

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS—Continued

*	*	*	*	*	*	*
<b>Available Sanctions for High Severity Level Prohibited Acts</b>						
B.2 .....	Forfeit up to 60 days of FSA Time Credits.					
*	*	*	*	*	*	*
<b>Available Sanctions for Moderate Severity Level Prohibited Acts</b>						
B.2 .....	Forfeit up to 30 days of FSA Time Credits.					
*	*	*	*	*	*	*
<b>Available Sanctions for Low Severity Level Prohibited Acts</b>						
B.2 .....	Forfeit up to 7 days of FSA Time Credits (only where the inmate is found to have committed a second violation of the same prohibited act within 6 months; forfeit up to 14 days of FSA Time Credits (only where the inmate is found to have committed a third violation of the same prohibited act within 6 months).					
*	*	*	*	*	*	*

\* \* \* \* \*

■ 4. Amend § 541.7, by revising paragraph (f) to read as follows:

**§ 541.7 Unit Discipline Committee (UDC) review of the incident report.**

(f) Sanctions. If you committed a prohibited act or acts, the UDC can impose any of the available sanctions in Tables 1 and 2, except loss of good conduct sentence credit, FSA Time Credits, disciplinary segregation, or monetary fines.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R05–OAR–2016–0074; FRL–10016–90–Region 5]

**Air Plan Approval; Wisconsin; Partial Approval and Partial Disapproval of the Oneida County SO<sub>2</sub> Nonattainment Area Plan**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a revision to the Wisconsin State Implementation Plan (SIP) for attaining the 2010 primary, health-based 1-hour sulfur dioxide (SO<sub>2</sub>) national ambient

air quality standard (NAAQS or “standard”) for the Oneida County SO<sub>2</sub> nonattainment area. This SIP revision (hereinafter referred to as Wisconsin’s Oneida County SO<sub>2</sub> plan or plan) includes Wisconsin’s attainment demonstration and other attainment planning elements required under the Clean Air Act (CAA). EPA is proposing to approve some elements of the Oneida County SO<sub>2</sub> plan and disapprove some elements of the plan, including the attainment demonstration, since it contains facility credit for a stack height that does not meet the regulations for good engineering practice stack height regarding the prohibition of air pollution dispersion techniques.

**DATES:** Comments must be received on or before December 28, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0074 at <http://www.regulations.gov>, or via email to [Aburano.Douglas@epa.gov](mailto:Aburano.Douglas@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

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

**FOR FURTHER INFORMATION CONTACT:** Jennifer Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6832, [Liljegren.Jennifer@epa.gov](mailto:Liljegren.Jennifer@epa.gov). The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

**SUPPLEMENTARY INFORMATION:**

**I. Why was Wisconsin required to submit a plan for the Oneida County SO<sub>2</sub> nonattainment area?**

On June 22, 2010, EPA published a new 1-hour primary SO<sub>2</sub> NAAQS of 75 parts per billion (ppb). This standard is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average

concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50.<sup>1</sup> On August 5, 2013, EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO<sub>2</sub> NAAQS, including the Oneida County SO<sub>2</sub> nonattainment area in Wisconsin.<sup>2</sup> These area designations became effective on October 4, 2013. Section 191(a) of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO<sub>2</sub> NAAQS (hereinafter called “plans” or “nonattainment plans”) to EPA within 18 months of the effective date of the designation, *i.e.*, by no later than April 4, 2015 in this case. Under CAA section 192(a), these plans are required to have measures that will provide for attainment of the NAAQS as expeditiously as practicable, but no later than five years from the effective date of designation, *i.e.*, October 4, 2018, for the Oneida County SO<sub>2</sub> nonattainment area.

In response to the requirement for SO<sub>2</sub> nonattainment plan submittals, Wisconsin submitted to EPA the Oneida County SO<sub>2</sub> plan on January 22, 2016, and submitted supplemental information on July 18, 2016, and November 29, 2016.

For reasons described in the following sections, EPA is proposing to disapprove portions of the Oneida County SO<sub>2</sub> plan. Finalization of this action would start sanctions clocks which can be stopped only if the conditions of EPA’s regulations at 40 CFR 52.31 are met.

