

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

\* \* \* \* \*

■ 4. Section 520.1510 is revised to read as follows:

**§ 520.1510 Nitenpyram tablets.**

(a) *Specifications.* Each tablet contains 11.4 or 57 milligrams (mg) nitenpyram.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Special considerations.* The concurrent use of nitenpyram tablets and flavored milbemycin/lufenuron tablets as in paragraph (d)(1)(ii)(B) of this section shall be by or on the order of a licensed veterinarian.

(d) *Conditions of use—(1) Dogs—(i) Amount—(A)* One 11.4-mg tablet for dogs weighing less than 25 pounds (lb) or one 57-mg tablet for dogs weighing more than 25 lb, as needed, for use as in paragraph (d)(1)(ii)(A) of this section.

(B) One 11.4-mg tablet for dogs weighing less than 25 lb or one 57 mg tablet for dogs weighing more than 25 lbs, once or twice weekly, for use as in paragraph (d)(1)(ii)(B) of this section.

(ii) *Indications for use—(A)* For the treatment of flea infestations on dogs and puppies 4 weeks of age and older and 2 lbs of body weight or greater.

(B) The concurrent use of nitenpyram tablets as in paragraph (d)(1)(i)(B) of this section with either flavored lufenuron tablets as in § 520.1288(c)(1) of this chapter or flavored milbemycin and lufenuron tablets as in § 520.1446(d)(1) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

(2) *Cats—(i) Amount—(A)* One 11.4-mg tablet, as needed, for use as in paragraph (d)(2)(ii)(A) of this section.

(B) One 11.4-mg tablet, once or twice weekly, for use as in paragraph (d)(2)(ii)(B) of this section.

(ii) *Indications for use—(A)* For the treatment of flea infestations on cats and kittens 4 weeks of age and older and 2 lbs of body weight or greater.

(B) The concurrent use of nitenpyram tablets as in paragraph (d)(2)(i)(B) of this section with flavored lufenuron tablets as in § 520.1288(c)(2) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

Dated: August 18, 2003.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 03-22072 Filed 8-28-03; 8:45 am]

BILLING CODE 4160-01-S

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[CGD05-03-125]

RIN 1625-AA08

**Special Local Regulations for Marine Events; Hampton River, Hampton, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of implementation of regulation.

**SUMMARY:** The Coast Guard is implementing the special local regulations at 33 CFR 100.508 during the Hampton Bay Days Festival to be held September 5-7, 2003, on the waters of the Hampton River at Hampton, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the festival events. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

**EFFECTIVE DATES:** 33 CFR 100.508 is effective from 12 noon on September 5, 2003 to 6 p.m. on September 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Chief Petty Officer J. Saffold, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703-2199, (757) 483-8521.

**SUPPLEMENTARY INFORMATION:** Hampton Bay Days, Inc. will sponsor the Hampton Bay Days Festival on September 5-7, 2003 on the Hampton River, Hampton, Virginia. The festival will include water ski demonstrations, personal watercraft and wake board competitions, paddle boat races, classic boat displays, fireworks displays and a helicopter rescue demonstration. A fleet of spectator vessels is expected to gather nearby to view the festival events. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.508 will be in effect for the duration of the festival activities. Under provisions of 33 CFR 100.508, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may enter and anchor in the special spectator anchorage areas if they proceed at slow, no wake speed. The Coast Guard Patrol Commander will allow vessels to transit the regulated area between festival events. Because these restrictions will be in effect for a limited period, they should not result in

a significant disruption of maritime traffic.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: August 20, 2003.

**Ben R. Thomason, III,**

*Captain, U.S. Coast Guard, Acting*

*Commander, Fifth Coast Guard District.*

[FR Doc. 03-22136 Filed 8-28-03; 8:45 am]

BILLING CODE 4910-15-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[WI-113-3; FRL-7528-7]

**Approval and Promulgation of State Implementation Plans; Wisconsin**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving a revision to Wisconsin's State Implementation Plan (SIP) for the attainment of the one-hour ozone standard for the Milwaukee-Racine area. This SIP revision, submitted to EPA on December 16, 2002, allows emissions averaging for sources subject to the state's rules limiting emissions of nitrogen oxides (NO<sub>x</sub>) from large electricity generating units in southeast Wisconsin. In addition, the revision creates a new categorical emissions limit for new integrated gasification combined cycle units. On April 10, 2003, the EPA proposed approval of this SIP revision and published a direct final approval as well. EPA received adverse comments on the proposed rulemaking, and therefore withdrew the direct final rulemaking on June 6, 2003.

