

inventory is a requirement independent of planning for an area's attainment. *See* 81 FR 58009 at 58028 and 58127–8 and 80 FR 15340 at 15441–2. Additionally, NNSR requirements are discussed in the PM<sub>2.5</sub> SIP Requirements Rule and required by CAA sections 110(a)(2)(C); 172(c)(5); 173; 189(a); and 189(e), as not being suspended by a CDD because this requirement is independent of the area's attainment planning. *See* 81 FR 58010 at 58107 and 58127. Furthermore, the BACM/BACT requirements found in CAA section 189(b)(1)(B) are not suspended with a CDD for a Serious NAA due to this requirement being independent of attainment. *See* 81 FR 58010 at 58128.

Under the proposed CDD, the planning requirements noted above (for both Moderate and Serious areas) shall be suspended, until such time as the area is redesignated to attainment, after which such requirements are permanently discharged. This proposed action, if finalized, will not constitute a redesignation to attainment under CAA section 107(d)(3)(E), because the State must have an approved maintenance plan for the area as required under section 175A of the CAA, and the EPA must determine that the area has met the other requirements for redesignation in order to be redesignated to attainment. The designation status of the area will remain nonattainment for the 2006 PM<sub>2.5</sub> NAAQS until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment under CAA section 107(d)(3)(E).

It is possible, although not expected, that the Provo, UT area could violate the 24-hour PM<sub>2.5</sub> NAAQS before a maintenance plan is adopted, submitted, and approved, and the area is redesignated to attainment. Under 40 CFR 51.1015(a)(2) and (b)(2), if the EPA determines that the area has re-violated the 24-hour PM<sub>2.5</sub> NAAQS, the EPA will rescind the CDD and the State shall be required to submit the suspended attainment plan elements. Even so, submission of the suspended elements may be insufficient to eliminate future violations. Therefore, the issuance of a SIP call under section 110(k)(5) could be an appropriate response. This SIP call could require the State to submit, by a reasonable deadline not to exceed 18 months, a revised plan demonstrating expeditious attainment and complying with other requirements applicable to the area at the time of this finding. Under CAA section 172(d), the EPA may reasonably adjust the dates applicable to these requirements.

### III. Proposed Action

The EPA is proposing to make a CDD for the 2006 24-hour PM<sub>2.5</sub> Provo, Utah (UT) NAA based on the area's current attainment of the standard. Pursuant to 40 CFR 51.1015(a) and (b), the EPA proposes to determine that the obligation to submit any remaining attainment-related SIP revisions arising from classification of the Provo, UT area as a Moderate NAA and subsequent reclassification as a Serious NAA under subpart 4 of part D (of title I of the Act) for the 2006 24-hour PM<sub>2.5</sub> NAAQS is not applicable for so long as the area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS. However, the CDD does not suspend UDAQ's obligation to submit non-attainment-related requirements, which includes the base-year emission inventory, NNSR revisions, and BACM/BACT. This proposed action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3).

### IV. Statutory and Executive Order Reviews

This action proposes to issue a determination of attainment based on air quality and to suspend certain federal requirements, and thus, would not impose additional requirements beyond those imposed by state law. For this reason, this proposed 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 (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 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, this proposed action does not 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 proposed 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).

### List of Subjects in 40 CFR Part 52

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

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

Dated: February 6, 2019.

**Douglas Benevento,**

*Regional Administrator, Region 8.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2018–0569; FRL–9989–24–Region 5]**

### Air Plan Approval; Wisconsin; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve, as a State Implementation Plan (SIP) revision, Wisconsin's certification that its SIP satisfies the nonattainment new source review (NNSR) requirements of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality

Standard (NAAQS). The State's submittal is in response to EPA's February 3 and December 11, 2017 Findings of Failure to Submit (FFS) final rule, which found that Wisconsin failed to timely submit certain SIP elements to satisfy CAA requirements for implementation of the 2008 ozone NAAQS in nonattainment areas. EPA is proposing to approve this revision in accordance with the requirements of the CAA. Approval of the NNSR requirements would address EPA's finding that Wisconsin failed to submit moderate ozone NNSR requirements and turn off the sanctions and Federal Implementation Plan (FIP) clock.