If EPA finalizes the disapproval that EPA is proposing here, that action would initiate a new sanctions clock under section 179, providing for new source sanctions if EPA has not approved a revised plan within 18 months after final disapproval, and providing for highway funding sanctions if EPA has not approved a revised plan within 6 months thereafter, as well as initiating an obligation for EPA to promulgate a Federal implementation plan within 24 months unless in the meantime Wisconsin has submitted and EPA has approved a plan addressing these attainment planning requirements.

The remainder of this preamble describes the requirements that nonattainment plans must meet in order to obtain EPA approval, provides the history and description of EPA’s stack height regulations (which are pertinent to Wisconsin’s plan for Oneida County), provides a review of the Oneida County

SO<sub>2</sub> plan with respect to these requirements, and describes EPA’s proposed action on the plan.

On September 10, 2020, following discussions between EPA and Wisconsin regarding the requirements of EPA’s stack height regulations, Wisconsin sent EPA a letter, included in the docket for this proposed action, expressing a desire for additional analyses of the “formula GEP height” (see 40 CFR 51.100(ii)(2) for EPA’s regulations addressing formula height demonstrations) for the Ahlstrom-Munksjo facility and committing to adopt a limit consistent with EPA’s stack height regulations by April 1, 2021. However, this letter does not provide any technical information that affects EPA’s review of Wisconsin’s existing plan that was submitted to EPA, and the commitment for an additional submittal does not serve as a substitute for a plan with suitable, enforceable limits. Therefore, this recent letter does not alter EPA’s review of Wisconsin’s Oneida County SO<sub>2</sub> plan.

## II. Requirements for Nonattainment Plans

Nonattainment plans for SO<sub>2</sub> must meet the applicable requirements of the CAA, specifically sections 110, 172, 191, and 192. EPA’s regulations governing nonattainment SIP submissions are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements codified at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIP revisions in the “General Preamble for the Implementation of Title I of the CAA Amendments of 1990” (“General Preamble”).<sup>3</sup> Among other things, the General Preamble addressed SO<sub>2</sub> SIP submissions and fundamental principles for SIP control strategies.<sup>4</sup> On April 23, 2014, EPA issued recommended guidance for meeting the statutory requirements in SO<sub>2</sub> SIP submissions in a document entitled “Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions” (“2014 SO<sub>2</sub> Guidance”). In the 2014 SO<sub>2</sub> Guidance, EPA described the statutory requirements of CAA section 172(c) for a complete nonattainment plan, including: An accurate emissions inventory of current emissions for all sources of SO<sub>2</sub> within the nonattainment area; an attainment demonstration; a demonstration of RFP; implementation of RACM (including

RACT); new source review; enforceable emission limitations and control measures; and adequate contingency measures for the affected area.

For EPA to fully approve a SIP revision as meeting the requirements of CAA sections 110, 172, 191, and 192, and EPA’s regulations at 40 CFR part 51, the plan for an affected area must demonstrate to EPA’s satisfaction that each of the aforementioned requirements has been met. Under CAA section 110(l), EPA may not approve a plan that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement. Under CAA section 193, no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area that is nonattainment for any air pollutant may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

Sections 172(c)(1) and 172(c)(6) of the CAA direct states with areas designated as nonattainment to demonstrate that the submitted plan and the emissions limitations and control measures in it provide for attainment of the NAAQS. 40 CFR part 51, subpart G further delineates the control strategy requirements that plans must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability.<sup>5</sup> SO<sub>2</sub> nonattainment plans must consist of two components: (1) Emission limits and other control measures that ensure implementation of permanent, enforceable, and necessary emission controls, and (2) a modeling analysis that meets the requirements of 40 CFR part 51, appendix W and demonstrates that these emission limits and control measures provide for timely attainment of the primary SO<sub>2</sub> NAAQS as expeditiously as practicable, but no later than the attainment date for the affected area. In cases where the necessary emission limits have not previously been made a part of the state’s SIP or have not otherwise become federally enforceable, the plan needs to include the necessary enforceable limits in an adopted form suitable for incorporation into the SIP in order for the plan to be approved by EPA. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures

<sup>1</sup> 75 FR 35520, codified at 40 CFR 50.17(a)–(b).

<sup>2</sup> 78 FR 47191, codified at 40 CFR part 81, subpart C.

<sup>3</sup> 57 FR 13498 (April 16, 1992).

<sup>4</sup> *Id.* at 13548–13549, 13567–13568.

