

The statement of scope for this rule, SS #042-19 was approved by the Governor on April 29, 2019, published in Register No. 761A1 on May 6, 2019, and approved by the Natural Resources Board on June 26, 2019. This rule was approved by the Governor on August 26, 2021.

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

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 404.04 (5) (c) (Note), **renumber and amend** NR 407.02 (4) (c) 1. and 428.20 (1); to **amend** NR 408.02 (32) (a) 6., 428.20 (2) and 428.21 (3) (intro.), (a) and (b); and to **create** NR 404.04 (5) (d) and (Note), 407.02 (4) (c) 1. b., 408.02 (24) (c) and (Note), 428.20 (1) (a) 1., 2., 3., (b), (Note) and (c), 428.21 (3) (c), 428.255, and 484.04 Table 2 row (7s), relating to incorporation of the 2015 national ambient air quality standards for ozone.

**AM-10-19**

**Analysis Prepared by the Department of Natural Resources**

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

**2. Statutory Authority:** Sections 227.11(2)(a), 285.11(1) and (6), 285.21(1), Stats.

**3. Explanation of Agency Authority:** Section 227.11(2)(a), Stats., expressly confers rulemaking authority to an agency where such rules are necessary to effectuate the purpose of existing statutory authority. The Wisconsin Department of Natural Resources (the department) is required under s. 285.21(1)(a), Stats., to promulgate by rule ambient air quality standards similar to, but not more restrictive than the National Ambient Air Quality Standards (NAAQS). The department is also authorized under s. 285.11(6), Stats., to develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state.

**4. Related Statutes or Rules:** There are no other statutes or rules directly related to the proposed rule changes.

**5. Plain Language Analysis:** 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), 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.

On October 26, 2015, the EPA revised the primary and secondary NAAQS for ozone to 0.070 parts per million (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).

EPA’s approach to revoking the 1997 ozone NAAQS as part of the 2008 ozone NAAQS implementation rule was challenged in South Coast Air Quality Management District v. EPA, 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 in a separate future 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.

To incorporate the 2015 ozone NAAQS into Wisconsin Administrative Code and otherwise ensure implementation of federal ozone NAAQS consistent with CAA requirements, this rule includes the following changes:

Adoption of the 2015 ozone NAAQS

SECTIONS 1, 2, and 13 revise chs. NR 404 and 484, Wis. Adm. Code, to adopt the 2015 ozone NAAQS and incorporate by reference the federal ambient air monitoring requirements related to the NAAQS.

Clarification of major source thresholds in areas subject to multiple ozone nonattainment classifications

A “major source” is a stationary source whose emissions exceed a specified threshold. Major source thresholds are defined in the CAA based on areas’ ozone nonattainment classifications (100 tons per year (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). A “major modification” refers to a modification project, including construction of new emission units and modification of existing units, at an existing source which results in the source’s potential to emit in excess of the CAA-specified major source threshold. Major sources and major modifications are subject to nonattainment New Source Review permitting requirements.

SECTIONS 3 through 6 include changes to chs. NR 407 and 408, Wis. Adm. Code, to 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. This clarification has been requested by EPA. SECTION 6 also updates the definition of an ozone precursor in s. NR 408.02(32)(a), Wis. Adm. Code, to address an oversight identified by the department when revising this rule.

Changes to the thresholds used to determine the applicability of Reasonably Available Control Technologies (RACT) for emissions of nitrogen oxides (NO<sub>x</sub>)

SECTIONS 7 through 12 amend subch. IV of NR 428, Wis. Adm. Code, which includes the requirements for NO<sub>x</sub> RACT. Currently, NO<sub>x</sub> RACT requirements apply to sources with maximum theoretical NO<sub>x</sub> emissions equal to or greater than 100 tpy that are located in Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, or Waukesha counties that are or had been previously classified as “moderate” ozone nonattainment areas.

SECTIONS 7 and 8 revise the applicability emissions thresholds for NO<sub>x</sub> RACT so that they include all the major source thresholds associated with current (and former) ozone nonattainment classification 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 “moderate” (or higher) ozone nonattainment area requirements for NO<sub>x</sub> RACT programs, and is specifically applicable to the 2008 ozone NAAQS partial Kenosha County nonattainment area, which was reclassified by EPA from “moderate” to “serious” nonattainment on September 23, 2019.