**DATES:** Comments must be received on or before March 14, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-RO5-OAR-2018-0569, at <http://www.regulations.gov>, or via email to [damico.genvienne@epa.gov](mailto:damico.genvienne@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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7017, [rineheart.rachel@epa.gov](mailto:rineheart.rachel@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 the Background for This Action?
- II. What is EPA's Evaluation of Wisconsin's Submittal?
- III. What Action Is EPA Proposing?
- IV. Statutory and Executive Order Reviews

### **I. What is the background for this action?**

#### *A. Background on the 2008 Ozone Standard*

On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).<sup>1</sup> Promulgation of a revised NAAQS triggers a requirement for EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standard. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.<sup>2</sup> Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent 3 years). The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.<sup>3</sup>

Areas that EPA designates nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources, and implement a NNSR program for the relevant ozone NAAQS.<sup>4</sup> For moderate areas, a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than 6 years after designation, the requirement to submit a reasonable further progress (RFP) plan, the requirement to adopt and implement certain emissions controls, such as RACT and I/M, and the requirement for greater emissions offsets for new or modified major stationary sources under the state's NNSR program.<sup>5</sup>

#### *B. Background on the Wisconsin Ozone Nonattainment Areas*

On June 11, 2012,<sup>6</sup> EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and part of Kenosha County in Wisconsin. On May 4, 2016,<sup>7</sup> pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2015 marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas. Pleasant Prairie and Somers townships in Kenosha County are part of the Chicago area nonattainment area. The remainder of Kenosha County is designated as unclassifiable/attainment.

On May 21, 2012,<sup>8</sup> EPA designated Sheboygan County in Wisconsin as a marginal nonattainment area for the 2008 ozone NAAQS. On December 19, 2016,<sup>9</sup> pursuant to section 181(b) of the CAA, EPA determined that Sheboygan County failed to attain the 2008 ozone NAAQS by the July 20, 2016 marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas.

Effective March 6, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 ozone NAAQS.<sup>10</sup> This finding established certain deadlines for the imposition of sanctions if a state does not submit a timely SIP revision addressing the requirements for which the finding was made and for EPA to promulgate a FIP to address any outstanding SIP requirements. As part of that action, EPA made a finding that Wisconsin failed to submit a marginal NNSR SIP for the Wisconsin portion of the Chicago area and for Sheboygan County.

<sup>1</sup> 73 FR 16436.

<sup>2</sup> CAA sections 107(d)(1) and 181(a)(1).

<sup>3</sup> CAA section 181(a)(1).

<sup>4</sup> CAA section 182(a).

<sup>5</sup> CAA section 182(b).

<sup>6</sup> CAA section 182(b).

<sup>7</sup> 81 FR 26697.

<sup>8</sup> 77 FR 30088 (May 21, 2012).

<sup>9</sup> 81 FR 91841 (December 19, 2016).

<sup>10</sup> 82 FR 9158 (February 3, 2017).

## II. What is EPA's evaluation of Wisconsin's submittal?

On July 19, 2018, Wisconsin submitted a SIP revision requesting EPA approve Wisconsin's certification that its existing SIP-approved NNSR regulations fully satisfy the NNSR requirements set forth in 40 CFR 51.165 for both marginal and moderate ozone nonattainment areas for the 2008 ozone NAAQS. The NNSR certification addresses the deficiency that was the basis for the March 6, 2017 finding; therefore, approval of the certification would turn off both the sanctions and FIP clocks for the Wisconsin portion of the Chicago area and for Sheboygan County.

### A. Background

CAA sections 110(a)(2) and 172(c)(5) require permits for the construction of new or modified major stationary sources anywhere in a nonattainment area in accordance with CAA section 173. CAA section 182 contains additional requirements applicable to ozone nonattainment areas. NNSR requirements are codified at 40 CFR 51.165.

On March 6, 2017, EPA found that Wisconsin failed to submit moderate ozone NNSR rules for the Wisconsin portions of the Chicago area 2008 ozone nonattainment areas and for the Sheboygan County 2008 ozone nonattainment area. On July 19, 2018, Wisconsin submitted its NNSR certification to address NNSR

requirements for marginal and moderate ozone nonattainment areas.