<sup>5</sup> *Id.* at 13567–13568.

and must be quantifiable (*i.e.*, a specific amount of emission reduction can be ascribed to the measures), fully enforceable (*i.e.*, specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (*i.e.*, the procedures for determining compliance are sufficiently specific and objective so that two independent entities applying the procedures would obtain the same result), and accountable (*i.e.*, source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

EPA's 2014 SO<sub>2</sub> Guidance recommends that the emission limits be expressed as short-term average limits not to exceed the averaging time for the applicable NAAQS that the limit is intended to help maintain (*e.g.*, addressing emissions averaged over one hour for the 2010 SO<sub>2</sub> NAAQS), but it also describes the option to utilize emission limits with longer averaging times of up to 30 days as long as the state meets various recommended criteria.<sup>6</sup> The 2014 SO<sub>2</sub> Guidance recommends that, should states and sources utilize longer averaging times (such as, for example, 24-hours or 30 days), the longer-term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment. Additional discussion of EPA's rationale for approving longer-term average limits in selected cases has been provided in several notices of proposed rulemaking, for example for the Pekin, Illinois area (see 82 FR 46434, Oct. 5, 2017), for the Steubenville, Ohio-West Virginia area (see 84 FR 29456, June 24, 2019), and for the Central New Hampshire area (see 82 FR 45242, Sep. 28, 2017).

Attainment demonstrations for the 2010 1-hour primary SO<sub>2</sub> NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.*, not just at the violating monitor) by using air quality dispersion modeling (see appendix W) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the SO<sub>2</sub> NAAQS. For the short-term (*i.e.*, 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area that may affect attainment in the area) is

technically appropriate. This approach is also efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and source operating conditions that may contribute to peak ground-level concentrations of SO<sub>2</sub>.

Preferred air quality models for use in regulatory applications are described in appendix A of EPA's "Guideline on Air Quality Models" (appendix A of 40 CFR part 51, appendix W ("appendix W")).<sup>7</sup> In general, nonattainment SIP submissions must demonstrate the adequacy of the selected control strategy using the applicable air quality model designated in appendix W.<sup>8</sup> However, where an air quality model specified in appendix W is inappropriate for the particular application, the model may be modified or another model substituted, if EPA approves the modification or substitution.<sup>9</sup> In 2005, EPA promulgated the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) as the Agency's preferred near-field dispersion model for a wide range of regulatory applications addressing stationary sources (*e.g.*, in estimating SO<sub>2</sub> concentrations) in all types of terrain based on an extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO<sub>2</sub> standard is provided in appendix A of the 2014 SO<sub>2</sub> Guidance. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in the 2014 SO<sub>2</sub> Guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET, which is the meteorological data preprocessor for AERMOD. Estimated concentrations should include ambient background concentrations, follow the form of the standard, and be calculated as described in EPA's August 23, 2010 clarification memorandum.<sup>10</sup>

Of particular relevance to Wisconsin's submittal are requirements in 40 CFR 51.100, generally referred to as the stack

height regulations. These regulations, which implement CAA section 123, require that if the GEP stack height exceeds the height resulting from the 40 CFR 51.100(ii)(2) formulae and is determined based on the results of a special study, typically a fluid modeling or wind tunnel study, then additional requirements relating to emissions control must first be met. These additional requirements would result in a more stringent limit than that which is proposed for the Ahlstrom-Munksjo facility in the Wisconsin's Oneida County SO<sub>2</sub> plan. The history and nature of the stack height regulations are described in the following section.

### III. History and Nature of Stack Height Regulations

Given the significance of the stack height regulations for EPA's review of Wisconsin's submittal, and given the distinctive nature of these regulations, a discussion of the history of these regulations is necessary to provide perspective on EPA's application of these requirements. Prior to the enactment of the CAA Amendments of 1977, some parties expressed the view that "the solution to pollution is dilution." This viewpoint in effect argues that meeting air quality standards by building sufficiently tall stacks, thereby enhancing the degree of dispersion between the time a plume is released and the time the plume reaches ground level, should be an acceptable alternative to meeting air quality standards by reducing emissions. Other parties argued that dilution is not the solution to pollution, that the use of excessively tall stacks without any reduction to the atmospheric loading of pollutants should not be a permissible means for meeting air quality standards. Congress ultimately adopted the latter perspective, as reflected in its enactment of section 123 in its CAA Amendments of 1977. As discussed in a court ruling upholding this interpretation of section 123, Congress "refused to allow reliance" on tall stacks because "dispersion techniques do not reduce the amount of pollution in the air, but merely spread it around, exporting it to other areas . . . and exposing previously pristine areas to contamination." *Sierra Club v. EPA*, 719 F. 2d at 441 (D.C. Cir. 1983).

