• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comment only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Chelsea Trull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729, *chelsea.trull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that the food additive petition (FAP 2286) filed by BASF Corp., 100 Park Ave., Florham Park, NJ 07932 proposing to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of feed grade sodium formate as a feed acidifying agent in complete swine feeds, also proposed that FDA amend the animal food additive regulations for formic acid (§ 573.480) and ammonium formate (§ 573.170) to limit formic acid and formate salts from all added sources to 1.2 percent of complete feed when multiple sources of formic acid and its salts are used in combination. This element of the petition was not described in the July 25, 2014, notice of petition (79 FR 43325).

Elsewhere in this issue of the **Federal Register**, FDA is publishing a regulation providing for the safe use of feed grade sodium formate as a feed acidifying agent in complete swine feeds.

The potential environmental impact of this action is being reviewed. The Agency will prepare a claim of categorical exclusion or an environmental assessment to evaluate the potential environmental impacts of these actions. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any comments on potential environmental impact without further announcement in the **Federal Register**. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, FDA will prepare an environmental assessment and place it on public display at the Division of Dockets Management (see **DATES** and **ADDRESSES**) for public review and comment.

Dated: September 26, 2016.

Tracey H. Forfa,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 2016–23645 Filed 9–29–16; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0134; FRL–9953–51–Region 5]

Air Plan Approval; Wisconsin; NO_X as a Precursor to Ozone, $PM_{2.5}$ Increment Rules and PSD Infrastructure SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a revision to Wisconsin's state implementation plan (SIP), revising portions of the State's Prevention of Significant Deterioration (PSD) and ambient air quality programs to address deficiencies identified in EPA's previous narrow infrastructure SIP disapprovals and Finding of Failure to Submit. This SIP revision request is consistent with the Federal PSD rules and addresses the required elements of the fine particulate matter ($PM_{2.5}$) PSD Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) Rule. EPA is also proposing to approve elements of SIP submissions from Wisconsin regarding PSD infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 nitrogen dioxide (NO_2), 2010 sulfur dioxide (SO_2), and 2012 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before October 31, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0134 at *http://www.regulations.gov,* or via email to *damico.genevieve@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permitting Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6058, *morgan.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of these SIP submissions?
II. What is EPA's review of these SIP submissions?
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. What is the background of these SIP submissions?

On August 8, 2016, the Wisconsin Department of Natural Resources (WDNR) submitted a SIP revision request to EPA to revise portions of its PSD and ambient air quality programs to address deficiencies identified in EPA's previous narrow infrastructure SIP disapprovals and Finding of Failure to Submit (FFS). Final approval of this SIP revision request will be consistent with the Federal PSD requirements and will address the required elements of the $PM_{2.5}$ PSD Increments, SILs and SMC Rule. Wisconsin submitted revisions to its rules NR 404 and 405 of the Wisconsin Administrative Code. The submittal requests that EPA approve the following revisions to Wisconsin's SIP: (1) Amend NR 404.05 (2) (intro); (2) create NR 404.05(2) (am); (3) amend NR 404.05(3) (intro); (4) create NR 404.05(3) (am); (5) amend NR 404.05(4) (intro); (6) create NR 404.05(4) (am); (7) amend NR 405.02(3), (21)(a), and (21m)(a); (8) create NR 405.02(21m)(c); (9) amend NR 405.02(22)(b) and (22m)(a)1. and (b)1.; (10) create NR 405.02(22m)(a)3.; (11) amend NR 405.02(27)(a)6.; (12) amend NR 405.07(8)(a)3m; (13) create NR 405.07(8)(a)3m (Note); and (14) amend NR 405.07(8)(a)5. (Note).

WDNR also requested that this SIP revision supplement the PSD portions of its previously submitted infrastructure submittals, including 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, SO_2, and 2012 $PM_{2.5}$.