Wisconsin has certified that specific sections of its NNSR rules at NR 408 continue to meet the NNSR program requirements for ozone nonattainment areas under the 2008 ozone NAAQS. The table below provides the sections of Wisconsin's NNSR rule corresponding to the relevant requirements at 40 CFR 51.165. NR 408 was originally approved into the SIP effective February 17, 1995,<sup>11</sup> with revisions subsequently approved into the SIP effective January 16, 2009.<sup>12</sup> Each requirement identified in Wisconsin's certification has not been revised since EPA last approved it. The following table lists the specific provisions of Wisconsin's NNSR rules that address the required elements of the Federal NNSR rules:

| Federal rule                                | Wisconsin rule   |
|---|--|
| 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) ..... | NR 408.02(21), NR 408.02(21)(a)(1)(b), (C), (d) and (e).                   |
| 40 CFR 51.165(a)(1)(iv)(A)(2) .....         | NR 408.02(21)(b), NR 408.02(21)(b)(1)(a)–(c), and NR 408.02(21)(b)(2)–(4). |
| 40 CFR 51.165(a)(1)(iv)(A)(3) .....         | NR 408.02(21)(a)(3).   |
| 40 CFR 51.165(a)(1)(v)(E) .....             | NR 408.02(20)(c).  |
| 40 CFR 51.165(a)(1)(v)(F) .....             | NR 408.02(20)(a).  |
| 40 CFR 51.165(a)(1)(x)(A) .....             | NR 408.02(32)(a) and NR 408.02(32)(a)(6).                                  |
| 40 CFR 51.165(a)(1)(x)(B) .....             | NR 408.02(32)(c).  |
| 40 CFR 51.165(a)(1)(x)(C) .....             | NR 408.02(32)(f) and NR 408.03(5).   |
| 40 CFR 51.165(a)(1)(x)(E) .....             | NR 408.02(32)(d).  |
| 40 CFR 51.165(a)(3)(ii)(C)(1) .....         | NR 408.06(7)(a), NR 408.06(7)(a)(1), and NR 408.06(7)(a)(4).               |
| 40 CFR 51.165(a)(3)(ii)(C)(2) .....         | NR 408.06(7)(b).   |
| 40 CFR 51.165(a)(8) .....                   | NR 408.03(5).  |
| 40 CFR 51.165(a)(9)(ii)–(iv) .....          | NR 408.06(4)(a)–(e), NR 408.06(5), and NR 408.05(2)(b).                    |

### B. Analysis of Wisconsin's NNSR Rules

For the following reasons, we are proposing to approve Wisconsin's certification that NR 408 is consistent with 40 CFR 51.165 and meets the requirements of CAA sections 172(c)(5), 173, 110(a)(2), 182(a)(4), and 182(b)(5) under the 2008 ozone standard for the Wisconsin portion of the Chicago area ozone nonattainment area and for Sheboygan County. Approval of Wisconsin's NNSR certification would address the deficiency that was the basis for the March 6, 2017 finding. Therefore, approval of this SIP revision would turn off both the sanctions and FIP clocks for the Wisconsin 2008 ozone nonattainment areas.

#### 1. Major Source Thresholds for Ozone—40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2)

The major source thresholds for both volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) (*i.e.* ozone precursors) are defined in 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2). The

applicable thresholds vary depending on the classification of the ozone nonattainment area. For marginal and moderate ozone nonattainment areas, a major stationary source of ozone is a source that emits, or has the potential to emit, 100 tons per year of VOC or NO<sub>x</sub>. Different emissions thresholds apply for Serious, Severe and Extreme ozone nonattainment areas and for areas located in an ozone transport region (OTR).