The pertinent text of CAA section 123(a) indicates that the degree of emission limitation required for control of any air pollutant under an applicable implementation plan shall not be affected in any manner by so much of the stack height of any source as exceeds good engineering practice (as determined under regulations

<sup>7</sup> EPA published revisions to appendix W on January 17, 2017, 82 FR 5182.

<sup>8</sup> 40 CFR 51.112(a)(1).

<sup>9</sup> 40 CFR 51.112(a)(2); appendix W, section 3.2.

<sup>10</sup> "Applicability of Appendix W Modeling Guidance for the 1-hr SO<sub>2</sub> National Ambient Air Quality Standard" (August 23, 2010).

promulgated by the Administrator). EPA's regulations implementing section 123 reside at 40 CFR 51.118–51.119, and in a series of definitions at 40 CFR 51.100(ff)–(nn). EPA's most recently promulgated regulations implementing section 123 were published on July 8, 1985 (50 FR 27892). The preamble of EPA's notice promulgating these regulations help explain EPA's intent underlying its formulation of these regulations.

The stack height regulations define several terms used in evaluating whether or not a plan is consistent with the provisions in section 123 and 40 CFR 51.118 prohibiting reliance on dispersion techniques, as defined in 40 CFR (hh)(1)–(2). The pertinent terms relate to creditable stack heights. GEP stack height is defined as the greatest among three values, based on three defined approaches for determining GEP stack height. The first approach, defined in 40 CFR 51.100(ii)(1), uses a minimum GEP height of 65 meters. The second approach, defined in 40 CFR 51.100(ii)(2), defines GEP stack height by applying one of two formulae, as applicable based on the age of the stack, in which GEP stack height is calculated on the basis of building dimensions that influence how tall a stack is routinely warranted to avoid most of the downwash that the building creates. The first formula, defining GEP stack height based on an old equation developed for this purpose, is not germane to Wisconsin's plan. The second, pertinent equation (in 40 CFR 51.100(ii)(2)(ii)) is that the GEP stack height equals the height of the building plus 1.5 times the lesser of the height or the width of the building. The third approach, set forth in 40 CFR 51.100(ii)(3) and tied to the definitions of “nearby” and “excessive concentration” at 40 CFR 51.100(jj)(2) and (kk)(1), respectively, uses neither of the formulae and defines GEP height based on the results of a special study, typically a fluid modeling or wind tunnel study, with the provision in section 51.100(kk)(1) that additional requirements relating to emissions control must first be met, namely control to the new source performance standard (NSPS) level or an alternative rate established if the NSPS is demonstrated to be infeasible. For clarity, this notice will describe the first and second approach as relying on the formula GEP height and the third approach as relying on the height determined by fluid modeling or wind tunnel study. More detailed guidance on these analyses is provided in guidance

that EPA issued in conjunction with the stack height regulations.<sup>11</sup>

In this third approach, the creditable stack height is defined in 40 CFR 51.100(ii)(3) as the height demonstrated by a fluid model . . . which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features. “Nearby” is defined in 40 CFR 51.100(jj)(2) as not greater than 0.8 km (½ mile) with a set of exceptions applying to terrain features (see 40 CFR 51.100(jj)(2)). “Excessive concentrations” is then defined in 40 CFR 51.100(kk)(1) for sources seeking credit for stack height exceeding [formula GEP height] as a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. The allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the authority administering the SIP, an alternative emission rate shall be established in consultation with the source owner or operator.

Thus, in cases where a source seeks credit for a stack height greater than formula GEP stack height, the stack height regulations require that the state first determine whether the air quality standard can be attained by applying suitable emission controls with credit for no more than formula GEP stack height. If so, then the facility does not have “excessive concentrations” with the stack at formula GEP height and no additional stack height is creditable. This feature is discussed further in the preamble to the 1985 regulations, which indicates that the EPA's 1976 stack

<sup>11</sup> Guidance on this and related topics is provided in “Guidance for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulation),” June 1985, EPA, Office of Air Quality Planning and Standards, EPA-450/4-80-023R, available at <https://www3.epa.gov/ttn/scram/guidance/guide/gep.pdf>.