**DATES:** This final rule is effective September 29, 2003.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Alexis Cain at (312) 886-7018 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Alexis Cain, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR-18J), USEPA,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7018.

#### SUPPLEMENTARY INFORMATION:

The supplemental information is organized in the following order:

- I. What action is EPA taking today?
- II. What is EPA's response to comments received on the proposed rulemaking?
- III. Statutory and Executive Order Reviews

#### I. What Action Is EPA Taking Today?

EPA is approving, as part of the Wisconsin ozone SIP, rules that would allow sources to use emissions averaging and an emissions cap as a option for complying with ozone season limits on emissions of NO<sub>x</sub>. These limits apply to large electricity generating units in Southeast Wisconsin. EPA approved the rules setting the NO<sub>x</sub> emissions limits into Wisconsin's SIP on November 13, 2001 (66 FR 56931). The limits are expressed in mass of allowable emissions per unit of heat input (pounds per million Btu).

Emissions averaging will allow units subject to the NO<sub>x</sub> emissions limits of NR 428 of the Wisconsin Administrative Code to create emissions averaging plans in which the compliance of multiple sources would be assessed collectively. Participating sources would need to submit such plans to the Wisconsin Department of Natural Resources (WDNR) at least 90 days prior to the start of the ozone season, and would need to identify the participating units, their owners or operators, applicable emissions limitations, projected heat input and emissions rate, and projected mass emissions for the ozone season. The plan would establish an aggregate ozone season emissions rate limit for participating units through a formula that sums allowable emissions for each unit (based on projected heat input and each source's individual emissions rate), and divides it by the total projected heat input. To provide an environmental benefit from averaging, the formula subtracts 0.01 pounds/mmBtu from each unit's allowable emissions.

As a result, total emissions under an averaging plan would be lower than they would be if each unit demonstrated compliance on an individual basis. However, individual units would be allowed to exceed emissions rates specified in the NO<sub>x</sub> reduction rules, while other units would emit less than allowed under the rules. Thus, averaging allows companies to minimize the cost of emissions reductions by allocating reductions at the units that can achieve them most inexpensively.

In addition, units participating in an averaging plan are subject to a mass emission limitation, beginning with the 2008 ozone season. This feature of the program "caps" the aggregate ozone season NO<sub>x</sub> emissions of participating sources at a level that could not be exceeded regardless of heat input. This level is determined by the participating units' share of actual heat input during the 1995, 1996 and 1997 ozone seasons, multiplied by 15,912 tons, an amount consistent with the state's one-hour ozone attainment demonstration.

Within 60 days of the end of each ozone season, owners or operators of the participating units must submit compliance reports demonstrating compliance with the plan's emission rate and mass emission limit.

#### II. What Is EPA's Response to Comments Received on the Proposed Rulemaking?

The Midwest Environmental Advocates provided adverse comments on EPA's proposed approval of Wisconsin's averaging program. The Natural Resources Defense Council requested clarification of an issue related to the proposed approval of the new categorical emissions limit for new integrated gasification combined cycled units. In addition, EPA received two positive comments on the proposed rulemaking from citizens. This section responds to the adverse comments and to the request for clarification.

The Midwest Environmental Advocates noted areas where Wisconsin's averaging program may differ from the EPA's guidance on Improving Air Quality with Economic Incentive Programs, EPA-452/R-01-001, January 2001 (EIP Guidance). The comments by Midwest Environmental Advocates are addressed in detail below, and in many cases EPA disagrees that Wisconsin's averaging program is inconsistent with the EIP. In general, EPA notes that the EIP Guidance is neither a law nor a regulation. While it provides important guidance on the development of economic incentive programs, differences between a SIP submittal and the EIP Guidance are not necessarily sufficient reason to disapprove a SIP submittal.

*Comment:* Wisconsin's NO<sub>x</sub> averaging program should not be approved because it would not result in clear environmental benefit, as required under the EIP Guidance.

*Response:* The averaging program should be considered as an element of Wisconsin's overall NO<sub>x</sub> reduction rules. EPA has determined that these rules will achieve the results that the state attributed to them in the one-hour

ozone attainment plan (proposed rule, July 2, 2001, 66 FR 34878; final rule November 13, 2001, 66 FR 56931). The averaging portion of the rules provides compliance provisions that make it possible for sources subject to the rules to comply with them in a timely way, which otherwise would not be possible. Therefore, the averaging program is an essential element in an overall package that will lead to actual emissions decreases, and conforms with the EIP Guidance provisions on environmental benefit. Moreover, units that enter into NO<sub>x</sub> averaging plans must collectively accept a lower NO<sub>x</sub> emissions limit than they would have individually, which will promote further reductions in actual emissions.