Wisconsin has certified that the Federal requirements for major source thresholds for VOC and NO<sub>x</sub> are addressed by NR 408.02(21). Under NR 408.02(21)(a), for an area designated as nonattainment for ozone, a major stationary source is a stationary source which emits or has the potential to emit VOC in an amount equal to or greater than (1) 100 tons per year in an area classified as marginal or moderate nonattainment for ozone (NR 408.02(21)(a)(1); (2) 50 tons per year of VOC in an area designated as serious nonattainment for ozone (NR 408.02(21)(a)(1)(b)); (3) 25 tons per year

of VOC in an area designated as severe for ozone (NR 408.02(21)(a)(1)(d)); and (4) 10 tons per year of VOC in an area designated as extreme for ozone (NR 408.02(21)(a)(1)(e)). Under NR 408.02(21)(b), for an area designated as nonattainment for ozone, a major stationary source is a stationary source which emits or has the potential to emit NO<sub>x</sub> in an amount equal to or greater than (1) 100 tons per year in an area classified as marginal or moderate nonattainment for ozone (NR 408.02(21)(b)(1)(a)); (2) 50 tons per year in an area classified as serious nonattainment for ozone (NR 408.02(21)(b)(2)); (3) 25 tons per year in an area classified as severe nonattainment for ozone (NR 408.02(21)(b)(3)); and (4) 10 tons per year in an area classified as extreme nonattainment for ozone (NR 408.02(21)(b)(4)).

Wisconsin's thresholds are consistent with the Federal thresholds; therefore, we propose to find that Wisconsin's NNSR provisions at NR 408.02(21)

<sup>11</sup> See 60 FR 3538.

<sup>12</sup> See 73 FR 76560.

satisfy the requirements of 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2).

**2. Change Constitutes Major Source by Itself—40 CFR 51.165(a)(1)(iv)(A)(3)**

Under 40 CFR 51.165(a)(1)(iv)(A)(3), any physical change that would occur at a stationary source not qualifying as a major stationary source becomes a major stationary source if the change would constitute a major stationary source by itself. Wisconsin has certified that the requirement is addressed by NR 408.02(21)(a)(3) which states that a major source includes “any physical change that would occur at a stationary source not qualifying under subd. 1. or 2. as a major source, if the change would constitute a major source by itself.” Wisconsin’s provisions are consistent with Federal provisions; therefore, we propose to find that the Wisconsin SIP at NR 408.02(21)(a)(3) satisfies the requirements of 40 CFR 51.165(a)(1)(iv)(A)(3).

**3. Significant Net Emissions Increase of NO<sub>x</sub> Is Significant for Ozone—40 CFR 51.165(a)(1)(v)(E)**

Under 40 CFR 51.165(a)(1)(v)(E), any significant net emissions increase of NO<sub>x</sub> is considered significant for ozone. Wisconsin has certified that this requirement is addressed by NR 408.02(20)(c), which provides that any significant net emissions increase of NO<sub>x</sub> is considered significant for ozone in addition to any separate requirements for nitrogen oxides. Wisconsin’s provisions at NR 408.02(20)(c) are consistent with the Federal requirements at 40 CFR 51.165(a)(1)(v)(E); therefore, we propose to find that NR 408.02(20)(c) satisfies the requirements of 40 CFR 51.165(a)(1)(v)(E).

**4. Any Emissions Change of VOC in an Extreme Area Triggers NNSR—40 CFR 51.165(a)(1)(v)(F)**

Under 40 CFR 51.165(a)(1)(v)(F), any physical change in, or change in the method of operation of, a major stationary source of VOC that results in any increase in emissions of VOC from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to CAA title 1, part D, subpart 2. Wisconsin has certified that this requirement is addressed by NR 408.02(20)(a). NR 408.02(20)(a) provides that “any physical change in, or change in the method of operation of a major source of VOCs located in an extreme

nonattainment area for ozone which results in any increase in emissions of VOCs from any discrete operation, emissions unit or other pollutant emitting activity at the source shall be considered a major modification for ozone.” Wisconsin’s provision at NR 408.02(20)(a) is consistent with the Federal requirements of 40 CFR 51.165(a)(1)(v)(F); therefore, we propose to find that NR 408.02(20)(a) satisfies the requirements of 40 CFR 51.165(a)(1)(v)(F).