height guidelines<sup>12</sup> imposed special conditions (the installation of control technology) on stacks above formula height that were not imposed on lower stacks. The legislative history of the 1977 CAA Amendments cautioned that credit for stacks above formula height should be granted only in rare cases, and the Court of Appeals adopted this as one of the keystones of its opinion. The preamble to the 1985 regulations further indicated that for these reasons, EPA is requiring sources seeking credit for stacks above formula height to show by field studies or fluid modeling that this height is needed to avoid a 40 percent increase in concentrations due to downwash and that such an increase would result in exceedance of air quality standards. Finally, the preamble to the 1985 regulations indicated that this will restrict stack height credit in this context to cases where the downwash avoided is at levels specified by regulation or by act of Congress as possessing health or welfare significance.

That is, if fluid modeling showed that downwash with a formula GEP height stack increased concentrations by more than 40 percent but suitable controls would provide for attainment (or if no modeling was provided assessing whether suitable controls would provide for attainment or if the state did not adopt limits requiring suitable control), then the plan would not have justified a stack height above formula GEP height as being creditable. In that case, the attainment demonstration would be considered to rely on a prohibited dispersion technique, in contravention of CAA section 123.

A common phrase in the debate leading to the 1985 regulations was “control first.” Advocates for control first, notably Natural Resources Defense Council, Inc. (NRDC), urged that all candidates for taller stacks first be required to implement aggressive emissions control, and that sources only be granted credit for taller stacks if such control does not suffice to resolve air quality problems. The opposite

<sup>12</sup> These guidelines are available at <https://nepis.epa.gov/Exe/ZyNET.exe/9100JWku.txt?ZyActionD=ZyDocument&Client=EPA&Index=1976%20Thru%201980&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C76THRU80%5CXT%5C00000016%5C9100JWku.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=3>.

preference was to focus solely on air quality, to argue that EPA should approve plans that resolve air quality problems with taller stacks (particularly those plans that involve more than a 40 percent impact of building downwash) without regard to the degree of control that the source implements. EPA's 1985 regulations reflect a compromise between these two positions, in which requirements for "control first" apply to sources seeking credit for stacks taller than formula GEP height and do not apply to sources with stacks at or below formula GEP height. The U.S. Court of Appeals for the D.C. Circuit affirmed this compromise in *Natural Resources Defense Council v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988).

The preamble to the 1985 regulations provides further discussion of the level of control that is mandated as a prerequisite for finding any stack height greater than the formula GEP height to be creditable. As a general matter, the NSPS associated with the subject source's source category are presumed to be the level of control to be adopted and to be used in any assessment of whether such emission controls and a creditable stack height in excess of the formula height is needed to eliminate any excessive concentrations (in combination with an assessment of the percentage impact of downwash). However, the regulations also provide the possibility of demonstrating that the NSPS are infeasible at the source, in which case an alternate control requirement must be adopted and used in evaluating whether the source's controlled emissions and a stack height above formula GEP height may be credited to avoid an excessive concentration. Footnote 6 of the 1985 preamble (50 FR 27898) states that EPA will rely on its Best Available Retrofit Technology (BART) Guideline in reviewing any [demonstrations of NSPS infeasibility] and alternative emission limitations. That is, in cases where the NSPS is demonstrated to be infeasible, EPA will use the criteria in the BART Guideline to determine whether the plan adequately demonstrates the infeasibility of the NSPS and whether the limit that the state adopts qualifies as a suitable limit to use in evaluating whether excessive concentrations (*i.e.* violations of the air quality standard) remain that might warrant a creditable stack height that is higher than the formula GEP height. In either case, the analysis of whether credit for stack height above formula GEP height is warranted must be based on an assessment of whether the appropriately limited allowable emissions would

nevertheless result in violation of the air quality standard. Since this demonstration must rely on allowable emissions, the SIP must include the appropriate limit, either the NSPS or a BART limit, as an adopted part of the plan. EPA's approach to implementing these provisions was affirmed by the U.S. Court of Appeals for the 9th Circuit, in *Montana Sulphur & Chemical Company v. USEPA*, 666 F. 3d 1174 (9th Cir. 2012).

