

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.2070 (45)	
					Comments/unapproved sections	
No. 29.3 ...	EMISSIONS .....	4/28/95	March 22, 1996	[Insert FR citation from published date].	*	This rule limits a source's potential to emit, therefore avoiding RACT, title V operating permits.

[FR Doc. 96-6601 Filed 3-21-96; 8:45 am]  
 BILLING CODE 6560-50-P

**40 CFR Part 52**

[W164-01-7169a; FRL-5437-3]

**Approval and Promulgation of State Implementation Plan; Wisconsin; Rate-of-Progress and Contingency Plans**

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Direct final rule.

**SUMMARY:** In this action, USEPA is approving a revision to the Wisconsin State Implementation Plan (SIP) for the purpose of satisfying the rate-of-progress and contingency plan requirements of the Clean Air Act (Act) which will aid in ensuring the attainment of the national ambient air quality (NAAQS) for ozone.

**DATES:** This "direct final" rule will be effective May 21, 1996, unless USEPA receives adverse or critical comments by April 22, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments may be mailed to: Carlton T. Nash, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Brad J. Beeson at (312) 353-4779.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act (CAA); Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. Section 182(b)(1) of the CAA requires all ozone nonattainment areas classified as moderate and above to submit a SIP revision by November 15, 1993, which describes, in part, how these areas will achieve an actual emissions reduction of at least 15 percent during the first 6 years after

enactment of the CAA (November 15, 1996). Emissions and emissions reductions shall be calculated on a typical weekday basis for the "peak" 3-month ozone period (generally June through August).

The 15 percent VOC emissions reduction required by November 15, 1996 is defined within this document as "rate-of-progress." Furthermore, the portion of the SIP revision that illustrates the plan for the achievement of the emissions reduction is subsequently defined in this document as the "rate-of-progress plan."

In addition, section 172(c)(9) requires moderate and above areas to adopt contingency measures by November 15, 1993. The General Preamble states that the contingency measures generally must provide reductions of 3 percent of the emissions from the adjusted base year inventory. While all contingency measures must be fully adopted rules or measures, the State can use these measures in 2 different ways. The State can use its discretion to implement any contingency measures it wants before 1996. Alternatively, the State may decide not to implement a measure until the area has failed to either make rate-of-progress or attain the national ambient air quality standards (NAAQS). In that situation, the reductions must be achieved in the year following that in which the failure has been identified.

**II. Wisconsin's SIP Submittal**

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The State of Wisconsin held a public hearing on October 14, 1993, to receive public comment on the implementation plan for their moderate and above ozone nonattainment areas. Following the public hearing the plan was adopted by

the State Natural Resources Board and signed by the Governor's designee, George Meyer on September 9, 1993, and submitted to USEPA on November 15, 1993 as a proposed revision to the SIP.

The SIP revision was reviewed by USEPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). Because neither plan included fully adopted rules for all the measures listed in the plans, these submittals were deemed incomplete.

On July 13, 1995, the State made a supplemental submittal which included fully adopted rules for both the rate-of-progress and contingency plan. On July 18, the State's SIP submittal was deemed complete.

**III. The USEPA's Analysis of Wisconsin's Rate-of-Progress and Contingency Plans**

The USEPA has reviewed the State's submittal for consistency with the requirements of USEPA regulations. A summary of USEPA's analysis is provided below. More detailed support for approval of the State's submittal is contained in a Technical Support Document (TSD), dated January 10, 1996, which is available from the Region 5 Office, listed above.

**A. Accurate Emission Inventory**

Sections 172(c)(3) and 182(b)(1) of the Act require that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because the approval of such inventories is necessary to an area's rate-of-progress plan and attainment demonstration, the emission inventory must be approved prior to or with the rate-of-progress plan submission.

On June 15, 1994, USEPA approved Wisconsin's base year inventory. Therefore, Wisconsin has a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area.

**B. Calculation of the Adjusted Base Year Inventory**

The Act specifies the emission baseline from which the 15 percent reduction is calculated. This baseline value is termed the 1990 adjusted base year inventory. Section 182(b)(1)(D) excludes from the baseline the emissions that would be eliminated by Federal Motor Vehicle Control Program (FMVCP) regulations promulgated by January 1, 1990, and Reid vapor pressure (RVP) regulations (55 FR 23666, June 11, 1990), which require maximum RVP limits in nonattainment areas during the peak ozone season.

The adjusted base year inventory is determined by starting with the emission inventory, and then removing all biogenic emissions as well as emissions from sources located outside of the designated nonattainment boundary. The resulting inventory is termed the rate-of-progress base year inventory. The rate-of-progress base year inventory is then adjusted by removing the expected FMVCP and RVP reductions in order to derive the adjusted base year inventory.

