

Report From Agency

REPORT TO LEGISLATURE
NR 404, 407, 408, 428 and 484, Wis. Adm. Code

Board Order No. AM-10-19
Clearinghouse Rule No. CR 21-022

Basis and Purpose of the Proposed Rule

Under the federal Clean Air Act (CAA), the U.S. Environmental Protection Agency (EPA) is responsible for promulgating National Ambient Air Quality Standards (NAAQS), which are designed to protect public health and public welfare. On October 26, 2015, the EPA promulgated the “2015 ozone NAAQS,” which set the NAAQS for ozone at 0.070 parts per million (ppm). Under s. 285.21(1)(a), Stats., if the EPA promulgates a NAAQS, the Department of Natural Resources (the department) is required to promulgate a similar, but no more restrictive, standard. The CAA also requires states to adopt or otherwise incorporate federal NAAQS into state rules. To meet state and federal requirements, the proposed rules revise chs. NR 404 and 484, Wis. Adm. Code, to adopt the 2015 ozone NAAQS and incorporate by reference the federal air pollution monitoring requirements related to the NAAQS. State-enforced ambient air standards enable the department to implement the full range of emission control programs necessary to comply with the health-based standards and meet associated CAA requirements.

In addition to adoption of the 2015 ozone NAAQS, which is the most significant proposed change in this rulemaking, the department is proposing to revise sections of chs. NR 407, 408 and 428, Wis. Adm. Code, to ensure implementation of the ozone NAAQS, consistent with federal law. Because there are currently two ozone NAAQS being implemented nationwide (the 2008 ozone NAAQS and the 2015 ozone NAAQS), the department is proposing to revise chs. NR 407 and 408, Wis. Adm. Code, to clarify major source and major modification thresholds in areas with different nonattainment classifications for multiple ozone NAAQS. The final key proposed revisions ensure that major source thresholds that determine applicability for reasonably available control technology (RACT) requirements for sources that emit nitrogen oxides (NO_x) in ozone nonattainment areas are consistent with federal law. Current NO_x RACT major source thresholds in ch. NR 428, Wis. Adm. Code, are inconsistent with federal requirements for the state’s ozone nonattainment areas that are classified as “serious” (or above).

Summary of Public Comments

The public comment period for the draft rule occurred from March 1 to April 15, 2021. No written comments were received during the public comment period. The public hearing on the draft rule was held on April 8, 2021. Two members of the public attended the hearing. One attendee asked clarifying questions about the proposed rule changes. Neither attendee provided verbal comments.

Modifications Made

No modifications were made to the proposed rule as a result of public comments or testimony, as none were received.

Appearances at the Public Hearing

The following people attended the public hearing: Roman Ryan and Rebecca Clarke of the Sheboygan Ozone Reduction Alliance. No members of the public registered for or against the proposed rule or provided testimony at the public hearing.

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the plain language rule analysis, economic impact analysis, or fiscal estimate as a result of public comments or testimony, as none were received.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style, and placement in administrative code; and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

Comment 5.a. In its rule analysis, the department said it will reach out to any source affected by a nonattainment area reclassification and revise its permits as needed. The department should consider including a provision in the rule that would require the department to send written notification to affected sources if reclassification of a nonattainment area occurs.

Response – Thank you for this suggestion. The department is opting not to include the suggested provision because there are currently no similar provisions included elsewhere in the NR 400 series which require the department to issue written notification to sources affected by nonattainment area reclassifications. Reclassifications and their resulting changes to major source thresholds were promulgated as part of the federal Clean Air Act, last amended in 1990, and are not new to the 2015 ozone standard being incorporated in this rulemaking. In practice, the department typically works with affected sources early in EPA’s reclassification process to ensure alignment of the effective dates of the sources’ revised permits and nonattainment area’s reclassification.

Comment 5.c. – Part I. To increase clarity, the department should define the term “redesignation substitute” used in ss. NR 407.02 (4) (c) 1. b. and 408.24 (24) (c) and explain how that relates to the major source threshold.

Response – Instead of including a definition for “redesignation substitute”, the department addressed LCRC’s comment by revising ss. NR 407.02 (4) (c) 1. b. and 408.24 (24) (c) to explain that redesignations correspond to current standards and redesignation substitutes correspond to revoked standards.

Final Regulatory Flexibility Analysis

The department does not anticipate small businesses will be impacted by the proposed rule language. The proposed rule changes only have the potential to impact relatively large sources that meet “major source” emissions thresholds.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.