A. PSD Rule Revisions

1. $PM_{2.5}$ Increments

To implement the $PM_{2.5}$ NAAQS, EPA issued two separate final rules that establish the New Source Review (NSR) permitting requirements for $PM_{2.5}$: The NSR $PM_{2.5}$ Implementation Rule promulgated on May 16, 2008 (73 FR 28321), and the $PM_{2.5}$ PSD Increments, SILs and SMC Rule promulgated on October 20, 2010 (75 FR 64864). EPA's 2008 NSR $PM_{2.5}$ Implementation Rule required states to submit applicable SIP revisions to EPA no later than May 16, 2011, to address this rule's PSD and nonattainment NSR SIP requirements. This rule requires that the state submit revisions to its SIP, including the identification of precursors for $PM_{2.5}$, the significant emissions rates for $PM_{2.5}$ and the requirement to include emissions which may condense to form particulate matter at ambient temperatures, known as condensables, in permitting decisions. EPA published a final approval of a revision to Wisconsin's SIP on October 16, 2014, (79 FR 62008), which included all of the required elements of the 2008 NSR Implementation Rule.

The $PM_{2.5}$ PSD Increments, SILs and SMC Rule required states to submit SIP revisions to EPA by July 20, 2012, adopting provisions equivalent to or at least as stringent as the $PM_{2.5}$ PSD increments and associated implementing regulations. On August 11, 2014, EPA published a finding that Wisconsin had failed to submit the required elements of the $PM_{2.5}$ PSD Increments, SILs and SMC Rule (79 FR 46703).

The $PM_{2.5}$ PSD Increments, SILs and SMC Rule also allows states to discretionarily adopt and submit for EPA approval: (1) SILs, which are used as a screening tool to evaluate the impact a proposed new major source or major modification may have on the NAAQS or PSD increment; and (2) a SMC (also a screening tool), which is used to determine the subsequent level of data gathering required for a PSD permit application for emissions of $PM_{2.5}$. However, on January 22, 2013, the United States Court of Appeals for the District of Columbia (Court) granted a request from EPA to vacate and remand to EPA the portions of the $PM_{2.5}$ PSD Increments, SILs and SMC Rule $PM_{2.5}$ addressing the SILs for $PM_{2.5}$ so that EPA could voluntarily correct an error in these provisions. The Court also vacated parts of the $PM_{2.5}$ PSD Increments, SILs and SMC Rule establishing a $PM_{2.5}$ SMC, finding that EPA was precluded from using the $PM_{2.5}$ SMCs to exempt permit applicants from the statutory requirement to compile preconstruction monitoring data. *Sierra Club* v. *EPA,* 705 F.3d 458, 463–69. On December 9, 2013, EPA issued a good cause final rule formally removing the affected SILs and replacing the SMC with a numeric value of 0 micrograms per cubic meter ($\mu g/m^3$) and a note that no exemption is available with regard to $PM_{2.5}$. See 78 FR 73698. As a result, SIP submittals could no longer include the vacated $PM_{2.5}$ SILs at 40 CFR 51.166(k)(2) and 52.21(k)(2) and the $PM_{2.5}$ SMC must be revised to 0 $\mu g/m^3$, consistent with 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c).

2. Ozone

On November 29, 2005, EPA published (70 FR 71612) in the **Federal Register** the ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2''. Part of this rule established, among other requirements, oxides of nitrogen (NO_X) as a precursor to ozone. The final rule became effective on January 30, 2006.

On October 6, 2015, EPA finalized approval of revisions to Wisconsin's SIP that included the identification of NO_X as a precursor to ozone in the definition of regulated NSR pollutant. *See* 79 FR 60064.

B. Infrastructure SIP Submittals

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

This specific rulemaking is only taking action on the PSD elements of the Wisconsin infrastructure submittals.

Separate action has been or will be taken on the non-PSD infrastructure elements in separate rulemakings. The infrastructure elements for PSD are found in CAA 110(a)(2)(C), 110(a)(2)(D), and 110(a)(2)(J) and will be discussed in detail below. For further discussion on the background of infrastructure submittals, see 77 FR 45992.

II. What is EPA's review of these SIP submissions?

A. PSD Rule Revisions

EPA has evaluated WDNR's proposed revision to the Wisconsin SIP in accordance with the Federal requirements governing state permitting programs. The revisions described in section I above are intended to update the Wisconsin SIP to comply with the current rules and address deficiencies identified by EPA in its previous SIP disapprovals. As discussed below, EPA is proposing to approve these revisions because they meet Federal requirements.

