

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 CAA; 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, this proposed 2006 PM<sub>2.5</sub> clean NAAQS data determination for the Milwaukee-Racine, Wisconsin area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Particulate Matter, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 17, 2012.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2012-31290 Filed 12-27-12; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2011-0467; EPA-R05-OAR-2012-0538; FRL-9765-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Prevention of Significant Deterioration Greenhouse Gas Tailoring and Biomass Deferral Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Wisconsin State Implementation Plan (SIP), submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on May 4, 2011, June 20, 2012, and September 28, 2012. The proposed revisions modify Wisconsin's Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Wisconsin's PSD permitting requirements for their greenhouse gas (GHG) emissions. Additionally, these revisions propose to defer until July 21, 2014, the application of the PSD permitting requirements to biogenic carbon dioxide (CO<sub>2</sub>) emissions from bioenergy and other biogenic stationary sources in the State of Wisconsin. EPA is proposing approval of Wisconsin's revisions because the Agency has made the preliminary determination that these revisions are in accordance with the Clean Air Act (CAA) and EPA regulations regarding PSD permitting for GHGs.

**DATES:** Comments must be received on or before January 28, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2011-0467, or EPA-R05-OAR-2012-0538 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email:* [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov).

3. *Fax:* (312)692-2450.

4. *Mail:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID Nos. EPA-R05-OAR-2011-0467, or EPA-R05-OAR-2012-0538. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Danny Marcus, Environmental Engineer, at (312) 353-8781 before visiting the Region 5 office.

#### FOR FURTHER INFORMATION CONTACT:

Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8781, [marcus.danny@epa.gov](mailto:marcus.danny@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 should I consider as I prepare my comments for EPA?
- II. Wisconsin's Submittals Regarding GHGs
- III. What is the background for this proposed action?
- IV. What is EPA's analysis of Wisconsin's proposed SIP revision?
- V. What action is EPA Taking?
- VI. Statutory and Executive Order Reviews.

### I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

### II. Wisconsin's Submittals Regarding GHGs

In separate letters, dated May 4, 2011, June 20, 2012, and September 28, 2012, WDNR submitted requests to EPA for approval of revisions to the State's SIP to incorporate rule amendments adopted by Wisconsin related to GHG provisions.

#### A. Submittal on the Tailoring Rule Provisions

The first set of rules, originally submitted on May 4, 2011, became effective in the Wisconsin Administrative Code on September 1, 2011. These amendments establish thresholds for GHG emissions in Wisconsin's PSD regulations at the same emissions thresholds and in the same time frames as those specified by EPA in the "PSD and Title V Greenhouse Gas Tailoring; Final Rule," 75 FR 31514 (June 3, 2010), hereafter referred to as

the "Tailoring Rule," ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements for GHGs that they emit. The amendments to the SIP clarify the applicable thresholds in the Wisconsin SIP, address the flaw discussed in the "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans Final Rule," 75 FR 82536 (December 30, 2010) (the "PSD SIP Narrowing Rule"), and incorporate State rule changes adopted at the State level into the Federally-approved SIP.

#### B. Submittal on the Deferral of CO<sub>2</sub> Emissions From Biogenic Sources

On June 20, 2012, WDNR submitted final adopted rules related to the deferral of CO<sub>2</sub> emissions from bioenergy and other biogenic sources (biogenic CO<sub>2</sub> emissions), when determining whether the modification of a stationary source would result in a net emissions increase that would trigger PSD thresholds, and require the application of Best Available Control Technology (BACT). The adopted rules became effective on April 16, 2012. The purpose of the amendment is to incorporate the Federal deferral for biogenic CO<sub>2</sub> emissions into the Wisconsin's SIP provisions that govern GHG applicability.

In today's action, pursuant to section 110 of the CAA, EPA is proposing to approve these revisions into the Wisconsin SIP.

### III. What is the background for this proposed action?

This section briefly summarizes EPA's recent GHG-related actions that provide the background for this proposed action. More detailed discussion of the background is found in the preambles for those actions. In particular, the background is contained in what we call the GHG PSD SIP Narrowing Rule,<sup>1</sup> and in the preambles to the actions it cites.