#### IV. Review of Modeled Attainment Demonstration

The majority of Wisconsin's submittal includes an assessment of the air quality impacts Wisconsin expected to result from emissions limits governing the Ahlstrom-Munksjo paper mill (formerly Expera Specialty Solutions LLC (Expera)), which Wisconsin found to be the primary SO<sub>2</sub> source in the Oneida County nonattainment area based on its AERMOD dispersion model. This source is the only source in Oneida County listed in the 2017 National Emissions Inventory with more than 100 tons per year of SO<sub>2</sub> emissions. The plan accounts for two additional stationary sources, namely Red Arrow Products and the Packaging Corporation of America (PCA), but the emissions from these sources are subject to permanent, enforceable limits through existing title I construction permit requirements. These sources have minimal effect on area air quality, insofar as Red Arrow emits less than 10 tons per year, and PCA, which emits about 50 tons per year, is over 30 kilometers from the area of concern in Oneida County.

Wisconsin's Oneida County SO<sub>2</sub> plan includes a discussion of its modeling using AERMOD to determine the emissions that can be emitted from the Ahlstrom-Munksjo facility while still attaining the NAAQS (*i.e.* a modeled attainment demonstration). The model assumes maximum allowable emissions from Red Arrow and PCA, the other SO<sub>2</sub> sources in the nonattainment area or within 50 kilometers of the nonattainment area, as allowed by their Title I construction permits. This analysis used surface meteorological data from the Rhinelander-Oneida County Airport (KRHI) and upper air data from the Green Bay site. Although the Ahlstrom-Munksjo facility's boiler B26 formula GEP stack height according to the State's submittal is 75 meters, Wisconsin modeled the facility with a stack height of 90 meters, based on a series of wind tunnel studies conducted by consultants to the facility showing that a 90 meter stack would reduce downwash effects down to a 40 percent impact on concentrations.

Subsequently, Ahlstrom-Munksjo (formerly Expera) raised the stack from 63.7 meters to 90 meters. However, as detailed above, emissions control requirements are a prerequisite to potentially receiving credit for a stack height that exceeds the height resulting from the 40 CFR 51.100(ii)(2) formulae. These emissions control requirements (NSPS or BART) would result in a more stringent limit than that which is proposed for the Ahlstrom-Munksjo facility in Wisconsin's Oneida County SO<sub>2</sub> plan.

While many aspects of Wisconsin's modeling are consistent with the recommendations of appendix W, the submittal relies on a stack height and corresponding emission limitation that is contrary to and exceeds what is creditable under EPA's stack height regulations. Wisconsin's proposed GEP stack height exceeds formula GEP height without satisfying the associated requirements for establishing suitable control requirements and without demonstrating the degree to which a height above formula GEP height (if any) is necessary to avoid violations with application of the control requirements. Since this portion of the submittal therefore cannot be approved, EPA is not providing a full review of the various features of Wisconsin's attainment demonstration for the Oneida County SO<sub>2</sub> nonattainment area (*e.g.* the methodology and parameters of the wind tunnel study with respect to relevant EPA guidance, the stack-specific downwash algorithm developed from the wind tunnel study and applied to Ahlstrom-Munksjo's boiler B26 stack in AERMOD in lieu of the traditional downwash algorithm utilized in AERMOD, etc.).

#### V. SIP Strengthening Emission Limits

As noted above, Wisconsin's Oneida County SO<sub>2</sub> plan proposed a more stringent emission limit for the Ahlstrom-Munksjo facility than that which previously applied. Historically, as part of Wisconsin's Oneida County SO<sub>2</sub> plan for the 1971 24-hour SO<sub>2</sub> NAAQS, Wisconsin issued Consent Order AM-94-38 with an SO<sub>2</sub> emission limit on Ahlstrom-Munksjo's (then Rhinelander Paper's) coal-fired boiler, boiler B26, and EPA approved this order into the Wisconsin SIP on December 7, 1994. *See* 59 FR 63046.<sup>13</sup> The existing SIP limit is 3.5 pounds (lbs) of SO<sub>2</sub> per Million British Thermal Units (MMBTU) averaged over 24 hours (1,050 lbs per hour at the maximum operating

<sup>13</sup> 59 FR 63046 references "Rhinelander Paper" the name and ownership of the facility have since changed to Ahlstrom-Munksjo.