Wisconsin used USEPA's MOBILE5a emission factor model to correctly calculate its adjusted base year inventory. Wisconsin's documentation includes the actual 1990 motor vehicle emissions using 1990 vehicle miles traveled (VMT) and MOBILE5a emission factors, and the adjusted emissions using 1990 VMT and the MOBILE emission factors in calendar year 1996 with the appropriate RVP for the nonattainment area as mandated by USEPA. The plan includes adequate information on how the MOBILE5a model was run to calculate the expected emission reductions from FMVCP and RVP.

As specified by the Act, section 182(b)(1)(B), preenactment banked emission credits were not included in any of Wisconsin's inventories.

Provided below is a tabular summary of the emission inventories calculated above.

Emissions inventory	Tons per day
A. 1990 Base Year Emission Inventory .....	559.9
B. 1990 Rate-of-Progress Inventory .	409.5
C. Emission Reductions from the pre-1990 FMVCP and Phase II RVP expected by 1996 .....	70.2
D. 1990 Adjusted Base Year Inventory (B-C) .....	339.3

**C. Required Reductions**

The adjusted base year inventory is multiplied by 0.15 to calculate the amount of the required rate-of-progress emission reduction. The amount of reductions necessary to meet the contingency plan requirement is 3 percent of the adjusted base year inventory. Therefore the adjusted base year inventory is multiplied by 0.03 to calculate the amount of required reductions for the contingency plan requirement.

Shown below is a table summarizing the amount of required reductions for the rate-of-progress and contingency plans.

Inventory	Tons per day
1990 Adjusted Base Year Inventory	339.3
Reduction for Rate-of-Progress Requirement .....	50.9
Reduction for Contingency Requirement .....	10.2

Therefore, to meet the rate-of-progress requirement, Wisconsin's plan must provide for at least a 50.9 tons per day (tpd) reduction, net of growth, in VOC emissions. In addition, to meet the contingency requirement, the State's plan must provide for at least a 10.2 tpd reduction, net of growth, in VOC emissions.

Under section 182(b)(1)(D) of the Act, the following reductions are not creditable towards the rate-of-progress reductions: (1) FMVCP regulations promulgated by January 1, 1990; (2) RVP

regulations; (3) RACT corrections; and (4) inspection and maintenance (I/M) corrections. Thus, the total expected reductions comprise the amount of reductions necessary to meet the rate-of-progress requirement and the expected reductions from the four noncreditable programs just described.

Wisconsin has documented the correct amount for the total expected reductions in the nonattainment area by showing each step, discussing any assumptions made, and stating the origin of the number used in the calculations.

**D. Projected Emission Inventory**

Emission projections for sources within an air basin are needed to determine if the rate-of-progress requirements in the Act are met and to determine if the area will attain the NAAQS by the applicable attainment date. The purpose of projecting the emission inventories into the future is not solely to predict what is likely to happen, but also to test the ability of the regulations in the control strategy to meet the rate-of-progress goals and attain the ozone NAAQS.

Growth factors are not included in the calculations of the 1990 adjusted base year inventory or the 1996 target.

Growth factors are needed, however, to project emissions to 1996 for the rate-of-progress demonstration as part of the rate-of-progress plan.

Wisconsin has included growth factors documenting assumptions made. The State's calculations for growth in the on-road mobile, industrial, and area source sectors is 11.6, 0.5, and 2.1 tpd respectively. These growth estimations were calculated in a manner consistent with USEPA's guidance.

**E. Control Measures**

The revision submitted by the State lists a series of control measures projected to achieve a 63.8 tpd reduction in VOC emissions. See the table below for list of the measures and their associated reductions.

Control measure	Expected reductions	Implemented by Nov. 1996
<b>On road mobile sector:</b>		
94-96 tailpipe and evaporative .....	0.72	✓
I/M and RFG (severe counties) .....	34.06	✓
I/M (Sheboygan County) .....	0.98	✓
ECO .....	1.57	✓
Federal detergent additive rule .....	0.57	✓
RFG—Class C (moderate counties) .....	1.50	
RFG—Class B (severe counties) .....	5.66	
<b>Industrial Sector</b>		
Wood furniture coating .....	2.38	✓
Misc. wood product coating .....	0.91	✓

Control measure	Expected reductions	Implemented by Nov. 1996
Yeast manufacturing .....	0.73	✓
Screen printing controls .....	0.12	✓
Foundries—gray iron and steel .....	0.06	✓
Industrial adhesives .....	0.21	✓
Lithography .....	0.58	✓
Degreasing .....	2.01	✓
Area Sources		
AIM coatings .....	3.77	✓
Autobody refinishing .....	2.91	✓
RFG (off-road) .....	1.56	✓
Federal non-road engine standards .....	0.87	✓
Stage II vapor recovery .....	7.70	✓
Traffic markings .....	3.62	✓
Gas station tank breathing .....	0.91	✓
Consumer and commercial products .....	2.80	✓

#### F. Rate-of-Progress and Contingency Plan Demonstrations

Overall, a State's rate-of-progress and contingency plans must provide for an 18 percent reduction in VOC emissions, of which rules for 15 percent must be implemented by November 15, 1996. For Wisconsin this means that at a minimum the State's plan must provide for a 61.1 tpd reduction in VOCs, of which at least 50.9 tpd of these reductions must be achieved by November 15, 1996.