#### A. GHG-Related Actions

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for this proposed action on the Wisconsin SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute

Finding," which EPA issued in a single final action,<sup>2</sup> the "Johnson Memo Reconsideration,"<sup>3</sup> the "Light-Duty Vehicle Rule,"<sup>4</sup> and the "Tailoring Rule." Taken together and in conjunction with the CAA, these actions establish regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determine that such regulations, when they took effect on January 2, 2011, subject GHGs emitted from stationary sources to PSD requirements; and limit the applicability of PSD requirements to GHG sources on a phased-in basis. EPA promulgated this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

PSD is implemented through the SIP process. Pursuant to this process in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call and, for some of these states, a Federal Implementation Plan (FIP).<sup>5</sup> Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year (tpy) of GHGs, and that do not limit PSD applicability to GHGs to

<sup>2</sup> "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

<sup>3</sup> "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

<sup>4</sup> "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

<sup>5</sup> Specifically, by action dated December 13, 2010, EPA finalized a "SIP Call" that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," 75 FR 77698 (December 13, 2010). EPA has begun making findings of failure to submit that would apply in any state unable to submit the required SIP revision by its deadline, and finalizing FIPs for such states. See, e.g., "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases," 75 FR 81874 (December 29, 2010); "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," 75 FR 82246 (December 30, 2010). Because Wisconsin's SIP already authorizes WDNR to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, Wisconsin is not subject to the proposed SIP Call or FIP.

<sup>1</sup> "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule." 75 FR 82536 (December 30, 2010).

the higher thresholds in the Tailoring Rule, EPA issued the GHG PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected provisions within the SIPs to the extent those provisions covered GHG-emitting sources below the Tailoring Rule thresholds.

#### B. EPA's Biomass Deferral Rule

On July 20, 2011, EPA promulgated the final "Deferral for CO<sub>2</sub> Emissions from Bioenergy and other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs" (Biomass Deferral). The following is a brief discussion of the deferral. For a full discussion of EPA's rationale for the rule, see the notice of final rulemaking at 76 FR 43490 (July 20, 2011).

The biomass deferral delays the consideration of CO<sub>2</sub> emissions from bioenergy and other biogenic sources (hereinafter referred to as "biogenic CO<sub>2</sub> emissions") when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of BACT<sup>6</sup> until July 21, 2014. Stationary sources that combust biomass (or otherwise emit biogenic CO<sub>2</sub> emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO<sub>2</sub> emissions resulting from those actions. The deferral applies only to biogenic CO<sub>2</sub> emissions and does not affect non-GHG pollutants or other GHGs (e.g., methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O)) emitted from the combustion of biomass fuel. Also, the deferral only pertains to biogenic CO<sub>2</sub> emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program.

Biogenic CO<sub>2</sub> emissions are defined as emissions of CO<sub>2</sub> from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of "biogenic CO<sub>2</sub> emissions" include, but are not limited to:

- CO<sub>2</sub> generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO<sub>2</sub> from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes;

- CO<sub>2</sub> from fermentation during ethanol production or other industrial fermentation processes;
- CO<sub>2</sub> from combustion of the biological fraction of municipal solid waste or biosolids;
- CO<sub>2</sub> from combustion of the biological fraction of tire-derived fuel; and
- CO<sub>2</sub> derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

EPA recognizes that use of certain types of biomass can be part of the national strategy to reduce dependence on fossil fuels. Efforts are underway at the Federal, state and regional level to foster the expansion of renewable resources and promote bioenergy projects, increase domestic alternative energy production, enhance forest management and create related employment opportunities. Part of fostering this development is to ensure that those feedstocks with negligible net atmospheric impact not be subject to unnecessary regulation. At the same time, it is important that EPA have time to conduct its detailed examination of the science and technical issues related to accounting for biogenic CO<sub>2</sub> emissions. The deferral is intended to be a temporary measure, in effect for no more than three years, to allow the Agency time to complete its work and determine what, if any, treatment of biogenic CO<sub>2</sub> emissions should be in the PSD and Title V programs. The Agency plans to complete its science and technical review and any follow up rulemakings within the three year deferral period and believes that three years is ample time to complete these tasks. It is possible that the subsequent rulemaking, depending on the nature of EPA's determinations, would supersede the biomass deferral rulemaking and become effective in fewer than three years. In that event, Wisconsin may be required to revise its SIP accordingly.

For stationary sources co-firing fossil fuel and biologically-based fuel, and/or combusting mixed fuels (e.g., tire derived fuels, municipal solid waste (MSW)), the biogenic CO<sub>2</sub> emissions from that combustion are included in the biomass deferral. However, the fossil CO<sub>2</sub> emissions are not included in the deferral. Emissions of CO<sub>2</sub> from processing of mineral feedstocks (e.g., calcium carbonate) are also not included in the deferral. Various methods are available to calculate both the biogenic and fossil portions of CO<sub>2</sub> emissions, including those methods contained in the GHG Reporting Program (40 CFR part 98). Consistent with the other pollutants subject to PSD, there are no

requirements to use a particular method in determining biogenic and fossil CO<sub>2</sub> emissions.