SECTION 9 revises s. NR 428.20(2), Wis. Adm. Code, to expand NO<sub>x</sub> RACT implementation requirements from the seven southeastern counties (Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan,

Washington, and Waukesha) to any area that is classified as moderate (and above) ozone nonattainment, as required by the CAA.

SECTIONS 10 and 11 revise s. NR 428.21, Wis. Adm. Code, to ensure that the existing 75 tpy exemption threshold continues to apply in areas with a 100 tpy major source threshold, which is currently the case.

SECTION 12 creates s. NR 428.255, Wis. Adm. Code, which provides compliance schedule information for some sources affected by the updated NOx RACT major source thresholds.

The department has evaluated these proposed rule changes to determine their potential impact on existing sources of emissions, and has not identified any immediate effects. While a new NAAQS and the associated designations process can result in additional permitting requirements, the adoption of this rule does not have an economic impact. Sources in the areas designated as nonattainment are identified as such by EPA and not by this rule. Construction of new major sources of Volatile Organic Compounds (VOC) or NOx or major modifications of VOC or NOx need to conduct additional air pollution dispersion modeling and engineering analysis in order to satisfy s. 285.63(1)(b), Stats.; however, this would typically affect five or fewer projects a year. Regulatory requirements associated with the 2015 ozone NAAQS became effective when the federal rule went into effect on December 28, 2015 (80 FR 65291), and the department immediately began implementing these requirements as required by federal law. The changes proposed to the description of major source thresholds only clarify the department's existing application of those rules.

Regarding the proposed revision to NOx RACT applicability thresholds in ch. NR 428, Wis. Adm. Code, the department assessed how sources in the partial Kenosha County 2008 ozone NAAQS nonattainment area might be affected since that area is a "serious" nonattainment area and is also the only part of the state with the potential to be impacted by this change. The department determined that none of the ten sources (establishments which emit or cause emissions of air contaminants) located in that nonattainment area that report NOx emissions to the department would be required to implement NOx 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 sources' 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 source in the state becoming subject to NOx RACT requirements upon promulgation of this rule.

Depending on their location, sources could be affected in the future if their NOx emissions increase above the updated major source threshold and/or the nonattainment area in which they are located is reclassified to a more stringent nonattainment status. For example, under the CAA, it is possible that EPA will reclassify the partial Kenosha County area, which EPA designated as part of the Chicago-Naperville 2008 ozone NAAQS nonattainment area, to a "severe" classification in the future if the area's air quality monitoring data do not meet the 2008 ozone NAAQS. If this were to occur, the major source threshold in the partial Kenosha County 2008 ozone NAAQS nonattainment area would be lowered to 25 tpy. Reclassifications, and their resulting lower major source/modification thresholds, are a function of the CAA, not this rule. The department has determined that such a reclassification could impact three sources in the area. The department will reach out to any affected source and revise its permits as needed, should this reclassification occur. SECTION 12 describes the compliance schedule for sources affected by this rulemaking.

**6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:** The federal 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 in ch. NR 404, Wis. Adm. Code, consistent with the corresponding federal NAAQS, as required under s. 285.21(a), Stats.

**7. Summary of Public Comments and Feedback Received During Preliminary Public Hearing and Comment Period on Statement of Scope:** A preliminary public hearing was requested by the Joint Committee for the Review of Administrative Rules on May 13, 2019, and was held on May 31, 2019. No public comments were received during the preliminary public hearing and comment period on the statement of scope of the proposed rule.

**8. Comparison with Similar Rules in Adjacent States:** Illinois and Indiana have incorporated the 2015 ozone NAAQS into their administrative code. Indiana is included in this analysis because portions of Wisconsin, Illinois, and Indiana comprise a tri-state nonattainment area for the 2015 ozone NAAQS. Minnesota has state-specific standards in its administrative code and incorporates by reference the federal standard for ozone. Michigan incorporates by reference the federal ozone standard. Iowa does not currently have the 2015 ozone NAAQS incorporated into its administrative code, but has incorporated ozone NAAQS promulgated in earlier years.