**5. Significant Emission Rates for VOC and NO<sub>x</sub> as Ozone Precursors—40 CFR 51.165(a)(1)(x)(A)–(C) and (E)**

Under 40 CFR 51.165(a)(1)(x)(A), (B) and (e), the significant emission rate for ozone is 40 tons per year of VOC or NO<sub>x</sub>, except that the significant emission rate in serious or severe nonattainment areas shall be 25 tons per year. Under 40 CFR 51.165(a)(1)(x)(E), any increase in actual emissions of VOC from any emissions unit at a major stationary source of VOC located in an extreme ozone nonattainment area shall be considered a significant net emissions increase.

Wisconsin has certified that NR 408.02(32)(a), (c), (d) and (f) satisfy these requirements. NR 408.02(32)(a) defines significant emission rates for NO<sub>x</sub> of 40 tons per year and for ozone of 40 tons per year of VOC. NR 408.02(32)(c) defines significant for serious and severe ozone nonattainment areas as 25 tons per year of VOC. NR 408.02(32)(d) states that any increase in VOC emissions at a major source of VOC in an extreme ozone nonattainment area is considered significant. NR 408.02(32)(f) states that for purposes of applying NR 408.03(5)(major NSR applicability) to major sources of NO<sub>x</sub> located in ozone nonattainment areas, the significant emission rates and other requirements for VOC shall apply to NO<sub>x</sub> emissions. These provisions satisfy the requirements of 40 CFR 51.165(a)(1)(x)(A)–(C) and (E) with respect to VOC emissions. While the significant emission rate for ozone in NR 408.02(32)(a) does not specifically include NO<sub>x</sub>, Wisconsin has certified that other provisions ensure NO<sub>x</sub> would also be subject to the 40 tons per year significance rate for ozone. NR 408.03(2) provides that the NNSR requirements shall apply to any new source or major modification that is major for the pollutant, or precursor of the pollutant, for which the area is designated as nonattainment. Therefore, a major modification of NO<sub>x</sub> in an ozone nonattainment area would trigger NNSR requirements for ozone. EPA is proposing to find that NR 408.02(32)(a),

(c), (d) and (f) in conjunction with NR 408.03(2) satisfy the requirements of 40 CFR 51.165(a)(1)(x)(A)–(C) and (E).

**6. Provisions for Emissions Reduction Credits—40 CFR 51.165(a)(3)(ii)(C)(1)–(2)**

Under 40 CFR 51.165(a)(3)(ii)(C)(1) and (2), to be considered creditable, emission reductions achieved by shutting down an existing emission unit or curtailing production or operating hours must be surplus, permanent, quantifiable, and federally enforceable. Shutdowns or curtailments must have occurred after the last day of the base year for the SIP planning process. Reviewing authorities may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes emissions from the previously shutdown or curtailed emissions units, but in no event may credit be granted for shutdowns that occurred prior to August 7, 1977. Shutdown or curtailment reductions occurring before the last day of the base year for the SIP planning process may also be generally credited if the shutdown or curtailment occurred on or after the date the construction permit application is filed or if the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emission unit and the emission reductions that result are surplus, permanent, quantifiable, and federally enforceable. Wisconsin has certified that the requirements of NR 408.06(7)(a), NR 408.06(7)(a)(1), NR 408.06(7)(a)(4), and NR 408.06(7)(b) satisfy these requirements.

NR 408.06(7)(a) states that “emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if (1) The reductions are surplus, permanent, quantifiable and federally enforceable . . . (4) The shutdown or curtailment occurs on or after the date specified for this purpose in the state implementation plan, and if the date specified is on or after the date of the most recent emissions inventory used in the plan’s demonstration of attainment. The department may consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from the previously shut down or curtailed sources. However, no credit is available for shutdowns which occurred prior to August 7, 1977.” NR

408.06(7)(b) states that “the emission reductions described in par. (a) may be credited in the absence of a U.S. environmental protection agency approved state implementation plan only if the shutdown or curtailment occurs on or after the date the construction permit application is filed or if the applicant can establish that the proposed new source is a replacement for the shut down or curtailed source, and the cutoff date provisions of par. (a)4. are observed.” EPA finds these provisions to be consistent with the Federal requirements; therefore, we propose to find that the provisions of NR 408.06(7)(a), NR 408.06(7)(a)(1), NR 408.06(7)(a)(4) and NR 408.06(7)(b) satisfy the requirements of 40 CFR 51.165(a)(3)(ii)(C)(1) and (2).

