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(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2009-10

(session year)

## Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules ...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

State of Wisconsin  
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS  
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Board Order Number: AM-12-09  
Clearinghouse Number: CR 09-088  
Subject of Rules: Ambient air quality standards for ozone and lead, and new reporting requirements for lead compounds.  
Date of Transmittal: February 25, 2010

**Send a copy of any correspondence or notices pertaining to the rule to:**

**Linda Haddix, Department Rules Coordinator  
DNR Bureau of Legal Services  
LS/8, 101 South Webster**

An electronic copy of the proposed rule submittal may be obtained by contacting Robert B. Eckdale at 266-2856 or [robert.eckdale@wisconsin.gov](mailto:robert.eckdale@wisconsin.gov)

## REPORT TO LEGISLATURE

NR 404, 438, and 484, Wis. Adm. Code

Ambient air quality standards for ozone and lead and new reporting requirements for lead compounds

Board Order Number: AM-12-09

Clearinghouse Rule Number: 09-088

### BASIS AND PURPOSE OF THE PROPOSED RULE

The federal Clean Air Act requires the US Environmental Protection Agency (EPA) to promulgate national ambient air quality standards (NAAQS), which are designed to protect public health (primary standards) and public welfare (secondary standards) for certain criteria pollutants such as ozone, particular matter, sulfur dioxide, and lead. The EPA is required to periodically review the latest scientific information and standards in order to evaluate if and how the existing NAAQS need to be adjusted to more adequately protect human health and welfare.

In 1997, the EPA promulgated a 0.08 parts per million (ppm) 8-hour ozone NAAQS based on its conclusion that the more restrictive 8-hour ozone standard provided greater public health protection than the 1-hour ozone standard in effect at that time. EPA did not however repeal the 1-hour ozone standard, but left it in place. In 2008, EPA significantly strengthened the 8-hour ozone NAAQS for ground-level ozone to 0.075 ppm. Again, EPA left both the previous 1-hour and 8-hour standards in place. The Department is now proposing to adopt the 2008 8-hour ozone NAAQS which will provide even greater public health protection than did the 1997 ozone standard.

In addition, based on its review of the air quality criteria, the EPA has promulgated a new primary and secondary NAAQS for lead set at 0.15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to provide requisite protection for public health and welfare respectively. The older standard of  $1.5\mu\text{g}/\text{m}^3$  has been left in place. By adopting the revised standards for lead, Wisconsin's air quality standard for lead will be consistent with the federal NAAQS.

As required by s. 285.21(1)(a), Stats., Wisconsin must promulgate ambient air quality standards similar to the federal NAAQS for the protection of public health and welfare. Consequently, there are no apparent policy alternatives to this proposed action.

### SUMMARY OF PUBLIC COMMENTS

No public comments were received.

### MODIFICATIONS MADE

No modifications were necessary.

### APPEARANCES AT THE PUBLIC HEARING

The Department conducted a public hearing on December 1, 2009 at the Department's Southeast Region Headquarters in Milwaukee. There were no public appearances at the hearing.

### CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

None were required.

## RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

All comments from the Rules Clearinghouse were accepted as reported, and the rule revised accordingly.

### FINAL REGULATORY FLEXIBILITY ANALYSIS

The promulgation of the ozone and lead ambient air quality standards would not have any direct effect on business, including those defined as small business. Following the promulgation of the ozone and lead air quality standards, the EPA will determine if any areas in the state should be designated as nonattainment for either of the new air quality standards. The Department is required to develop an air quality management state implementation plan (SIP) to ensure that all ambient air quality standards are attained and maintained in all areas of the state. The future development of that SIP to address ozone and lead may result in emission limitations being developed for specific source categories or in the implementation of emission control technologies which may affect business, including small business. Any prospective SIP revisions would occur through the development of additional rules, which would include analyses of the rules' potential effects on the private sector, including small business.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
RENUMBERING AND AMENDING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **renumber and amend** NR 404.04(7); to **amend** NR 438.03(1) Table 1 and 484.04(3) and to **create** NR 404.04(5)(c) and Note, 404.04(7)(a) and (b) and 484.04(6t) and (6v), relating to ambient air quality standards for ozone and lead and new reporting requirements for lead compounds.

AM-12-09

Analysis Prepared by the Department of Natural Resources

1. **Statute interpreted:** s. 285.21(1)(a), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. **Statutory authority:** ss. 285.11(1) and (6) and 285.21(1)(a), Stats.