**9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:** 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.

The extensive data developed by EPA in its review and setting of the 2015 ozone NAAQS can be found on EPA's website at <https://www.epa.gov/naaqs/ozone-o3-air-quality-standards-documents-review-completed-2015> and in the regulatory docket (EPA-HQ-OAR-2013-0169) associated with the 2015 ozone NAAQS final rule (80 FR 65292; October 26, 2015). These data and methods are applicable also to the adoption of that standard into the Wisconsin Administrative Code.

**10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an 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 NAAQS. The department's assessment of how businesses will be impacted by the incorporation of the 2015 ozone NAAQS is congruent with the EPA's analysis, which establishes that the NAAQS does not have a significant impact upon small entities, including small businesses, because the NAAQS itself imposes no regulations upon such 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) found in the regulatory docket for the 2015 ozone NAAQS (EPA-HQ-OAR-2013-0169).

The proposed changes to ch. NR 428, Wis. Adm. Code, would only have the potential to impact relatively large sources ("major sources") whose emissions exceed the NO<sub>x</sub> RACT major source applicability threshold and who are also planning to construct a new major source or make a major modification. In addition, as noted above, the department specifically analyzed sources in the partial Kenosha County 2008 ozone NAAQS nonattainment area ("serious" classification; 50 tpy major source threshold) and determined that the proposed changes in ch. NR 428, Wis. Adm. Code, would not result in any existing

source becoming subject to NOx RACT requirements upon promulgation of this rule. This would include any small businesses.

Depending on its location, a source could be affected in the future if its NOx emissions increase above the updated major source threshold and/or the nonattainment area in which it is located is reclassified to a more stringent nonattainment status. For example, under the CAA, it is possible that EPA will reclassify the partial Kenosha County area, which EPA designated as part of the Chicago-Naperville 2008 ozone NAAQS nonattainment area, to a “severe” classification in the future if the area’s air quality monitoring data do not meet the 2008 ozone NAAQS. If this were to occur, the major source threshold in the area would be lowered to 25 tpy. Reclassifications, and their resulting lower major source/modification thresholds, are a function of the CAA, not this rule. 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 NOx control cost is \$960 – \$1,200/ton, depending on the emission sector. Alternatively, a source could also opt to lower VOC and/or NOx emission limits in its permits, potentially at little or no cost to the source. The department will reach out to any affected source and revise its permits as needed, should this reclassification occur. Because reclassification of the partial Kenosha County nonattainment area at this point is a hypothetical scenario, and reclassification is a function of the CAA, not this rule, the department did not consider the associated NOx and VOC emission control costs in its determination of the proposed rule’s implementation and compliance cost estimate.

**11. Effect on Small Business (initial regulatory flexibility analysis):** Since the 2015 ozone NAAQS is already implemented federally, the adoption of the standard into state code will not have any direct effect on businesses, including those defined as small businesses. However, as noted above in the Plain Language Analysis, future impacts on businesses are possible, should the major source/modification threshold for an area be lowered as a result of a future designation or reclassification of a nonattainment area. Should future state implementation of this NAAQS require development of additional rules in order to meet CAA requirements, those would include analyses of the rule’s potential effects on the private sector, including small businesses.

**12. Agency Contact Person:** Olivia Salmon, Bureau of Air Management, Wisconsin Department of Natural Resources PO Box 7921, Madison, WI 53703; (608) 630-5264; OliviaE.Salmon@Wisconsin.gov.

**13. Place where comments are to be submitted and deadline for submission:** A public hearing was held on April 8, 2021. Written comments were accepted through April 15, 2021.

The consent of the Attorney General will be requested for the incorporation by reference of the “Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone” (40 CFR 50 App. U) into ch. NR 484, Wis. Adm. Code.

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## RULE TEXT

**SECTION 1. NR 404.04 (5) (c) (Note) is repealed.**

**SECTION 2. NR 404.04 (5) (d) and (Note) are created to read:**

**NR 404.04 (5)** (d) 0.070 ppm – 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 4th-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.070 ppm, as determined under 40 CFR part 50, Appendix U, incorporated by reference under s. NR 484.04 (7s).

Note: The department promulgates ozone standards in response to federally promulgated ozone standards, and pursuant to its statutory obligation under s. 285.21 (1) (a), Stats., pars. (a) and (b) reflect standards from 1979 and 1997. They are included here to conform to the federal standards in 40 CFR part 50, where they are also included.

