ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Air Plan Approval; Wisconsin; Modification of Greenhouse Gas Language

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an approval to a revision to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on November 28, 2017. In this revision, WDNR makes modifications to the language associated with how greenhouse gases are evaluated in the Prevention of Significant Deterioration (PSD) program. These revisions were made to reflect changes required by the United States Supreme Court in its June 23, 2014 decision, Utility Air Regulatory Group (UARG) v. EPA, 134 S. Ct. 2427, on how greenhouse gases are evaluated in the PSD program. On June 23, 2014, in UARG v. EPA, the Supreme Court ruled that the Clean Air Act (CAA) neither compels nor permits EPA to adopt an interpretation of the CAA requiring a source to obtain a PSD or title V permit based solely on its potential greenhouse gas emissions. The ruling supported EPA’s decision to require sources otherwise subject to PSD review to comply with BACT emission standards for greenhouse gases. In other words, with respect to PSD, the ruling upheld PSD permitting requirements for greenhouse gases under Step 1 of the Tailoring rule for “anyway” sources, i.e., sources that were subject to PSD review anyway due to their non-greenhouse gas regulated pollutants, and invalidated PSD permitting requirement for Step 2 sources, i.e., sources that were considered major solely as a result of their greenhouse gas emissions.

Following the UARG v. EPA decision, WDNR is modifying its PSD rules in NR 405.07(9) to establish the conditions under which greenhouse gases at a stationary source shall be subject to the PSD regulations.

On May 25, 2018 (83 FR 24258), EPA published a notice of proposed rulemaking (NPRM) proposing approval of Wisconsin’s November 28, 2017 submittal for SIP revision on the basis that we found it consistent with the June 23, 2014, UARG v. EPA ruling. The specific changes to Wisconsin’s November 28, 2017 SIP revision and the rationale for EPA’s approval are discussed in the NPRM and will not be restated here. EPA received three comments on the proposed action; none were relevant to the rulemaking.

II. What action is EPA taking?

EPA is approving Wisconsin’s November 28, 2017 submittal for SIP revision as the modification to the greenhouse gas language in NR 405.07(9) is consistent with the June 23, 2014, UARG v. EPA ruling.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

• Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
• 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 (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);
This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 17, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

§ 52.2570 Identification of plan.

(c) * * * *(126) On May 4, 2011, June 20, 2012, and September 28, 2012, Wisconsin Department of Natural Resources (WDNR) submitted a request to revise Wisconsin’s Prevention of Significant Deterioration (PSD) program to incorporate the “Tailoring Rule” and the Federal deferral for biogenic CO2 emissions into Wisconsin’s SIP. On November 28, 2017, WDNR submitted a modification to the greenhouse gas language to be consistent with the June 23, 2014, UARG v. EPA ruling.

(j) * * * *(D) Wisconsin Administrative Code, NR 405.07 Review of major stationary sources and major modifications—source applicability and exemptions. NR 405.07(9), as published in the Wisconsin Administrative Register July 2015, No. 715, effective August 1, 2015.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FR Doc. 2018–16469 Filed 7–31–18; 8:45 am]

BILLING CODE 6560–50–P

Supplemental information:
Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.