1. $PM_{2.5}$

The $PM_{2.5}$ PSD Increments, SILs and SMC Rule finalized several new requirements for states to revise their SIPs to incorporate increments for $PM_{2.5}$. Specifically, the rule requires a state's submitted PSD SIP revision to adopt and submit for EPA approval the $PM_{2.5}$ increments issued pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS. States were also required to adopt and submit for EPA approval revisions to the definitions for ''major source baseline date,'' ''minor source baseline date,'' and ''baseline area'' as part of the implementing regulations for the $PM_{2.5}$ increments. The $PM_{2.5}$ increments are codified in 40 CFR 51.166(c)(1) and 40 CFR 52.21(c)(1). For class I areas the maximum allowable increase is codified as 1 $\mu g/m^3$ determined on an annual arithmetic mean, and a 24-hr maximum of 2 $\mu g/m^3$. For class II areas the maximum allowable increase is 4 $\mu g/m^3$ determined on an annual arithmetic mean, and a 24-hr maximum of 9 $\mu g/m^3$. For class III areas the maximum allowable increase is 8 $\mu g/m^3$ determined on an annual arithmetic mean, and a 24-hr maximum of 18 $\mu g/m^3$. Wisconsin incorporated these maximum allowable increases for $PM_{2.5}$ into their rules at NR 404.05(2) (intro) and (am); NR 404.05(3) (intro) and (am); and NR 404.05(4) (intro) and (am) for the class I, class II, and class III increments, respectively. As Wisconsin has utilized the same maximum allowable increases as the Federal regulations, their revisions are found to be consistent with the Federal regulations.

States were also required to adopt and submit for EPA approval revisions to the definitions for ''major source baseline date,'' ''minor source baseline date,'' and ''baseline area'' as part of the implementing regulations for the $PM_{2.5}$ increments. Wisconsin's revisions to the definition of ''major source baseline date,'' at NR 405.02(21m)(a) and (c), clarifies that the baseline date for particulate matter less than 10 micrometers (PM_{10}) is January 6, 1975, and adds October 20, 2010, as the major source baseline date for $PM_{2.5}$. This is consistent with the Federal definition at 40 CFR 51.166(b)(14)(i). Wisconsin's revisions to the definition of ''minor source baseline date'' at NR 405.02(22m)(a)1. and 3., clarify that the trigger date for PM_{10} is January 6, 1975, and establish October 20, 2011, as the trigger date for $PM_{2.5}$. The revisions to NR 405.02(22m)(b)(1) revise the definition of baseline date to update references to the U.S. Code of Federal Regulations. These revisions are consistent with the definition of ''minor source baseline date'' at 40 CFR 51.166(b)(14)(ii). The State revised the definition of ''Baseline area'' at NR 405.02(3) to explicitly identify pollutant air quality impacts that would define a baseline area where a minor source baseline date is already established. This revision is consistent with 40 CFR 51.166(b)(14)(ii)(c).

Wisconsin also revised provisions pertaining to the $PM_{2.5}$ SMC to be consistent with Federal requirements after the January 22, 2013, Court decision. WDNR's revision to NR 405.07(8)(a)3m. revises the $PM_{2.5}$ SMC to 0 $\mu g/m^3$ and NR 405.07(8)(a)3m.(Note) adds a note that no exemption is available with regard to $PM_{2.5}$. These revisions are consistent with the language in 40 CFR 51.166(i)(5)(i)(c) regarding the SMC for $PM_{2.5}$.

2. Ozone

The ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2'' required states to make revisions to their PSD programs to establish NO_X as a precursor to ozone. Specifically, NO_X was required to be identified as a precursor to ozone in the definition of major stationary source, the definition of major modification, the definition of significant, the definition of regulated NSR pollutant, and the SMC for ozone.

Wisconsin's revisions to the definition of ''major modification'' in NR 405.02(21)(a) states that any net emission increase at major stationary source that is significant for NO_X or volatile organic compounds (VOCs) shall be considered significant for ozone. This is consistent with the Federal requirements of 40 CFR 51.166(b)(2)(ii). Wisconsin's revisions to the definition of ''Major Stationary Source'' at NR 405.02(22)(b) add that a major stationary source that is major for NO_X shall be considered major for ozone. This is consistent with the Federal definition at 40 CFR 51.166(b)(1). Wisconsin's revisions to NR 405.07(8)(a)5.(note) revise the SMC for ozone to provide that sources with a net increase of 100 tons per year of NO_X need to perform an ambient impact analysis for ozone. This matches the note at 40 CFR 51.166(i)(5)(i)(f).[1] The revisions to the definition of ''Significant'' at NR 405.02(27)(a)6. adds a significant emission rate for ozone of 40 tons per year of nitrogen oxides. This is consistent with the Federal requirements of 40 CFR 51.166(b)(23)(i).