**SECTION 3. NR 407.02 (4) (c) 1. is renumbered 1. (intro.) and amended to read:**

**NR 407.02 (4) (c) 1.** For ozone nonattainment areas,~~sources~~:

a. Sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as “rural transport<sub>2</sub>”; “marginal<sub>2</sub>” or “moderate<sub>2</sub>”; 50 tpy or more in areas classified as “serious<sub>2</sub>”; 25 tpy or more in areas classified as “severe<sub>2</sub>”; and 10 tpy or more in areas classified as “extreme”; except that the references in this paragraph to 100, 50, 25<sub>2</sub> and 10 tpy of nitrogen oxides do not apply with respect to any source for which the administrator has made a finding, under section 182 (f) (1) or (2) of the Act (42 USC 7511a (f) (1) or (2)), that requirements under section 182 (f) of the Act (42 USC 7511a (f)) do not apply.

**SECTION 4. NR 407.02 (4) (c) 1. b. is created to read:**

**NR 407.02 (4) (c) 1. b.** The classification with the lowest emission threshold under this subd. 1. a. determines the major source threshold in an area classified as nonattainment for more than one ozone national ambient air quality standard, until the area is redesignated to attainment for a current standard or a redesignation substitute for a revoked standard has been approved by the EPA for the standard with the lowest emission threshold.

Note: The department maintains materials accessible to the public that show current Wisconsin nonattainment areas and summarizes the applicable permitting requirements for major sources of emissions within these areas.

**SECTION 5. NR 408.02 (24) (c) is created to read:**

**NR 408.02 (24)** (c) The classification with the lowest emission threshold under s. NR 407.02 (4) (c) 1. a. determines the major source or major modification threshold in an area classified as nonattainment for more than one ozone national ambient air quality standard, until the area is redesignated to attainment for a current standard or a redesignation substitute for a revoked standard has been approved by the EPA for the standard with the lowest emission threshold.

Note: The department maintains materials accessible to the public that show current Wisconsin nonattainment areas and summarizes the applicable permitting requirements for major sources of emissions within these areas.

**SECTION 6. NR 408.02 (32) (a) 6. is amended to read:**

**NR 408.02 (32)** (a) 6. Ozone: 40 tpy of VOC or 40 tpy of nitrogen oxides.

**SECTION 7. NR 428.20 (1) is renumbered (1) (a) (intro.) and amended to read:**

**NR 428.20 (1)** APPLICABILITY. (a) The requirements of this subchapter apply to the owner or operator of ~~an~~ NO<sub>x</sub> emissions unit ~~which that~~ is in a source category identified ~~in~~ under s. NR 428.22 and ~~which that~~ is located at a facility ~~with combined total maximum theoretical emissions for all NOX emissions units of 100 tons per year or more of NOX and which is in the county of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington or Waukesha.~~ that meets any of the following conditions:

**SECTION 8. NR 428.20 (1) (a) 1., 2., 3., (b) and (c) are created to read:**

**NR 428.20 (1)** (a) 1. The facility is located in the county of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, or Waukesha and the maximum theoretical emissions of NO<sub>x</sub> from all emission units in all source categories identified under s. NR 428.22 combined is equal to or greater than 100 tpy.

2. The facility is located in an area that is classified as a moderate, serious, severe, or extreme ozone nonattainment area and the maximum theoretical emissions of NO<sub>x</sub> from all emission units in all source categories identified under s. NR 428.22 combined is equal to or greater than the following:

- a. 100 tpy for moderate ozone nonattainment area.
- b. 50 tpy for serious ozone nonattainment area.
- c. 25 tpy for severe ozone nonattainment area.

d. 10 tpy for extreme ozone nonattainment area.

3. The facility is located in an area that, at any time on or after July 20, 2012, had been classified as a moderate, serious, severe, or extreme ozone nonattainment area and the maximum theoretical emissions of NO<sub>x</sub> from all emission units in all source categories identified under s. NR 428.22 combined is equal to or greater than the following:

a. 100 tpy for former moderate ozone nonattainment area.

b. 50 tpy for former serious ozone nonattainment area.

c. 25 tpy for former severe ozone nonattainment area.

d. 10 tpy for former extreme ozone nonattainment area.

(b) If more than one emission threshold under par. (a) is applicable to the same area due to different ozone standards or a change in nonattainment classification, the lowest applicable emission threshold under par. (a) 2. or 3. applies.