#### 7. Requirements for VOC Apply to NO<sub>x</sub> as Ozone Precursors—40 CFR 51.165(a)(8)

Under 40 CFR 51.165(a)(8), all requirements applicable to major stationary sources and major modifications of VOC shall apply to NO<sub>x</sub> except where the Administrator has granted a NO<sub>x</sub> waiver applying the standards set forth under CAA section 182(f) and the waiver continues to apply. Wisconsin has certified that these Federal requirements are satisfied by NR 408.03(5). NR 408.03(5) states “The requirements of ss. NR 408.04 to 408.10 applicable to new major sources or major modifications of VOC shall apply to nitrogen oxides emissions from new major sources or major modifications of nitrogen oxides, except that the requirements do not apply if the administrator determines, when the administrator approves a plan, plan revision or petition under provisions of section 182(f) of the CAA (42 U.S.C. 7511a(f)), that the statutory requirements of section 1829f) do not apply.” We find that NR 408.03(5) is consistent with the requirements of 40 CFR 51.165(a)(8); therefore, we propose to find that the Wisconsin SIP satisfies the requirements of 40 CFR 51.165(a)(8).

#### 8. Offset Ratios for VOC and NO<sub>x</sub> for Ozone Nonattainment Areas—40 CFR 51.165(a)(9)(ii)–(iv)

Under 40 CFR 51.165(a)(9)(ii)(A)–(E), the VOC offset ratios shall be 1.1:1 in marginal ozone nonattainment areas, 1.15:1 in moderate ozone nonattainment areas, 1.2:1 in serious ozone nonattainment areas, and 1.3:1 in severe ozone nonattainment areas, and 1.5:1 in extreme ozone nonattainment areas. NR 408.06(4) states “In meeting the requirements of sub. (3) for ozone nonattainment areas classified under section 182 of the CAA (42 U.S.C.

7511a), the ratio of total actual emission reductions of VOCs, and nitrogen oxides where applicable, to the net emissions increase for the same air contaminant class shall be as follows:

(a) In any rural transport or marginal nonattainment area for ozone: at least 1.1 to 1.

(b) In any moderate nonattainment area for ozone: At least 1.15 to 1.

(c) In any serious nonattainment area for ozone: At least 1.2 to 1.

(d) In any severe nonattainment area for ozone: At least 1.3 to 1.

(e) In any extreme nonattainment area for ozone: At least 1.5 to 1.” The offset ratios for both VOC and NO<sub>x</sub> are consistent with 40 CFR

51.165(a)(9)(ii)(A)–(E); therefore, we propose to find that the requirements of NR 408.06(4) satisfy the requirements of 40 CFR 51.165(a)(9)(ii)(A)–(E).

40 CFR 51.165(a)(9)(iv) requires, for ozone nonattainment areas subject to CAA title 1, part D, subpart 1 but not subpart 2, an offset ratio of at least 1:1. All of the current ozone nonattainment areas in Wisconsin were designated pursuant to CAA title 1, part D, subpart 2 and so this requirement does not apply to Wisconsin at this time.

#### 9. OTR Requirements

Wisconsin is not located in an OTR, and has certified as such. Wisconsin is not required to include the OTR provisions set forth in 40 CFR 51.165(a)(1)(iv)(A)(1)(ii), 40 CFR 51.165(a)(1)(iv)(A)(2)(ii), 40 CFR 51.165(a)(1)(v)(E), 40 CFR 51.165(a)(1)(x)(C), 40 CFR 51.165(a)(8), and 40 CFR 51.165(a)(9)(iii) in the SIP until such time that EPA publishes rules that establish Wisconsin as part of the OTR.