Because Wisconsin's requested revisions are consistent with the applicable requirements found in Federal regulations, EPA is proposing to approve the requested revisions.

B. Infrastructure SIP Submittals

PSD infrastructure elements are addressed in different sections of the CAA: Sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J).

1. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers: (i) Enforcement of SIP measures; (ii) PSD provisions that explicitly identify NO_X as a precursor to ozone in the PSD program; (iii) identification of precursors to $PM_{2.5}$ and the identification of $PM_{2.5}$ and PM_{10}[1] condensables in the PSD program; (iv) $PM_{2.5}$ increments in the PSD program;

[1] PM_{10} refers to particles with diameters less than 10 microns, oftentimes referred to as ''coarse'' particles.

and, (v) Greenhouse Gas (GHG) permitting and the ''Tailoring Rule.'' [2]

(i) Enforcement of SIP Measures

The enforcement of SIP measures provision was approved in previous rulemakings.

(ii) PSD Provisions That Explicitly Identify NO_X as a Precursor to Ozone in the PSD Program

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 29, 2005 (*see* 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone (70 FR 71612 at 71679, 71699–71700). This requirement was codified in 40 CFR 51.166.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including those identifying NO_X as a precursor to ozone, by June 15, 2007 (*see* 70 FR 71612 at 71683, November 29, 2005).

EPA is proposing to approve revisions to Wisconsin's PSD SIP reflecting these requirements in today's rulemaking, and therefore is proposing to find that Wisconsin has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS.

(iii) Identification of Precursors to $PM_{2.5}$ and the Identification of $PM_{2.5}$ and PM_{10} Condensables in the PSD Program

On May 16, 2008 (*see* 73 FR 28321), EPA issued the Final Rule on the ''Implementation of the New Source Review Program for Particulate Matter Less than 2.5 Micrometers'' (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5}$, otherwise known as precursors. In the 2008 rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to be SO_2 and NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations.

The explicit references to SO_2, NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(*b*) and 40 CFR 52.21(b)(50)(i)(*b*). As part of identifying pollutants that are precursors to $PM_{2.5}$, the 2008 NSR Rule also required states to revise the definition of ''significant'' as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define ''significant'' for $PM_{2.5}$ to mean the following emissions rates: 10 Tons per year (tpy) of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (*see* 73 FR 28321 at 28341).[3]

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(*a*) and 40 CFR 52.21(b)(50)(i)(*a*). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011 (*see* 73 FR 28321 at 28341).

EPA approved revisions to Wisconsin's PSD SIP reflecting these requirements on October 16, 2014 (*see* 79 FR 62008), and therefore proposes that Wisconsin has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS.

(iv) $PM_{2.5}$ Increments in the PSD Program

On October 20, 2010, EPA issued the final rule on the ''Prevention of Significant Deterioration for Particulate Matter Less Than 2.5 Micrometers—Increments, Significant Impact Levels and Significant Monitoring Concentration'' (2010 NSR Rule). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of ''increments,'' which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

TABLE 1—$PM_{2.5}$ INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER

	Annual arithmetic mean	24-hour max
Class I	1	2
Class II	4	9
Class III	8	18

[2] EPA highlights this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' and has issued additional guidance documents, the most recent on September 13, 2013, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' (2013 memo).

[3] EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM_{10} nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1. As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR Rule in order to comply with the court's decision. Accordingly, EPA's approval of Wisconsin's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The 2010 NSR Rule also established a new ''major source baseline date'' for $PM_{2.5}$ as October 20, 2010, and a new trigger date for $PM_{2.5}$ as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(*c*) and (b)(14)(ii)(*c*), and 40 CFR 52.21(b)(14)(i)(*c*) and (ii)(*c*). Lastly, the 2010 NSR Rule revised the definition of ''baseline area'' to include a level of significance of 0.3 micrograms per cubic meter, annual average, for $PM_{2.5}$. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

EPA is proposing to approve revisions to Wisconsin's PSD SIP reflecting these requirements in today's rulemaking, and therefore is proposing to find that Wisconsin has met this set of infrastructure SIP requirements for section 110(a)(2)(C) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS.

(v) GHG Permitting and the ''Tailoring Rule''

With respect to CAA Sections 110(a)(2)(C) and (J), EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Wisconsin has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In order to act consistently with its understanding of the Court's decision, the EPA no longer applies EPA regulations that would require that SIPs include the permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)).

