

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 8/31/21
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 400 – Air Pollution Control Definitions NR 438 – Air Contaminant Emission Inventory Reporting Requirements NR 484 – Incorporation By Reference	
4. Subject Revisions to ch. NR 438 to clarify and update air contaminant emissions inventory reporting requirements (Board Order AM-31-19).	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.370(4)(cm), 20.370(4)(co), 20.370(4)(mq)
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0 – 50,000 (minimal)	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule In 2015 the U.S. Environmental Protection Agency (EPA) finalized amendments to the Air Emissions Reporting Requirements (AERR) rule (40 CFR 51, subpart A, and 40 CFR 51.122). This rule updated requirements for state and local agencies to collect and submit emissions data to the EPA. Currently, some inconsistencies exist between Wisconsin's air emissions reporting requirements codified in ch. NR 438, Wis. Adm. Code, and the AERR rule. The Department of Natural Resources (the department) is proposing to revise ch. NR 438, Wis. Adm. Code, to meet federal requirements in the AERR rule. Updating ch. NR 438, Wis. Adm. Code, will ensure the state has a legally sufficient state implementation plan (SIP), required under Section 110(a)(2) of the federal Clean Air Act (CAA) and maintains Wisconsin's approval under Title I of the CAA. The department is proposing to add an emissions reporting requirement for sources that directly emit particulate matter with an aerodynamic diameter of equal to or less than 2.5 µm (PM _{2.5}), which ensures compliance with the AERR rule and maintains an approvable SIP. Related changes include specifying that state reporting requirements for particulate matter apply to primary emissions, where primary emissions are directly emitted to the atmosphere, rather than particulate matter formed through atmospheric chemical reactions ("secondary" emissions). Further, primary particulate emissions are being distinguished from filterable and condensable particulate emissions which sum to equal the primary particulate emissions. Emissions reporting requirements are included for these filterable and condensable components of primary PM _{2.5} and primary particulate matter with an aerodynamic diameter of equal to or less than 10 µm (PM ₁₀). The proposed rule also addresses a deficiency in ch. NR 438 identified by EPA which requires Type A sources	

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under subpart A of 40 CFR 51 to report annual emissions of all criteria air pollutants and ammonia if the sources emit in excess of any of the thresholds listed in Table 1 to Appendix A of Subpart A under 40 CFR 51.30. These proposed changes will ensure ch. NR 438, Wis. Adm. Code, meets federal requirements in the AERR rule (40 CFR 51, subpart A).

Additionally, the department is proposing to make other revisions to ch. NR 438, Wis. Adm. Code, to (1) align state administrative code language with federal emissions reporting terminology, (2) revise outdated ch. NR 438, Wis. Adm. Code, language and make corresponding updates to ch. NR 484, Wis. Adm. Code, to reflect the department's current emissions inventory process, and (3) create a list of emission units, operations or activities that a facility may exclude from the annual emission inventory. These proposed changes will clarify and modernize the emissions reporting rule language in ch. NR 438, Wis. Adm. Code.

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

Entities that may have an interest in the proposed rule include large point sources (Title V sources) that may meet the definition of a Type A source under subpart A of 40 CFR 51. Organizations that may not be directly affected by the rule but may have an interest in rule development include the Small Business Environmental Council and Wisconsin Manufacturers and Commerce. In addition, the Air Management Study Group, the air program's stakeholder working group, may be interested in the proposed rule. This group includes members representing Clean Wisconsin, environmental law attorneys, electric utilities, and representatives of large and small businesses. The department contacted all these entities during the environmental impact analysis comment period via email.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

This rule does not impact local government units directly. However, the department notified the League of Wisconsin Municipalities and the Wisconsin Counties Association via email so that counties and other local government units are consulted as part of the solicitation process. No local governmental units submitted comments on the EIA.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

(A) Economic Impact on Businesses

The department estimates that the economic impact of implementing the revised reporting requirements in Wisconsin will be minimal (\$0-\$50,000). The proposed changes will not involve an emission fee increase for sources and will not require sources to install new emissions monitoring equipment or reporting systems. The proposed rule will result in a small administrative impact to sources in the form of time required to report and certify annual PM_{2.5} emissions if a source's emissions exceed the reporting threshold or to report and certify all criteria air pollutant and ammonia emissions for a Type A source under subpart A of 40 CFR 51.

To minimize administrative time associated with annual emissions reporting, the department's web-based air emissions inventory reporting program provides information (i.e., emission factors) and an emissions calculator, which the owner or operator of a facility can use to estimate emissions. The program currently

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includes emission factors for sources to calculate their filterable and condensable PM_{2.5} emissions. Furthermore, the department expects that sources required to report PM_{2.5} emissions under the proposed rule are already familiar with the emissions calculations, since many of these sources likely already report other pollutant emissions under current ch. NR 438, Wis. Adm. Code, requirements.

In addition, the department is providing a proposed list of excluded units, operations, and activities to reduce the emissions reporting burden on sources. The department expects the proposed changes will improve the clarity of Wisconsin's emissions reporting requirements by synchronizing the emissions reporting language between ch. NR 438, the department's web-based air emissions inventory reporting program, and the federal AERR rule.

