

Report From Agency

REPORT TO LEGISLATURE

NR 404 and 484, Wis. Adm. Code,
Incorporating the National Ambient Air Quality Standard (NAAQS) for fine particles (PM_{2.5})

Board Order Number: AM-07-15
Clearinghouse Rule Number: CR 16-041

BASIS AND PURPOSE OF THE PROPOSED RULE

The proposed rule addresses adoption of federal primary annual National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometer (PM_{2.5}) into ch. NR 404, Wis. Adm. Code, and data handling conventions into ch. NR 484, Wis. Adm. Code.

On January 15, 2013, the U.S. Environmental Protection Agency (EPA) published revisions to the NAAQS for PM_{2.5} (78 FR 3086) and the revised standard was in effect on March 18, 2013. The primary annual standard for PM_{2.5} was revised from 15.0 micrograms per cubic meter (µg/m³) to 12.0 µg/m³. The secondary annual standard of 15.0 µg/m³ and the primary and secondary 24-hour standards of 35 µg/m³ for PM_{2.5} were retained. All areas of the state are currently attaining the new standard.

Under s. 285.21, Wis. Stats., the Department of Natural Resources (the Department) is required to promulgate by rule a similar, but no more restrictive, air quality standard when the EPA promulgates a new or revised NAAQS. Therefore, the Department proposed adopting the revised PM_{2.5}NAAQS into ch. NR 404, Wis. Adm. Code. Further, the Department also proposed revising ch. NR 484, Wis. Adm. Code, to include references to applicable U.S. EPA data handling conventions for PM_{2.5}.

In addition to adopting the revised PM_{2.5}NAAQS into ch. NR 404, Wis. Adm. Code and including references to applicable U.S. EPA data handling conventions for PM_{2.5} into ch. NR 484, Wis. Adm. Code, the Department also proposes to submit the revisions to NR 404 and 484, Wis. Adm. Code, promulgated through this rulemaking, to EPA for approval and incorporation into Wisconsin's State Implementation Plan (SIP) as required by Section 110 of the Clean Air Act. Pursuant to ss. 285.14(2) and 13.172(3), Wis. Stats., the Department is required to provide SIP plans and all the supporting documents to the standing committees of the legislature with jurisdiction over environmental matters (i.e. the Senate Committee on Natural Resources and the Assembly Committee on Environment and Forestry) at least 60 days prior to SIP submittal for EPA's approval. Section 285.11(6), Wis. Stats., authorizes the Department to develop and revise a SIP for prevention, abatement, and control of air pollution. This "Report to Legislature" fulfills the 60-day review requirements of s. 285.14(2), Wis. Stats.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

The Department prepared a draft fiscal estimate and economic impact analysis (EIA) for this rule and solicited comments from 1,600 industries, government agencies, trade groups, non-governmental organizations and other interested parties from March 23, 2016 through April 6, 2016. The Department received eight (8) responses from the public: six (6) from representatives of stationary source facilities and two (2) from trade organizations. The responses either did not raise comments or concerns, or agreed with the Department's estimate that there would be no, or minimal, additional economic impact due to

adoption of the 2012 annual PM_{2.5} NAAQS into state administrative code. The Response to Comments file, which summarizes the comments and includes the detailed responses, is attached for reference.

The fiscal estimate and EIA for this rule was finalized and included with the materials that were supplied to the public for comment from July 14, 2016 through August 31, 2016. The Department also held a public hearing on August 25, 2016 on the proposed rule. The Department received no comments during this public comment period.

MODIFICATIONS MADE TO THE PROPOSED RULE AS A RESULT OF PUBLIC COMMENT OR TESTIMONY RECEIVED

The Department received no public comments during the public comment period.

PERSONS APPEARING OR REGISTERING AT PUBLIC HEARINGS

No persons appeared at the hearing.

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

No changes were made to the rule analysis or the fiscal estimate and economic impact analysis.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

The Legislative Council Rules Clearinghouse recommended changes to clarify the proposed rule if the proposed rule involved incorporating federal regulations by reference. The Board Order has been revised to clarify that the proposed rule does not intend to incorporate new federal regulations, and therefore, Attorney General's certification is not required for this rule change. In addition, the Legislative Council Rules Clearinghouse also pointed out spelling errors in the federal regulation references in NR 484.04(6g) and NR 484.04(6r). These spelling errors have been corrected in the revised Board Order.

FINAL REGULATORY FLEXIBILITY ANALYSIS

This rule adopts the 2012 annual primary PM_{2.5} National Ambient Air Quality Standard (NAAQS) into state administrative code. The Department does not anticipate that this rule will have any economic impact on small businesses. All areas of the state are attaining the new standard. The new standards do not result in any new regulatory requirements for stationary sources.