3. **Explanation of agency authority:**

The Department is required under s. 285.21(1)(a), Stats., to promulgate by rule ambient air standards similar to, but not more restrictive than the national ambient air quality standards (NAAQS). The Department is also authorized under s. 285.11(1) and (6), Stats., to promulgate rules and establish control strategies in order to prepare and implement the State Implementation Plan for the prevention, abatement and control of air pollution in the state.

4. **Related statute or rule:** There are no related statutes that are not identified above.

5. **Plain language analysis:**

Chapter NR 404, Wis. Adm. Code, contains ambient air standards which are intended to be the same as the federal NAAQS promulgated by EPA, as is required under s. 285.21(1)(a), Stats. Chapter NR 438, Wis. Adm. Code, establishes requirements for submission of reports for owners or operators of air contaminant sources related to the ambient air standards that are employed by the Department. The Clean Air Act requires EPA to review the latest scientific information every five years and promulgate NAAQS which are designated to protect public health and public welfare. In 2008, EPA strengthened the 8-hour ozone NAAQS to 0.075 ppm and revised the NAAQS for lead from 1.5 micrograms/cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 0.15  $\mu\text{g}/\text{m}^3$ .

The Department is proposing to amend chs. NR 404 and 438, Wis. Adm. Code, to maintain consistency with the federal NAAQS. Specifically, the proposed rule revisions would: A) adopt the ozone and lead NAAQS into ch. NR 404, Wis. Adm. Code; and B) incorporate the corresponding lead reporting requirements into ch. NR 438, Wis. Adm. Code.

6. **Summary of, and comparison with, existing or proposed federal regulation:**

The federally-enforced NAAQS are contained in Title 40, Part 50 of the Code of Federal Regulations (40 CFR Part 50). The purpose of these proposed rules is to make the State-enforced ambient air standards for ozone and lead in ch. NR 404, Wis. Adm. Code, consistent with the corresponding federal NAAQS, as required under s. 285.21(1)(a), Stats.

7. **Comparison with rules in adjacent states:**

These proposed rule revisions are designed to make Wisconsin's ambient air quality standards consistent

with federal NAAQS, which are effective and enforced throughout the United States. Consequently, these proposed rules would be identical to the ambient air standard regulations in effect in the adjacent states.

**8. Summary of factual data and analytical methodologies:**

The EPA, through its Clean Air Scientific Advisory Committee has conducted exhaustive reviews and assessments on the health science of air pollution impacts to human health and welfare. This research has yielded NAAQS that are based upon sound health science designed to protect public health and welfare. The Department is accepting this extensive federal research as this order's factual data and analytical methodologies. Information on the federal rule changes are obtained from the federal registers published on March 27, 2008 (Vol. 73, No. 60) for ozone and on November 12, 2008 (Vol. 73, No. 219) for lead.

**9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:**

In light of the statutory requirement to promulgate by rule new ambient air quality standards similar to but not more restrictive than the federal standards, the Department relies on the federal data and the analytical methodologies EPA used to develop and promulgate the national ambient air quality standards. EPA analysis establishes that NAAQS do not have significant impacts upon small entities, including small businesses because NAAQS themselves impose no regulations upon small entities. Information on the analysis and supporting documents used to determine effects on small entities are contained in the EPA's Regulatory Impact Analysis (RIA) docket EPA-HQ-OAR-2007-0225 for the ozone NAAQS and RIA docket EPA-HQ-OAR-2006-0735 for the lead NAAQS.

An economic impact report was not requested.

**10. Effect on small business:**

The promulgation of the ozone and lead ambient air quality standards would not have any direct effect on businesses, including those defined as small business. Following the promulgation of the ozone and lead air quality standards, the EPA will determine if any areas in the state should be designated as nonattainment for either of the new air quality standards. The Department is required to develop an air quality management state implementation plan (SIP) to ensure that all ambient air quality standards are attained and maintained in all areas of the state. The future development of that SIP to address ozone and lead may result in emission limitations being developed for specific source categories or implementing emission control technologies which may affect businesses, including small businesses. Any prospective SIP revisions would occur through the development of additional rules, which would include analyses of the rules' potential effects on the private sector, including small businesses.

**11. Agency contact person:** Larry Bruss, P.O. Box 7921 (AM/7), Madison, WI 53707;  
Telephone number: (608) 267-7543; email address: [larry.bruss@wisconsin.gov](mailto:larry.bruss@wisconsin.gov)

The consent of the Attorney General will be requested for the incorporation by reference in ch. NR 484 of the federal documents related to the interpretation of the ozone and lead NAAQS.