*Comment:* Wisconsin's NO<sub>x</sub> averaging program fails to take source compliance margins into account, contrary to the EIP Guidance. The averaging program could lead to the disappearance of the margin between actual and allowable emissions that would occur in the absence of the averaging program, creating the potential for "an overall increase in actual emissions, despite a theoretical decrease in allowable emissions."

*Response:* The EIP Guidance (section 6.5(g)) states that in areas that have a required attainment demonstration, no provisions for considering compliance margins are necessary if the relevant attainment plan "includes the emissions from compliance margins as actual emissions" and "the relevant emissions inventories include emissions from the compliance margins for all sources covered under the EIP." Since the Milwaukee-Racine attainment and ROP plan and associated NO<sub>x</sub> emissions inventories assume that the NO<sub>x</sub> sources covered by the averaging program all emit as much as allowed, the compliance margin is already taken into account, and emissions will be reduced even if sources emit the maximum allowed. See "Technical Support Document for the Post-1999 Rate-of-Progress Plan Revision to the State Implementation Plan for the Milwaukee-Racine, Wisconsin Area," from Jacqueline Nwia to Randall Robinson, June 7, 2001, p. 27 (Docket WI 108-7338).

*Comment:* The rules require that excess emissions reductions used in an averaging plan be "beyond those required to meet all State and Federal requirements," but they do not require that reductions be in excess of those that would have occurred in the absence of the EIP, for instance due to upgrades, replacement or repair. The use of such reductions in averaging would frustrate

the goal of achieving additional reductions.

*Response:* Since it is difficult to determine which emissions-reducing upgrades, replacements, and repairs are motivated by an averaging program and which would occur in its absence, it is reasonable for the state to allow all reductions that are not otherwise required to be used in emissions averaging. It is sufficient to show that the overall effect of the program is to create lower emissions than would occur in the program's absence, even if some of the specific reductions used in an averaging plan would have occurred in any case. The EIP guidance requirement that economic incentive programs produce a clear environmental benefit is met because of the role that the averaging program plays in making compliance with the NO<sub>x</sub> reduction rules possible, by the reduced emissions rate on sources that participate in averaging, and by the imposition of an emissions cap.

*Comment:* It is unclear that the imposition of an emissions cap results in "any appreciable environmental benefit that would not have otherwise been achieved by complying with the state's one-hour ozone attainment plan."

*Response:* The one-hour ozone attainment plan is a tool for managing air quality, through projecting the impacts of regulations and economic changes on emissions of ozone precursors and on concentrations of ozone in ambient air. The attainment plan, however, does not impose requirements on sources. While the attainment plan includes projections of future emissions, based on projected activity levels and allowable emissions rates, these future emissions and activity levels are not regulatory requirements on sources. This SIP revision will create a new emissions cap, consistent with the attainment demonstration, for sources that participate in emissions averaging. This emissions cap provides certainty, which would not otherwise exist, that emissions from participating sources will be capped despite the potential for activity level increases beyond those projected.

*Comment:* The emissions cap does not apply until 2008, by which time it is likely that other factors will reduce NO<sub>x</sub> emissions in the Milwaukee-Racine area.

*Response:* It may be true that other programs or events will reduce future emissions beyond what is required under Wisconsin's current NO<sub>x</sub> rules. However, for the purpose of this rulemaking, EPA cannot assume the implementation of these future

programs prior to 2008, and therefore counts the 2008 emissions cap as an environmental benefit.

*Comment:* The program "fails to account for the relationship between NO<sub>x</sub> averaging plans and Title V permits." A unit operating under a Title V permit might use emissions averaging to increase its emissions, violating the facility's Title V permit and constituting a major modification necessitating new source review.

*Response:* Any unit that increases emissions sufficiently to violate its permit would be subject to enforcement, and any unit that increases emissions sufficiently to constitute a major modification would be subject to new source review, notwithstanding averaging for the purpose of compliance with the NO<sub>x</sub> emissions limits contained in NR 428.04(2) and NR 428.05(3). The averaging program cannot be used for compliance with any other requirement, and it cannot be used to avoid any requirement. Proper use of the averaging program for compliance with the NR 428 NO<sub>x</sub> emissions limits will be consistent with the Title V permit, because when these limits are included in the permits of sources eligible for averaging, the permits will specify that averaging is a compliance option.

