

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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| <b>1. Type of Estimate and Analysis</b><br><input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected   | <b>2. Date</b><br>2/3/2021                           |
| <b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b><br>NR 404 – Ambient Air Quality<br>NR 407 – Operation Permits<br>NR 408 – Construction Permits For Direct Major Sources In Nonattainment Areas<br>NR 428 – Control Of Nitrogen Compound Emissions<br>NR 484 – Incorporation By Reference   |  |
| <b>4. Subject</b><br>Adopt EPA’s revised standards for ozone and incorporate revised ozone data handling and computation requirements into Wisconsin Administrative Code. Clarify or update sections of chs. NR 407, 408, and 428 to ensure implementation of the ozone National Ambient Air Quality Standards (NAAQS), consistent with the federal Clean Air Act (CAA). (Board Order AM-10-19)   |  |
| <b>5. Fund Sources Affected</b><br><input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S   | <b>6. Chapter 20, Stats. Appropriations Affected</b> |
| <b>7. Fiscal Effect of Implementing the Rule</b><br><input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency’s Budget   |  |
| <b>8. The Rule Will Impact the Following (Check All That Apply)</b><br><input type="checkbox"/> State’s Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors<br><input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers<br><input type="checkbox"/> Small Businesses (if checked, complete Attachment A)   |  |
| <b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b><br>\$ 0 - 50,000 (minimal)  |  |
| <b>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)?</b><br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |  |
| <b>11. Policy Problem Addressed by the Rule</b><br>Under the federal Clean Air Act (CAA), the U.S. Environmental Protection Agency (EPA) is responsible for promulgating NAAQS, which are designed to protect public health (primary standards) and public welfare (secondary standards). Under s. 285.21(1)(a), Wis. Stats., if EPA promulgates a NAAQS, 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. 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.<br><br>On October 26, 2015, the EPA revised the primary and secondary NAAQS for ozone by lowering them from 0.075 parts per million (ppm) to 0.070 ppm. These revisions (the “2015 ozone NAAQS”) became effective on December 28, 2015. This rulemaking to adopt the NAAQS was initiated in the spring of 2019 after it became clear that the 2015 ozone NAAQS would not be revised by EPA as a result of litigation and after the implementation rule for the 2015 ozone NAAQS was finalized (December 6, 2018; 83 FR 62998).<br><br>EPA’s approach to revoking the 1997 ozone NAAQS as part of the 2008 ozone NAAQS implementation rule was challenged in <u>South Coast Air Quality Management District v. EPA</u> , 882 F.3d 1138 (D.C. Cir. 2018). In that decision, the D.C. Circuit found that EPA unlawfully weakened protections when it decided to revoke the 1997 ozone NAAQS. In December 2018, as part of the implementation rule for the 2015 standard, EPA stated that it intends to address any revocation of the 2008 ozone NAAQS, and potential anti-backsliding requirements, if any, in a separate future |  |

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rulemaking. As a result of these actions, there are currently two federal ozone NAAQS in effect and being implemented: the 2015 ozone NAAQS, and the previous, less stringent 2008 ozone NAAQS. Several elements of this rule will apply to areas currently or formerly designated as nonattainment for any ozone standard, including these two NAAQS.

The department is proposing to 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. Additionally, the department is proposing to clarify or update sections of chs. NR 407, 408 and 428, Wis. Adm. Code, to ensure implementation of the ozone NAAQS, consistent with federal law. Proposed changes to sections of chs. NR 407 and 408, Wis. Adm. Code, clarify which major source or major modification thresholds apply in areas subject to more than one ozone nonattainment classification due to the implementation of multiple ozone NAAQS. Proposed changes to sections of ch. NR 428, Wis. Adm. Code, update the major source threshold for requirements related to Reasonably Available Control Technologies (RACT) for emissions of nitrogen oxides (NOx). Current NOx RACT rule language sets a 100 tons per year (tpy) major source threshold for seven southeastern counties (Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha). The proposed rule language would revise the applicability emissions thresholds for NOx RACT so that they include all the major source thresholds associated with current (and former) ozone nonattainment classifications of the area (i.e., 100 tpy in areas classified as “moderate,” 50 tpy in areas classified as “serious,” 25 tpy in areas classified as “severe,” and 10 tpy in areas classified as “extreme” nonattainment). This change is required to meet CAA requirements for NOx RACT programs. This proposed change ensures that the correct NOx RACT major source threshold is being implemented regardless of future changes to an area’s nonattainment classification(s) and removes the need for the department to potentially undertake a rulemaking project everytime an area’s nonattainment classification changes.

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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 economic impacts of the proposed rule include facilities along the Lake Michigan shoreline, 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 economic impacts of the proposed rule. This group includes members representing Clean Wisconsin, environmental law attorneys, utilities and representatives of large and small businesses. The department contacted all these entities during the environmental impact analysis comment period via email or phone.

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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 so that counties and other local government units were consulted as part of the solicitation process. No local governmental units submitted comments on the EIA.

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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 Impacts on Specific Businesses and Business Sectors

The department determined that the total economic impact of the proposed rule is minimal to none. Under Wisconsin’s current ozone nonattainment classifications, the department expects no impacts on businesses as a result of the proposed rule changes.