EPA's final biomass deferral rule is an interim deferral for biogenic CO<sub>2</sub> emissions only and does not relieve sources of the obligation to meet the PSD permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period, or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO<sub>2</sub> emissions from a particular source during the three year effective period and the study and future rulemaking do not provide for a permanent exemption from PSD permitting requirements for the biogenic CO<sub>2</sub> emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO<sub>2</sub> emissions would have to be appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes, consistent with that subsequent rulemaking and the Final Tailoring Rule (e.g., a major source determination for Title V purposes or a major modification determination for PSD purposes). EPA also wishes to clarify that we did not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires.

40 CFR 52.21(w) requires that any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO<sub>2</sub> emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO<sub>2</sub> emissions after the deferral expires, the source will need to consider its biogenic CO<sub>2</sub> emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this

<sup>6</sup> As with the Tailoring Rule, the Biomass Deferral addresses both PSD and Title V requirements. However, EPA is only taking action on WDNR's PSD program as part of this action.

proposed approval of the deferral into the Wisconsin SIP, and will be addressed through subsequent rulemaking.

### C. Wisconsin's Actions

On July 28, 2010, WDNR provided a letter to EPA, in accordance with the Tailoring Rule, confirming that the State has the authority to regulate GHGs in its PSD program. The letter provided that WDNR intended to apply the meaning of the term "subject to regulation" that was established by EPA in the Tailoring Rule. WDNR explained that it would apply the term by revising chapters NR 400, 405, and 407 of the Wisconsin Administrative Code. See the docket for this proposed rulemaking for a copy of WDNR's letter.

Wisconsin's initial revision consisted of emergency rules under the Wisconsin Administrative Code, since WDNR was unable to meet the January 2, 2011 effective date for applicability of PSD for GHG's. WDNR passed the emergency rules to implement the PSD program consistent with the Tailoring Rule on December 15, 2010.

In the SIP Narrowing Rule, 75 FR 82536 (December 30, 2010), EPA withdrew its approval of certain provisions of Wisconsin's SIP, among other SIPs, to the extent that those provisions of the SIP apply PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.<sup>7</sup> In this rule, EPA found that the affected states, including Wisconsin, had a flaw in their SIPs at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.<sup>8</sup> Accordingly, for each affected state, including Wisconsin, EPA concluded that EPA's SIP approval action was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.<sup>9</sup> EPA recommended that states adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under state law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the Federally-approved SIP by clarifying that the SIP applies to

only sources at or above the Tailoring Rule thresholds.<sup>10</sup>

As a result, Wisconsin's current approved SIP provides the state with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds; and requires new and modified sources to receive a PSD permit based on GHG emissions only if they emit at or above the Tailoring Rule thresholds.

WDNR is currently authorized to regulate the GHG PSD regulations consistent with the Tailoring Rule at the State level since WDNR passed emergency rules consistent with the Tailoring Rule. The combination of these emergency rules and the SIP narrowing rule has allowed WDNR to implement the PSD GHG regulations consistent with the Tailoring Rule. At this time, WDNR is formally seeking to revise its SIP with permanent rules (identical to the emergency rules) for final approval by EPA. WDNR has formally amended regulations to incorporate the Tailoring Rule thresholds, and has submitted its amendments to EPA for approval.

### IV. What is EPA's analysis of Wisconsin's proposed SIP revision?

The regulatory revisions that WDNR submitted for approval on May 4, 2011, June 20, 2012, and September 28, 2012, establish thresholds for determining which stationary sources and modifications become subject to permitting requirements for GHG emissions under WDNR's PSD program as well as incorporate the biomass deferral that delays until July 21, 2014, the consideration of biogenic CO<sub>2</sub> emissions when determining whether a stationary source meets the PSD thresholds. Specifically, the submittal regarding the implementation of the Tailoring Rule includes changes to WDNR's PSD regulations at NR 400.02(74m), NR 400.03(3)(om), NR 400.03(4)(go) and (kg), NR 405.02(28m), and NR 405.07(9).