*Comment:* "The proposed SIP revision does not explicitly require units participating in averaging plans to modify their Title V permit accordingly." Unless the public can determine from a facility's Title V permit whether a unit is part of an averaging plan, which other units are included in the plan, and how to determine the applicable emissions limits among and between those units, public participation in the Title V permit process will be undermined." Moreover, "the public is charged with obtaining a copy of an averaging plan from the participating parties," potentially inhibiting the public's ability to assess a source's compliance status.

*Response:* While NR 428 does not itself contain a requirement that units participating in averaging plans modify their Title V permits, NR 407, which is part of Wisconsin's SIP, does require that new requirements and compliance options be incorporated into permits as they are issued. Therefore, permits issued for sources that may use averaging must authorize the use of the averaging program as a compliance option. The Clean Air Act does not require that the details of averaging plans be included in Title V permits, but rather that the Title V permit identify whether a unit may use emissions averaging as a compliance

option. EPA agrees with the commenter that the public should have access to the averaging plan when viewing a company's Title V permit, and the public should not have to obtain the averaging plan from the source. The WDNR has clarified, in a letter dated May 28, 2003, that it will keep any prospective averaging plan, DNR comments on the plan, the final plan, and all compliance reports, in the Title V permit file for each participating source. It should also be noted that participants in an emissions averaging plan must provide public notice of the plan in a local newspaper at least 60 days prior to the start of the ozone season.

*Comment:* The proposed SIP revision fails to include provisions preventing a unit receiving excess emissions credits from increasing emissions sufficient to constitute a major modification without undergoing PSD or NSR review.

*Response:* The PSD and NSR programs require sources to undergo review when increasing emissions sufficient to constitute a major modification. Nothing in Wisconsin's averaging program changes this requirement.

*Comment:* EPA's "justifications for failing to apply agency guidance [on averaging among sources not under common ownership] are insufficient because they fail to address the purported purpose behind the unified owner requirement "is meant to ensure enforcement and compliance." A cap, whatever its environmental benefits, cannot substitute for lack of enforceability.

*Response:* A cap provides assurances that if enforcement of average emission rates proves difficult, the state and EPA can nonetheless protect the environment by enforcing against any violation of the cap.

*Comment:* Saying that WDNR staff will be able to review averaging plants is irrelevant because the guidance prohibits emissions averaging between facilities owned by different companies to ensure enforcement and compliance. Given the difficulty of predicting activity levels, "merely making sure that projected activity levels are reasonable does not ensure that day to day averaging is achieved."

*Response:* The commenter is correct that projecting reasonable activity levels does not ensure that day to day averaging is achieved. In looking at the question of whether Wisconsin will be able to check the reasonableness of projected activity levels, EPA is seeking to ensure that averaging plan participants will not be able to

deliberately “game” the system by projecting excessive activity by a unit with a reduced emissions rate. In the situation where non-compliance occurs because a unit has a lower-than-projected activity level, emissions will be lower than projected. This situation is of less concern if the activity levels projected are reasonable and similar to those of previous years, than if intentionally-erroneous significant growth in activity levels were projected. In the latter situation, emissions could increase even if activity levels are lower than the inflated projections of the averaging plan. It is important to note that it is a violation of the NO<sub>x</sub> averaging rules to exceed the allowable aggregate emissions rate, regardless of whether total emissions are greater or less than projected.

*Comment:* “Wisconsin’s air management program is already understaffed and under-funded,” is late in issuing permits, and is having difficulty ensuring compliance with the Title V program. “Even if DNR staff review of averaging plans could adequately address the concerns in EPA guidance, air management staff are not in a position to adequately complete this task.”

*Response:* The staff time required to verify that a small number of averaging plans contain reasonable projections of activity levels is minimal. EPA is confident that Wisconsin staff can perform this function, regardless of staffing and funding problems that may affect the Title V program.

*Comment:* A company operating a high-emissions unit cannot ensure that sufficient reductions exist unless it controls the low emission unit creating those credits. The fact that eligible facilities operate close to capacity is irrelevant, since activity levels can change.

