitting requirements. EPA published the NSR Reform Rule, which includes revisions to the Federal Prevention of Significant Deterioration (PSD) and NANSR regulations, in the **Federal Register** on December 31, 2002, effective March 3, 2003. Elsewhere in today's **Federal Register**, EPA is approving Wisconsin's revisions to its NSR rules. The action approving them contains a compilation of responses to comments that we received.

This rule revision will affect those facilities meeting certain criteria within the major NSR program as a result of the actual-to-projected-actual applicability test, and facilities complying with plant-wide applicability limitations (PALs). This rule revision also establishes a new fee schedule for facilities utilizing PALs and for facilities utilizing the actual-to-projected-actual test to avoid major NSR.

This rule revision contains a provision that will be applicable to sources that meet criteria within the major NSR rules when applying the actual-to-projected-actual applicability test in circumstances where the calculated difference between projected actual emissions and baseline actual emissions does not exceed significant thresholds. Facilities that meet this criterion will also have to meet the criteria in this rule, AM-32-04b, in order to be eligible for utilizing the provision.

EPA created PALs so that a facility could make rapid, iterative changes optimizing process performance, without the administrative time delays and uncertainty associated with permitting. EPA believes that the PAL provides for environmental improvement since its cap-based framework encourages emission reductions and pollution prevention. EPA has not provided provisions for sources operating under a PAL in certain circumstances where a state's minor NSR rules could affect permitting. In rule AM-32-04b, WDNR provides additional requirements for facilities that choose to operate under a PAL.

In Wisconsin, any source that chooses to establish a PAL, or will distribute allowable emissions following expiration of a PAL, must comply with section NR 406.035 and will need a minor NSR construction permit. Any

source that chooses to modify its plant under a PAL will not need a minor NSR permit, consistent with the NSR Reform Rule, so long as the criteria of NR 406.04(1f) are met.

WDNR has also established in its rules a new fee schedule that will apply to facilities using PALs and to facilities applying to utilize certain new provisions in this rule. A source will be responsible for paying a fee when establishing a PAL limit, receiving permission to increase an existing PAL limit, and when distributing limits upon expiration of a PAL. Also, there are fees applicable to sources that utilize the actual-to-projected-actual determination to avoid major NSR under the new provisions of this rule.

II. What Are the Changes That EPA Is Approving?

We are approving amendments to Wisconsin's minor NSR construction permit program to incorporate some of the new elements of the Federal NSR Reform Rule. Please refer to the proposed approval of this rule, 72 FR 19834 (April 20, 2007), which includes a detailed explanation of the provisions that we are approving. This final action incorporates into the Wisconsin SIP amendments to the following provisions NR 406 and NR 410: NR 406.035, NR 406.04(1f), NR 406.04(1k), NR 406.07(3), NR 406.11(1m), NR 410.03(intro.), NR 410.03(1)(a)8. to 10., NR 410.03(1)(b)1, NR 410.03(1)(b)(intro.) and 2. to 4.

III. What Action Is EPA Taking Today?

EPA is approving into the Wisconsin SIP, rule AM-32-04b, changes to the minor NSR construction permit program and permits fees schedule. Rule AM-32-04b will update Wisconsin's minor NSR construction permit program to include changes to implement the new elements of the Federal NSR Reform Rule for sources that meet certain criteria within the major NSR program as a result of the actual-to-projected-actual applicability test, and for those facilities complying with the new PAL provisions. This new rule is necessary for AM-06-04, the adopted version of the NSR Reform Rule, to be implemented appropriately.

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 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 (Pub. L. 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 February 17, 2009. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 8, 2008.

Lynn Buhl,

Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

- 2. Section 52.2570 is amended by adding paragraph (c)(120) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(120) On May 25, 2006, Wisconsin submitted for EPA approval into the Wisconsin SIP a revision to renumber and amend NR 410.03(1)(b); to amend 410.03(intro.) and to create NR 406.035, 406.04(1f) and (1k), 406.07(3), 406.11(1m), 410.03(1)(a)8. to 10. and (b)(intro.) and 2. to 4. relating to changes to chs. NR 406 and 410, the state air permitting programs, with Federal changes to air permitting program and affecting small business. The rule

revision being approved in this action has been created to update Wisconsin's minor NSR construction permit program to include changes to implement some of the new elements of the Federal NSR Reform rules for sources that meet certain requirements within the new major NSR permitting requirements. EPA has determined that this revision is approvable under the Act.

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

(A) NR 406.035 Establishment or distribution of plant-wide applicability limitations, as published in the Wisconsin Administrative Register, June 30, 2007, No. 618, effective July 1, 2007.

(B) NR 406.04 Direct sources exempt from construction permit requirements. NR 406.04(1f) and NR 406.04(1k), as published in the Wisconsin Administrative Register, June 30, 2007, No. 618, effective July 1, 2007.

(C) NR 406.07 Scope of permit exemption. NR 406.07(3), as published in the Wisconsin Administrative Register, June 30, 2007, No. 618, effective July 1, 2007.

(D) NR 406.11 Construction permit revision, suspension and revocation. NR 406.11(1m), as published in the Wisconsin Administrative Register, June 30, 2007, No. 618, effective July 1, 2007.

(E) NR 410.03 Application fee. NR 410.03(intro.), NR 410.03(1)(a) 8 to 10, NR 410.03(1)(b), as published in the Wisconsin Administrative Register, June 30, 2007, No. 618, effective July 1, 2007.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0609; FRL–8748–9]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; NSR Reform Regulations, Rule AM–06–04

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving certain revisions to Wisconsin's prevention of significant deterioration (PSD) and non-attainment new source review (NANSR) construction permit programs, which Wisconsin submitted on May 25, 2006. The Wisconsin Department of Natural Resources (WDNR) is seeking approval of rule AM–06–04 to implement the