#### A. WDNR's Revisions Regarding the Tailoring Rule Provisions

Wisconsin is currently a SIP approved state for the PSD program, and has incorporated EPA's 2002 New Source Review (NSR) reform revisions, 67 FR 80186 (December 31, 2002), for PSD into its SIP, 73 FR 76560 (December 17, 2008). In a letter provided to EPA on July 28, 2010, WDNR notified EPA of its interpretation that Wisconsin currently has the authority to regulate GHGs under its NR 400 and NR 405 PSD regulations. The current WDNR program (adopted prior to the promulgation of

EPA's Tailoring Rule) applies to major stationary sources (having the potential to emit at least 100 tpy or 250 tpy or more of a regulated NSR pollutant, depending on the type of source) or modifications undertaken in areas designated attainment or unclassifiable with respect to the NAAQS.

Among the changes WDNR has undertaken, WDNR has revised NR 400 to add the definition of "Greenhouse gases". WDNR has also revised NR 405 to define "Subject to regulation under the Act", and to establish the new tailoring rule thresholds for GHG applicability.

#### B. WDNR's Revisions Regarding the Deferral of CO<sub>2</sub> Emissions From Biogenic Sources

With respect to the changes undertaken by WDNR regarding the biomass deferral rule, WDNR has revised 285.60 and 285.63 of the Wis. State Statutes. Sections 285.60(3m) and 285.63(3m) have been created to establish that emissions of GHG's from biogenic CO<sub>2</sub> emissions are exempt from GHG PSD permitting consistent with 40 CFR 51.66(b)(48). Consistent with Wisconsin's formal request within the June 20, 2012 submittal, we are proposing to approve only revisions with respect to PSD for the biomass deferral rule.

### V. What action is EPA taking?

EPA is proposing to approve Wisconsin's May 4, 2011, June 20, 2012, and September 28, 2012, SIP submittals, relating to PSD requirements for GHG-emitting sources. Specifically, Wisconsin's proposed SIP revisions establish appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule and biomass deferral rule. EPA has made the preliminary determination that these SIP submittals are approvable because they are in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.<sup>11</sup>

If EPA does approve Wisconsin's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into WDNR's SIP, then 40 CFR 52.2572(b), as included in EPA's SIP Narrowing Rule, which codifies EPA's limiting its

<sup>7</sup> "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule." 75 FR 82536 (December 30, 2010).

<sup>8</sup> *Id.* at 75 FR 82542.

<sup>9</sup> *Id.* at 75 FR 82544.

<sup>10</sup> *Id.* at 75 FR 82540.

<sup>11</sup> As explained on page 7, with respect to the first package for submittal regarding the Tailoring rule provisions, we are proposing approval based on the May 4, 2011 SIP submittal which was sent for parallel processing. EPA is awaiting the formal state-effective SIP revision request from WDNR. EPA will only then be able to prepare a final rulemaking action for the SIP revision with respect to the Tailoring rule provisions.

approval of WDNR's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds, is no longer necessary. In this proposed action, EPA is also proposing to amend 40 CFR 52.2572 to remove this unnecessary regulatory language.

## 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 CAA; 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: December 17, 2012.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2012-31191 Filed 12-27-12; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

#### 42 CFR Part 1001

#### Solicitation of New Safe Harbors and Special Fraud Alerts

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of intent to develop regulations.

**SUMMARY:** In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal anti-kickback statute (section 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts.

**DATES:** To ensure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 26, 2013.

**ADDRESSES:** In commenting, please refer to file code OIG-121-N. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at <http://www.regulations.gov>.
2. *By regular, express, or overnight mail.* You may send written comments to the following address: Patrice Drew,

Office of Inspector General, Congressional and Regulatory Affairs, Department of Health and Human Services, Attention: OIG-121-N, Room 5541C, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close of the comment period to Patrice Drew, Office of Inspector General, Department of Health and Human Services, Cohen Building, Room 5541C, 330 Independence Avenue SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619-1368.

For information on viewing public comments, please see the Supplementary Information section.

**FOR FURTHER INFORMATION CONTACT:** Patrice Drew, Congressional and Regulatory Affairs Liaison, Office of Inspector General, (202) 619-1368.

#### SUPPLEMENTARY INFORMATION:

*Submitting Comments:* We welcome comments from the public on recommendations for developing new or revised safe harbors and Special Fraud Alerts. Please assist us by referencing the file code OIG-121-N.

*Inspection of Public Comments:* All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on <http://www.regulations.gov> as soon as possible after they have been received. Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, Monday through Friday from 9:30 a.m. to 5 p.m. To schedule an appointment to view public comments, phone (202) 619-1368.

#### I. Background

##### A. OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a-7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration to induce or reward business reimbursable under the Federal health care programs. The