*Response:* The commenter is correct that in averaging plans involving multiple owners, the ability to comply of all participants in the averaging plan can be compromised if the owner of the unit with a reduced emission rate does not maintain sufficient activity level. Averaging plan participants must take the risk of failing to comply with the averaging plan as a result of unexpected reductions in activity level by sources with reduced emissions rates. EPA could bring enforcement actions for such non-compliance, even though non-compliance with the emissions rate would be accompanied by lower actual emissions than projected.

*Comment:* The proposed SIP fails to indicate that all units participating in an averaging plan are in violation each and every day within the plan’s averaging

period if the aggregate NO<sub>x</sub> emissions exceed the averaging plan’s emission limits, multiplied by the number of participating units, as required under the EIP guidance.

*Response:* NR 428(j) states that “all emissions units participating in an ozone season NO<sub>x</sub> emissions averaging program may be considered out of compliance” if the averaging plan aggregate emissions rate or emissions cap is exceeded. Furthermore, “each emissions unit is considered out of compliance for each day of non-compliance until corrective action is taken to reduce emissions and achieve compliance.” In the case of a violation of the averaging plan’s aggregate emission rate or emissions cap, these provisions would give Wisconsin the ability to bring enforcement actions for violations for each participating unit, for each day during the ozone season up to the point when corrective action was taken. These provisions provide significant deterrence, are consistent with the requirements of the Clean Air Act and Title V regulations, and are substantially consistent with the EIP guidance. While the EIP guidance might be interpreted to indicate that a source may be in violations for each day of the ozone season even after corrective action is taken, EPA is willing to be flexible on this point.

*Comment:* The proposed rules do not indicate that source shutdowns and production activity curtailments are not eligible as emission reductions, nor that a source’s emissions reductions must be “permanent,” as required under the EIP.

*Response:* Given the structure of Wisconsin’s averaging program, such provisions against counting source shutdowns and curtailments are unnecessary, and not required under the EIP. In Wisconsin’s averaging program, compliance depends on emissions rates, not total emissions. Therefore, shutdowns and curtailments intrinsically do not generate reductions that can be used in averaging programs. Regarding the permanence of emissions reductions, the EIP states that “permanent” means that a source “commits to actions or achieves reductions for a future period of time as defined in the EIP” (EIP Guidance, Section 4.2(a)). In Wisconsin’s program, sources must commit to making reductions during the period defined by the NO<sub>x</sub> reduction rules—the ozone season. Thus, averaging plans in Wisconsin must use reductions that meet the EIP’s general definition of permanent. The EIP also provides an additional definition of permanent specifically for averaging. In addition to the general definition, in an averaging

program “the source’s emission reduction must last throughout the life of the program defined in the SIP” (EIP Guidance, Table 4.3(b)). If “the life of the program” is defined as the period of time during which the program will be in operation, then Wisconsin’s program, which has an indefinite life, would not seem to meet this requirement. However, EPA believes that a more reasonable interpretation is that the reduction must last through a time period defined by the program—the ozone season. In this case, Wisconsin’s program does require permanent reductions.

*Comment:* The proposed SIP revision would allow geographic shifting of emissions without protecting communities of concern from emissions increases, as required under the EIP. In addition, EPA should determine whether the proposed SIP revision satisfies the environmental justice requirements in Executive Order 12898.

*Response:* The EIP does not require special protections for communities of concern in trading or averaging programs that involve emissions of NO<sub>x</sub>, because NO<sub>x</sub>, unlike volatile organic compounds, is not a pollutant that raises significant concerns about localized impacts. NO<sub>x</sub> emissions impact regional concentrations of ozone, but do not cause elevated ozone concentrations on a local level. NO<sub>x</sub> emissions are also associated with emissions of nitrogen oxides (NO<sub>2</sub>), a criteria pollutant for which the Clean Air Act provides a variety of protections for local communities. Wisconsin has no NO<sub>2</sub> nonattainment areas, and any significant increases in NO<sub>2</sub> emissions at sources subject to the averaging plan would be subject to New Source Review. Since the averaging program creates no adverse local impacts, there is no potential to create “disproportionately high and adverse human health or environmental effects \* \* \* on minority populations and low-income populations,” as addressed in Executive Order 12898.

*Comment:* Wisconsin’s NO<sub>x</sub> averaging rule “may frustrate the state’s new 8-hour attainment needs”. EPA should disapprove this SIP revision until Wisconsin submits an 8-hour attainment demonstration plan.

*Response:* The NO<sub>x</sub> averaging rule is a necessary component of Wisconsin’s NO<sub>x</sub> control rules, which will reduce NO<sub>x</sub> emissions and contribute to reductions in ambient ozone concentrations. The rule contributes to Wisconsin’s efforts to meet the 8-hour attainment standard; it does not frustrate them.