In light of the statutory requirement to promulgate by rule new ambient air quality standards similar to, but not more

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stringent than, the federal standards, the department relies on federal data and the analytical methodologies EPA used to develop and promulgate the national ambient air quality standards. When reviewing and setting a NAAQS, the EPA undertakes a comprehensive review, synthesis, and evaluation of the most policy-relevant science, including key science judgments and risk and exposure assessments. EPA's review is also informed by the Clean Air Scientific Advisory Committee (CASAC), which provides independent advice to the EPA Administrator on the technical bases for each NAAQS. The result is that each primary NAAQS is established so that it provides for the protection of public health with an adequate margin of safety, as required by the CAA. Information on the analysis and supporting documents used to determine effects on businesses are contained in the EPA's Regulatory Impact Analysis (RIA) docket EPA-HQ-OAR-2013-0169 for the 2015 ozone NAAQS. The department's assessment of how businesses will be impacted by the incorporation of the 2015 ozone NAAQS is in line with the EPA's analysis, which establishes that NAAQS do not have significant impacts upon small entities, including small businesses, because NAAQS themselves impose no regulations upon small entities. Construction of new major sources of Volatile Organic Compounds (VOC) or NO<sub>x</sub> or major modifications of VOC or NO<sub>x</sub> may trigger the need to conduct additional dispersion modeling and engineering analysis in order to satisfy s. 285.63(1)(b), Wis. Stats.; however, this would typically affect five or fewer projects a year.

The department expects that the proposed updates to the NO<sub>x</sub> RACT applicability language in s. NR 428.20, Wis. Adm. Code, which are necessary to meet CAA requirements, are the only changes associated with this rulemaking that could potentially impact businesses in the future. The proposed changes to ch. NR 428, Wis. Adm. Code, would only impact relatively large facilities, whose emissions exceed the major source applicability threshold. In the proposed changes, major source thresholds are determined by an area's ozone nonattainment classification (100 tpy in areas classified as "moderate," 50 tpy in areas classified as "serious," 25 tpy in areas classified as "severe," and 10 tpy in areas classified as "extreme"). The current rule language defines a 100 tpy major source threshold for seven southeastern counties (Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha). Currently, only the NO<sub>x</sub> RACT major source threshold in the "serious" 2008 ozone NAAQS partial nonattainment area in the eastern portion of Kenosha County would be modified by the proposed rule change.

The department assessed how sources in the partial Kenosha County nonattainment area might be affected. The department determined that none of the ten facilities located in that nonattainment area that report NO<sub>x</sub> emissions to the department would be required to implement NO<sub>x</sub> RACT controls as a result of this rule revision. This is because their Maximum Theoretical Emissions (MTE), as defined in s. NR 428.02(7e), Wis. Adm. Code, would be less than the serious nonattainment area major source applicability threshold of 50 tpy. Therefore, based on these facilities' current emissions and Wisconsin's current ozone nonattainment area classifications, the proposed changes in ch. NR 428, Wis. Adm. Code, would not result in any existing facility in the state becoming subject to NO<sub>x</sub> RACT requirements upon promulgation of this rule.

Depending on their location, facilities could be affected in the future by this rule change if their NO<sub>x</sub> emissions increase above the updated major source threshold and/or the nonattainment area in which they are located is reclassified to a higher nonattainment status. For example, due to draft 2020 air quality data, it is possible that EPA will reclassify the partial Kenosha County 2008 ozone NAAQS nonattainment area to "severe" classification in the future, at which time the major source threshold would be lowered to 25 tpy. The department has determined that such a reclassification, should it occur, could impact three sources in the partial Kenosha County nonattainment area. In its RIA for the 2015 ozone NAAQS (docket EPA-HQ-OAR-2013-0169), EPA estimates that the median VOC control cost is \$9,800/ton and the median NO<sub>x</sub> control cost is \$960 – \$1,200/ton, depending on the emission sector. According to department records, these sources' historical emissions are well below the severe classification's 25 tpy threshold. Therefore a source could opt to lower VOC and/or NO<sub>x</sub> emission limits in their permits, at little to no cost to the source, to meet this rule. The department will reach out to any affected sources and revise their permits as needed, should this reclassification occur. Because reclassification of the partial Kenosha County nonattainment area has not occurred, the department did not

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consider the associated NOx and VOC emission control costs in its determination of the proposed rule's implementation and compliance cost estimate (#9 above).

**(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 rule.

**(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 other than those already described. This rule will not require additional state staff to implement or affect state revenues.

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

Section 109 of the CAA and s. 285.21(1)(a), Wis. Stats., require the department to promulgate a similar, but no more restrictive, standard so there is no alternative to implementing the rule.

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**16. Long Range Implications of Implementing the Rule**

Due to the fact that impacted sources are already required to follow the federal NAAQS, the department does not anticipate any adverse long term implications to implementing the rule.

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**17. Compare With Approaches Being Used by Federal Government**

These revisions will ensure state rules are consistent with the federal regulations.

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

Illinois and Indiana have ozone NAAQS language in their administrative code. Minnesota has state-specific standards in their administrative code and incorporates by reference the federal NAAQS. Michigan incorporates by reference the federal NAAQS.

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**19. Contact Name**

Olivia Salmon

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**20. Contact Phone Number**

608-264-9219

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**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 department does not anticipate small businesses will be impacted by the proposed rule language.

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

Information on the analysis and supporting documents used to determine effects on businesses are contained in the EPA's RIA docket EPA-HQ-OAR-2013-0169 for the 2015 ozone NAAQS.

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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

The proposed rule changes only have the potential to impact relatively large sources that meet "major source" emissions thresholds.

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5. Describe the Rule's Enforcement Provisions

None

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

- Yes     No
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