#### 10. Anti-Backsliding Provisions—40 CFR 51.165(a)(12)

Anti-backsliding provisions are designed to ensure that for existing ozone nonattainment areas that are designated nonattainment for a revised and more stringent ozone NAAQS, (1) there is protection against degradation of air quality (*i.e.*, the areas do not “backslide”), (2) the areas continue to make progress toward attainment of the new, more stringent NAAQS, and (3) there is consistency with the ozone NAAQS implementation framework outlined in CAA title 1, part D, subpart 2. See 78 FR 34211. As part of the SIP Requirements Rule, EPA revoked the 1997 NAAQS for all purposes and established anti-backsliding requirements for areas that remained designated nonattainment for the revoked NAAQS. See 80 FR 12265 and 40 CFR 51.165(a)(12). Under 40 CFR

51.165(a)(12), the anti-backsliding requirements at 40 CFR 51.1105 apply in any area designated nonattainment for the 2008 ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015. The anti-backsliding requirements apply to Sheboygan County, which was designated as a moderate ozone nonattainment area for the 1997 ozone NAAQS. Anti-backsliding requirements are addressed in documents issued by the Wisconsin Department of Natural Resources pursuant to ss. 285.23(2), and are included as part of a separate SIP action.

### III. What action is EPA proposing?

EPA is proposing to approve Wisconsin’s July 18, 2018 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Wisconsin portion of the Chicago Nonattainment Area and for Sheboygan County. EPA has concluded that Wisconsin’s submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165. Approval of the NNSR requirements would address EPA’s finding that Wisconsin failed to submit moderate ozone NNSR requirements and turn off the sanctions and FIP clock.

### 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);
- 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 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).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 20, 2018.

**James O. Payne,**

Acting Deputy Regional Administrator,  
Region 5.

[FR Doc. 2019–02055 Filed 2–11–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2018–0078; FRL–9989–37–Region 4]

#### Air Plan Approval; North Carolina; Miscellaneous Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve changes to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality (NCDEQ), through letters dated April 4, 2017, August 22, 2017, and September 28, 2018. These SIP revisions make amendments, most of which are structural and minor, to North Carolina's source testing rules. This action is being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before March 14, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0078 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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, 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-pa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Febres can be reached by telephone at (404) 562–8966 or via electronic mail at [febres-martinez.andres@epa.gov](mailto:febres-martinez.andres@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. What action is the EPA taking today?

Through letters dated April 4, 2017, August 22, 2017, and September 28, 2018, the State of North Carolina, through NCDEQ, submitted three SIP

revisions for EPA approval.<sup>1</sup> These SIP revisions include structural amendments to 15A North Carolina Administrative Code (NCAC) 02D Section .0501—*Compliance with Emission Control Standards*, and typographical amendments to 15A NCAC 02D Section .0536—*Particulate Emissions from Electric Utility Boilers*.<sup>2</sup> Additionally, the SIP revisions incorporate, for primarily structural, organizational reasons, four new rules: 15A NCAC 02D Sections .2609—*Particulate Testing Method*, .2610—*Opacity*, .2611—*Sulfur Dioxide Testing Methods*, and .2617—*Total Reduced Sulfur*. EPA has preliminarily determined that a number of these changes to the North Carolina SIP are either structural or minor and ministerial and do not alter the meaning of any SIP provisions, that others are SIP-strengthening, and that all are consistent with federal regulations regarding source testing and are approvable pursuant to section 110 of the CAA. The changes that are the subject of this proposed rulemaking are described in further detail in section III below.

## II. Background

On November 19, 2008, North Carolina submitted to EPA for approval a SIP revision which restructured the way the SIP identified source testing methods. The November 19, 2008, SIP revision removed all references to required source testing methods from the source-category rules of the SIP and compiled them into a new section: Subchapter 2D Section .2600, *Source Testing*. This new rule section consolidated North Carolina's testing protocols with federal air source testing methods formerly located throughout DEQ's rules and amended existing source-category standards to add cross-references to the applicable testing rules in the new section, 2D Section .2600. EPA partially approved the November 19, 2008, SIP revision, together with several other SIP revisions, but did not act on some of the proposed amendments at the time. See 78 FR 27065 (May 9, 2013).

Through a letter dated April 4, 2017, North Carolina submitted a request to withdraw some of the proposed changes from the November 19, 2008, SIP revision and to resubmit these changes

<sup>1</sup> EPA received the SIP revisions on April 28, 2017, September 6, 2017, and October 10, 2018, respectively.

<sup>2</sup> In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as “Subchapter 2D Air Pollution Control Requirements.”