*Comment:* "The proposed SIP revision appears to be promulgated for one company," raising "issues of the appropriateness and legality of regulation created and implemented for individual companies."

*Response:* Several companies are eligible to use the NO<sub>x</sub> averaging program, and EPA anticipates that more than one company will be involved in emissions averaging. In any case, as long as the program is protective of the environment, it would not be a cause for concern if only one company chose to use the program.

*Comment:* "The direct final rule approves inclusion of a new categorical emission limit for new integrated gasification combined cycle (IGCC) units in the Wisconsin SIP. We call upon EPA to clarify that this emissions limit does not and cannot, pre-ordain, or substitute for, BACT or LAER analysis required under the NSR and PSD requirements of the Clean Air Act."

*Response:* None of the emissions limits in Wisconsin's NO<sub>x</sub> rules, including the categorical emission limit for new integrated gasification combined cycle (IGCC) units, do or can predetermine or substitute for BACT or LAER analysis required under the NSR and PSD requirements of the Clean Air Act.

### III. Statutory and Executive Order Reviews

#### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

#### *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

#### *Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### *Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

#### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### *Executive Order 13132: Federalism*

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

#### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

#### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards,

EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

#### *Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2003. 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, Incorporation by reference, Oxides of Nitrogen.

Dated: June 30, 2003.

**William E. Munro,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, 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 *et seq.*

**Subpart YY—Wisconsin**

■ 2. Section 52.2570 is amended by adding paragraph (c)(108) to read as follows:

**§ 52.2570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(108) On December 16, 2002, Lloyd L. Eagan, Director, Wisconsin Department of Natural Resources, submitted revised rules to allow use of NO<sub>x</sub> emissions averaging for sources subject to NO<sub>x</sub> emission limits in the Milwaukee-Racine area. The revised rules also establish a NO<sub>x</sub> emissions cap for sources that participate in emissions averaging, consistent with the emissions modeled in Wisconsin's approved one-hour ozone attainment demonstration for the Milwaukee-Racine area. The rule revision also creates a new categorical emissions limit for new integrated gasification combined cycle units.

(i) Incorporation by reference.

(A) NR 428.02(6m) as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 2, 2002.

(B) NR 428.04(2)(g)(3) as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 2, 2002.

(C) NR 428.06 as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 2, 2002.

[FR Doc. 03-22050 Filed 8-28-03; 8:45 am]

BILLING CODE 6560-50-P

**GENERAL SERVICES ADMINISTRATION**

**41 CFR Chapter 301**

[FTR Case 2003-306; FTR Amendment 2003-05]

RIN 3090-AH87

**Federal Travel Regulation (FTR); Per Diem (Incidental Expense Increase)**

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Federal Travel Regulation (FTR) by increasing the incidental expense allowance under the per diem expenses from \$2.00 to \$3.00 for all per diem localities.

**DATES:** *Effective Date:* October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, Room 4035, GSA Building, Washington, DC 20405, (202) 208-7312, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Umeki G. Thorne, Program Analyst, Office of Governmentwide Policy, Travel Management Policy at (202) 208-7636. Please cite FTR case 2003-306.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates for locations within the continental United States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. As a result of this analysis, the incidental expense under the per diem expenses will be increased from \$2 to \$3 for all per diem localities.

**B. Executive Order 12866**

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and

Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**C. Regulatory Flexibility Act**

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

**D. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**E. Small Business Regulatory Enforcement Fairness Act**

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

**List of Subjects in 41 CFR Part 301-11**

Government employees, Travel and transportation expenses.

Dated: August 22, 2003.

**Stephen A. Perry,**  
*Administrator of General Services.*

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701-5709, GSA amends 41 CFR chapter 301 as set forth below:

**CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES**

**PART 301-11—PER DIEM EXPENSES**

■ 1. The authority citation for 41 CFR part 301-11 continues to read as follows:

Authority: 5 U.S.C. 5707.

**§ 301-11.18 [Amended]**

■ 2. Amend § 301-11.18 by revising the table to read as follows:

\* \* \* \* \*

M&IE	\$31	\$35	\$39	\$43	\$47	\$51
Breakfast .....	6	7	8	9	9	10
Lunch .....	6	7	8	9	11	12
Dinner .....	16	18	20	22	24	26
Incidentals .....	3	3	3	3	3	3