(B) Economic Impacts on Local Governments, Utility Rate Payers and Public Entities

The department does not anticipate that local governments, utility rate payers, or public entities will be economically impacted by the implementation of the proposed rules.

(C) State Economy

The department does not anticipate negative impacts to the state's economy.

(D) Fiscal Impacts:

There are no fiscal impacts to this rule. This rule will not require additional state staff to implement or affect state revenues.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Implementing the proposed rule, specifically, the proposed primary PM_{2.5} reporting requirement will ensure Wisconsin is complying with the AERR rule and has a federally approvable SIP, required under Section 110(a)(2) of the CAA. The proposed changes will also resolve inconsistencies between Wisconsin's emissions reporting rules and those promulgated by the EPA. Additionally, the proposed changes will modernize the state's emissions inventory rule language to reflect the department's current emissions reporting process. Because most of the proposed changes align state and federal language or modernize the emissions reporting process, the department expects the proposed changes would improve the clarity of Wisconsin's emissions reporting requirements, saving time for sources and the department.

The department must ensure that state reporting requirements align with those established in federal code to keep Wisconsin's SIP current and maintain Wisconsin approval under Title I of the CAA. Section 285.14(1), Wis. Stats., requires SIP submittals resulting in regulatory requirements to be promulgated by rule. There are no policy alternatives available for the proposed rules because the proposed actions are required under state and federal law.

Inaction by the department to adopt the proposed rule into Wisconsin Administrative Code could lead to EPA issuing a federal implementation plan (FIP) and/or sanctions under the CAA. Without a permanent and enforceable primary PM_{2.5} reporting requirement consistent with the federal AERR rule, the state's SIP will not be approvable. Specifically, EPA has not approved all elements of Wisconsin's infrastructure SIPs for the

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2012 PM_{2.5} NAAQS or the 2015 O₃ NAAQS because Wisconsin currently does not have a codified PM_{2.5} emissions reporting requirement (81 FR 95043, 85 FR 61673). Disapproval of a SIP would prompt a 2-year clock for the FIP requirement under Section 110(c) of the CAA. Under a FIP, EPA would step in and directly implement PM_{2.5} emissions reporting requirements in the state. The department has a history of working with sources in the state to implement programs through SIP revisions that are consistent with the federal CAA and minimize impacts on sources. If EPA implemented a FIP following disapproval of a Wisconsin SIP revision, the department would not play a role in FIP development. In addition, disapproval of a SIP could trigger sanctions under Section 179 of the CAA and 40 CFR 52.31. Sanctions under the CAA include the loss of federal highway grants.

16. Long Range Implications of Implementing the Rule

The department does not anticipate any adverse long-term implications to implementing the rule. A long-range benefit to this rule is that the state will maintain a legally sufficient SIP as well as Wisconsin approval under Title I of the CAA.

17. Compare With Approaches Being Used by Federal Government

The revisions to ch. NR 438, Wis. Adm. Code, are being proposed to meet federal requirements in the AERR rule (40 CFR 51, subpart A, and 40 CFR 51.122). This federal rule requires state and local agencies to collect and submit emissions data to the EPA. This rulemaking will satisfy federal emissions reporting requirements and resolve inconsistencies between state and federal emissions inventory reporting.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The States of Illinois, Iowa, Michigan, and Minnesota have incorporated PM_{2.5} emissions reporting requirements into their administrative codes.

<h4>19. Contact Name</h4> <p>Olivia Salmon</p>	<h4>20. Contact Phone Number</h4> <p>(608) 630-5264</p>
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule will not have an economic or fiscal impact on small businesses. The proposed changes will not involve an emission fee increase for sources and will not require sources to install new emissions monitoring equipment or reporting systems. If the proposed PM_{2.5} emissions reporting requirement is applicable to a small business, there could be a small administrative impact in the form of time required to report and certify annual PM_{2.5} emissions.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The AERR rule amendments state that the updated reporting requirements "will not have a significant economic impact on a substantial number of small entities under the RFA [Regulatory Flexibility Act]. (80 FR 8794)

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☐ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☒ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☐ Exemption of Small Businesses from some or all requirements
☐ Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

As mentioned in #14 of the EIA, the department's web-based air emissions inventory reporting program provides emission factors and an emissions calculator, which the owner or operator of a facility can use to estimate emissions. Additionally, the department is providing a proposed list of excluded units, operations, and activities to reduce the emissions reporting burden on sources. The department expects the proposed changes will improve the clarity of Wisconsin's emissions reporting requirements by synchronizing the emissions reporting language between ch. NR 438, Wis. Adm. Code, the department's web-based air emissions inventory reporting program, and the federal AERR rule.

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5. Describe the Rule's Enforcement Provisions

Enforcement provisions are included in s. NR 438.03, Wis. Adm. Code, and are updated by the proposed order to reflect the department's current emissions inventory reporting process.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No