EPA anticipates a need to revise Federal PSD rules and for many states to revise their existing SIP-approved PSD programs in light of the Supreme Court opinion. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to ensure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA is proposing that Wisconsin's SIP is sufficient to satisfy sections 110(a)(2)(C), (D)(i)(II), and (J) with respect to GHGs, because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Wisconsin PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy Section 110(a)(2)(C), (D)(i)(II), and (J). The SIP contains the necessary PSD requirements and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision.

For the purposes infrastructure SIPs, EPA reiterates that NSR Reform regulations are not within the scope of these actions. Therefore, we are not taking action on existing NSR Reform regulations for Wisconsin. EPA approved Wisconsin's minor NSR program on January 18, 1995 (*see 60* FR 3543); and since that date, WDNR and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

Certain sub-elements in this section overlap with elements of section 110(a)(2)(D)(i) and 110(a)(2)(J). These links will be discussed in the appropriate areas below.

2. Section 110(a)(2)(D)(i)(II)—Interstate Transport

Section 110(a)(2)(D)(i)(II) requires that SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

EPA notes that Wisconsin's satisfaction of the applicable infrastructure SIP PSD requirements for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS have been detailed in the section addressing section 110(a)(2)(C). EPA further notes that the proposed actions in that section related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved or is proposing in today's action to approve revisions to Wisconsin's SIP that meet certain requirements required by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that: Explicitly identify NO_X as a precursor to ozone, explicitly identify SO_2 and NO_X as precursors to $PM_{2.5}$, and regulate condensable $PM_{2.5}$ and PM_{10} in applicability determinations and in establishing emissions limits. EPA is also proposing in today's action to approve revisions to Wisconsin's SIP that incorporate the $PM_{2.5}$ increments and the associated implementation regulations including the major source baseline date, trigger date, and level of significance for $PM_{2.5}$ per the 2010 NSR Rule. EPA is proposing that Wisconsin's SIP contains provisions that adequately address the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Wisconsin's EPA-approved NNSR regulations found in Part 2 of the SIP, specifically in chapter NR 408 of the Wisconsin Administrative Code, are consistent with 40 CFR 51.165, or 40

CFR part 51, appendix S. Therefore, EPA proposes that Wisconsin has met all of the applicable PSD requirements for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS for transport prong 3 related to section 110(a)(2)(D)(i)(II).

3. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. WDNR's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J). Therefore, EPA proposes that Wisconsin has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(J) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS.

III. What action is EPA taking?

EPA is proposing to approve revisions to Wisconsin's SIP that implement the $PM_{2.5}$ increment requirements and also incorporates NO_X as an ozone precursor. These revisions were made to meet EPA's requirements for Wisconsin's PSD and NSR program and are consistent with Federal regulations. Specifically, EPA is proposing to approve the following:

(i) NR 404.05(2)(intro) and (am)
(ii) NR 404.05(3)(intro) and (am)
(iii) NR 404.05(4)(intro) and (am)
(iv) NR 405.02(3) and (21)(a)
(v) NR 405.02(21m)(a) and (c)
(vi) NR 405.02(22)(b)
(vii) NR 405.02(22m)(a)1. and 3., and (b)1.
(viii) NR 405.02(27)(a)6.
(ix) NR 405.07(8)(a)3m and 3m(Note)
(x) NR 405.07(8)(a)5.(Note)

The revisions pertaining to $PM_{2.5}$ increment will fully address the requirements of the $PM_{2.5}$ PSD Increments, SILs, and SMC Rule and the deficiencies identified in EPA's August 11, 2014, Finding of Failure to Submit. The revisions pertaining to NO_X as a precursor to ozone will, in conjunction with EPA's October 6, 2015 approval, address all of the PSD requirements of the ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2''.

EPA is also proposing to approve the PSD related infrastructure requirements found in CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for Wisconsin's 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 lead, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS submittals.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the WDNR rules regarding revisions to the PSD and NSR programs discussed in section I of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and/or at the National Archives and Records Administration (NARA), and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). For information on the availability of this material at NARA, go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 21, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[EPA–HQ–OW–2016–0598; FRL–9953–25–OW]

[RIN 2040–AF68]

Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category—Implementation Date Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to extend the implementation deadline for certain