The State's plan provides for a 62.0 tpd reduction, net of growth, in VOCs of which 54.8 tpd will be accomplished by November 15, 1996. For measures not implemented by 1996, Wisconsin's SIP clearly states the trigger mechanisms, a schedule of the implementation of the measures, and an indication that the measures will be implemented with no further action by the State or USEPA (e.g., additional rulemaking actions such as public hearings or legislative review). Therefore the State's plan meets the minimum program requirements.

#### G. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and USEPA (see sections 172(c)(6), 110(a)(2)(A) of the Act, and 57 FR 13556). The USEPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP [see section 110(a)(2)(C) of the Act].

Each rule has been or will be independently reviewed and approved by USEPA as part of the State's SIP. Part

of this review process includes a review of the enforceability of the rule. Rules that are not enforceable will not be approved by USEPA.

#### H. Concluding Statement

The USEPA has reviewed Wisconsin's rate-of-progress and contingency plan SIP revisions submitted to USEPA as described above. The materials contained in these SIP revisions represent an acceptable approach to the rate-of-progress and contingency plan requirements and meet all the criteria required for approvability.

#### IV. Action

The USEPA approves Wisconsin's rate-of-progress and contingency plan SIP submittals. With this action, USEPA incorporates Wisconsin's rate-of-progress and contingency plan SIP revision into the SIP, making them federally enforceable.

For the purposes of transportation conformity determinations, final approval of this rate-of-progress plan revision would eliminate the need for a build/no-build test for VOC for the 1996 analysis year. However, for analysis years later than 1996, conformity determinations addressing VOC must demonstrate consistency with this plan revision's motor vehicle emissions budget, consistency with the VOC motor vehicle emissions budget in the submitted (but not yet approved) attainment demonstration (if any), and satisfaction of the build/no-build test (until the attainment demonstration is approved). Final approval of this rate-of-progress plan revision would not eliminate the need for a build/no-build test for NO<sub>x</sub> for the 1996 analysis year.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on May 21, 1996. However, if we receive

significant adverse comments by April 22, 1996, USEPA will publish a notice that modifies or withdraws this action.

#### V. Miscellaneous.

##### A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

##### B. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

##### C. Regulatory Flexibility.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities

affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds.

*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

#### D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

#### E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 21, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons,

Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 26, 1996.

Valdas V. Adamkus,  
Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(87) to read as follows:

##### § 52.2570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(91) The State of Wisconsin requested a revision to the Wisconsin State Implementation Plan (SIP). This revision is for the purpose of satisfying the rate-of-progress requirement of section 182(b) and the contingency measure requirement of section 172(c)(9) of the Clean Air Act (Act) which will aid in ensuring the attainment of the national ambient air quality standard (NAAQS) for ozone.

(i) Incorporation by reference.

(A) Wisconsin Statutes, sections 144.31(1)(e) and (f), enacted on April 30, 1992, by Wisconsin Act 302.

[FR Doc. 96-6779 Filed 3-21-96; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 70

[KY-JEFF-96-01; FRL-5445-7]

#### Clean Air Act Approval of Operating Permits Program; Jefferson County, Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

**SUMMARY:** The EPA is promulgating full approval of the Operating Permits Program submitted by the Jefferson County, Kentucky Air Pollution Control District (District) located in the geographic area of Jefferson County, Kentucky. The Jefferson County, Kentucky program was submitted for the purpose of complying with Federal requirements which mandate that state and local agencies develop, and submit to EPA programs for issuing operating

permits to all major stationary sources, and to certain other sources.

**EFFECTIVE DATE:** April 22, 1996.

**ADDRESSES:** Copies of the District's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE, Atlanta, Georgia 30365, on the 3rd floor of the Tower Building. Interested persons wanting to examine these documents, contained in EPA docket number KY-JEFF-96-01, should make an appointment at least 24 hours before the visiting day.

#### FOR FURTHER INFORMATION CONTACT:

Leonardo Ceron, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347-3555 extension 4196.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (Section 501-507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states or authorized local agencies develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of the interim program, it must establish and implement a Federal Program.

On November 24, 1995, EPA proposed full approval, or in the alternative, interim approval of the operating permits program for the Jefferson County, Kentucky, Air Pollution Control District. See 60 FR 58033. The November 24, 1995, notice also proposed approval of the District's interim mechanism for implementing section 112(g) and for delegation of section 112 standards as promulgated. EPA did not receive any comments on the proposal. On February 16, 1996, the District submitted a package containing revisions to the operating permits program, which addressed the