Note: The department maintains materials accessible to the public that show current Wisconsin nonattainment areas and summarizes the applicable permitting requirements for major sources of emissions within these areas.

(c) The requirements of this subchapter remain applicable to each affected unit regardless of any subsequent decrease in maximum theoretical emissions of NO<sub>x</sub> at the source to a level below the applicable emission thresholds.

**SECTION 9. NR 428.20 (2) is amended to read:**

**NR 428.20 (2) PURPOSE.** The purpose of this subchapter is to ~~establish~~ meet the requirements of sections 172 (c) and 182 (f) of the Act (42 USC 7502 (c) and 7511a (f)) by establishing reasonably available control technology ~~requirements~~ standards for NO<sub>x</sub> emissions units in ~~the ozone nonattainment area consisting of the counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha to comply with sections 172(c) and 182(f) of the Act (42 USC 7502(c) and 7511a(f))~~ areas that are or have ever been classified moderate, serious, severe, or extreme nonattainment for ozone under sub. (1).

**SECTION 10. NR 428.21 (3) (intro.), (a) and (b) are amended to read:**



**NR 428.21 (3) OTHER REGULATED UNIT.** An emissions unit ~~which is subject to and meeting an emission limitation in s. NR 428.04 or 428.05 (3)~~ is exempt from the emission limitations ~~in~~under s. NR 428.22, if ~~one of the following applies~~ it meets all of the following conditions:

(a) The emissions unit ~~is subject to a federally enforceable condition in an air permit which limits its emissions to~~ does not emit more than 75 tons of NO<sub>x</sub> per year due to a physical operating constraint or a federally enforceable condition in an air permit.

(b) The emissions unit, ~~because of a physical operating constraint, cannot emit more than 75 tons of NO<sub>x</sub> per year~~ is located in a facility subject to the applicability thresholds specified under s. NR 428.20 (1) (a) 1., 2. a, or 3. a.

**SECTION 11. NR 428.21 (3) (c) is created to read:**

**NR 428.21 (3) (c)** The emissions unit is subject to and meeting an emission limitation under s. NR 428.04 (2) or 428.05 (3).

**SECTION 12. NR 428.255 is created to read:**

**NR 428.255 Compliance schedule.** The owner or operator of a facility that has a NO<sub>x</sub> emission unit that is subject to this subchapter and that is located in any area described under s. NR 428.20 (1) (a) 2. or 3. shall comply with the applicable requirements of this subchapter upon the facility becoming subject to this subchapter, except for any of the following:

(1) The owner or operator of a NO<sub>x</sub> emission unit that commenced construction before [the effective date of this rule - LRB inserts date] and became subject to this subchapter on [the effective date of this rule - LRB inserts date] shall comply with the applicable requirements of this subchapter for that unit as expeditiously as practicable, but no later than 21 months after [the effective date of this rule - LRB inserts date].

(2) The owner or operator of a NO<sub>x</sub> emission unit that becomes subject to this subchapter due to the reclassification of a nonattainment area that occurs after [the effective date of this rule - LRB inserts date] shall comply with applicable requirements of this subchapter as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, as indicated by the relevant Federal Register publication, or January 1 of the 3rd year after the associated SIP revision submittal deadline, whichever is earlier.

Note: RACT SIP revisions must be submitted by the department no later than 24 months after the effective date of the reclassification, as indicated by the relevant Federal Register publication.

(3) The owner or operator of a NOx emission unit that becomes subject to this subchapter due to the initial designation of a nonattainment area that occurs after [the effective date of this rule - LRB inserts date], shall comply with applicable requirements of this subchapter as expeditiously as practicable, but no later than January 1 of the 5th year after the effective date of the initial designation, as indicated by the relevant Federal Register publication.

**SECTION 13. NR 484.04 Table 2 (7s) is created to read:**

**Table 2  
CFR Appendix References**

CFR Appendix Referenced	Title	Incorporated by Reference For
(7s) 40 CFR part 50 Appendix U	Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone	NR 404.04 (5) (d)

**SECTION 14. EFFECTIVE DATE.** This rule takes 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 15. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 23, 2021.

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

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY \_\_\_\_\_

For Preston D. Cole, Secretary