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SECTION 1. NR 404.04(5)(c) and Note are created to read:

NR 404.04(5)(c) 0.075 – maximum 8-hour concentration. The 8-hour primary and secondary ozone ambient air quality standards are attained at an ambient air quality monitoring site when the 3-year

average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR part 50, Appendix P, incorporated by reference in s. NR 484.04(6t).

**Note:** The Department promulgated the 1-hour and the 8-hour ozone standards, in pars. (a) and (b), respectively, in response to actions by the US EPA. Since the US EPA did not repeal these standards when it promulgated the 8-hour standard reflected in par. (c), the Department has retained them consistent with its statutory obligation under s. 285.21(1)(a), Stats.

SECTION 2. NR 404.04(7) is renumbered NR 404.04(7)(intro.), and as renumbered is amended to read:

NR 404.04(7) LEAD: PRIMARY AND SECONDARY STANDARDS. (intro.) The primary and secondary standards for lead and its compounds, measured as elemental lead, are the following: 1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter, as a constituent of suspended particulate matter.

SECTION 3. NR 404.04(7) (a) and (b) are created to read.

NR 404.04(7)(a) 1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter, as a constituent of suspended particulate matter. The primary and secondary standards for lead and its compounds, measured as elemental lead are attained when the maximum arithmetic mean averaged over a calendar quarter is less than or equal to 1.5 micrograms per cubic meter, as determined in accordance with 40 CFR Part 50, Appendix B, incorporated by reference in s. NR 484.04(3).

(b) 0.15 micrograms per cubic meter – maximum arithmetic mean. The primary and secondary ambient air quality standards for lead are attained when the maximum arithmetic 3-month mean concentration for a 3-year period is less than or equal to 0.15 micrograms per cubic meter, as determined in accordance with 40 CFR part 50, Appendix R, incorporated by reference in s. NR 484.04(6v).

SECTION 4. The entry for Lead compounds in Table 1 of NR 438.03(1) is amended to read:

NR 438.03(1) Table 1

Air Contaminant Name	CAS Number <sup>1</sup>	Reporting Level (lbs/yr)
Lead compounds	7439-92-1 <sup>2</sup>	<del>6,000</del> <u>400</u>

SECTION 5. NR 484.04(3) is amended to read:

NR 484.04

	CFR Appendix Referenced	Title	Incorporated by Reference For
(3)	40 CFR part 50 Appendix B	Reference Method for the Determination of suspended Particulate Matter in the Atmosphere (High Volume Method)	NR 404.02(11) <u>NR 404.04(7)(a)</u>

SECTION 6. NR 484.04(6t) and (6v) are created to read:

NR 484.04

	CFR Appendix Referenced	Title	Incorporated by Reference For
(6t)	40 CFR part 50 Appendix P	Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone	NR 404.04(5)(c)
(6v)	40 CFR part 50 Appendices R	Interpretation of the National Ambient Air Quality Standards for Lead	NR 404.04(7)(b)

SECTION 7. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.



SECTION 8. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 24, 2010.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

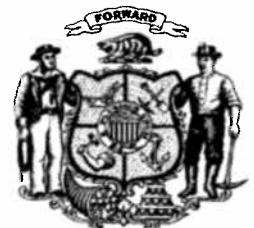
By \_\_\_\_\_

Matthew J. Frank, Secretary

(SEAL)



# WISCONSIN STATE LEGISLATURE





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **09-088**

AN ORDER to renumber and amend NR 404.04 (7); to amend NR 438.03 (1) Table 1 and 484.04 (3); and to create NR 404.04 (5) (c) and Note, 404.04 (7) (a) and (b), and 484.04 (6g) and (6r), relating to ambient air quality standards for ozone and lead and new reporting requirements for lead compounds.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

10-23-2009 RECEIVED BY LEGISLATIVE COUNCIL.

11-16-2009 REPORT SENT TO AGENCY.

RNS:LAK

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached            YES                             NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached            YES                             NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached            YES                             NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]  
Comment Attached            YES                             NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached            YES                             NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached            YES                             NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached            YES                             NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 09-088

#### Comments

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

#### 2. Form, Style and Placement in Administrative Code

- a. In the note following s. NR 404.04 (5) (a), “previous” should be deleted. Also, “Stats.” should be inserted at the end.
- b. In s. NR 404.04 (7), “the following” should be inserted before the colon.
- c. Section NR 484.04 (6g) and (6r) already exist in the current code and therefore cannot be created in SECTION 6 without first being repealed.