rate of 300 MMBTU per hour). As part of Wisconsin's Oneida County SO<sub>2</sub> plan (for the 2010 SO<sub>2</sub> NAAQS), Wisconsin issued Consent Order AM-15-01. AM-15-01 contains a requirement to raise the flue gas stack S09 height for boiler B26 to a minimum of 296 feet (90 meters) above ground level and establishes a more stringent SO<sub>2</sub> emission limit for boiler B26 than that which is currently contained in the Wisconsin SIP under AM-94-38. The order limits boiler B26 SO<sub>2</sub> emissions to 3.00 lbs per MMBTU on a 24-hour basis (900 lbs per hour at the maximum operating rate) and limits the maximum boiler load to 300 MMBTU per hour. The order carries forward the SO<sub>2</sub> emission limit, including the compliance demonstration and recordkeeping requirements, from AM-94-38 on boiler B28, which is that the sulfur content of distillate fuel fired in boiler B28 shall not exceed 0.05 percent by weight. In its Oneida County SO<sub>2</sub> plan, Wisconsin requested that EPA approve Wisconsin's nonattainment plan and withdraw AM-94-38 from the Wisconsin SIP and replace it with AM-15-01. Given the stack height issue identified above, EPA cannot approve AM-15-01 into the SIP. Therefore, EPA is not proposing to approve AM-15-01 into the SIP, and EPA is not proposing to withdraw AM-94-38 from the SIP. Rather, EPA is proposing to approve only the following portions of AM-15-01, including the more stringent SO<sub>2</sub> emission limit on boiler B26, the maximum boiler load limit for boiler B26, and the associated applicable reporting, recordkeeping, and compliance demonstration requirements including fuel sample collection, analysis, and retention, and emissions monitoring, recordkeeping, reporting, and performance testing requirements. Approval into the SIP would make these provisions permanent and federally enforceable and strengthen the Wisconsin SIP. Since this is not a relaxation of emissions limitations, sections 110(l) and 193 of the CAA are satisfied and no backsliding is occurring as a result of this SIP revision.

The limit in Wisconsin's 2016 plan is 3.0 lbs per MMBTU on a 24-hour rolling average basis, which Wisconsin considers to be equivalent to a limit of 3.2 lbs per MMBTU on a 1-hour basis. As previously stated, the longer-term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment. Although EPA is not able to approve this limit as sufficient to provide for attainment

(since the limit does not provide for attainment without credit for a taller stack than has been justified under EPA's stack height regulations), EPA is proposing to approve the limit as SIP strengthening, which is appropriate for limits that improve air quality whether or not these limits suffice to provide for attainment in accordance with CAA requirements.

EPA's 2014 SO<sub>2</sub> Guidance discusses the option, under specified circumstances, for emission limits with averaging times greater than one hour. Wisconsin's plan relies on a limit expressed as a 24-hour average. A critical criterion for such limits to be used for attainment planning purposes is that the longer-term average limit be comparably stringent to the 1-hour limit that the state has demonstrated would provide for attainment. In this case, Wisconsin has not properly demonstrated what 1-hour limit would provide for attainment without relying on a dispersion technique, *i.e.* without relying on credit for a taller stack than is creditable under the stack height regulations. Therefore, it is unnecessary to evaluate whether the State's 24-hour average limit is comparably stringent to the 1-hour average. In this action, EPA is not reviewing the validity of the adjustment factor that Wisconsin applied to determine the 24-hour average limit it adopted, other than to conclude that the 24-hour average limit of 3.0 lbs per MMBTU that the State adopted is more stringent than the 24-hour average limit of 3.5 lbs per MMBTU currently in the SIP.

**VI. Review of Other Plan Requirements**

*A. Emissions Inventory*

The emissions inventory and source emission rate data for an area serve as the foundation for air quality modeling and other analyses that enable states to estimate the degree to which different sources within a nonattainment area contribute to violations within the affected area and assess the expected improvement in air quality within the nonattainment area due to the adoption and implementation of control measures. The state must develop and submit to EPA a comprehensive, accurate, and current inventory of actual emissions from all sources of SO<sub>2</sub> emissions in each nonattainment area, as well as any sources located outside the nonattainment area that may affect attainment in the area.<sup>14</sup>

The base year inventory establishes a baseline that is used to evaluate emission reductions achieved by the

control strategy and to assess RFP requirements. Wisconsin used 2011 as the base year for emissions inventory preparation. At the time of preparation of the plan, 2011 reflected the most recent emissions data available to the State through its annual emissions reporting requirements during periods with air quality violations. The emissions inventory includes SO<sub>2</sub> emissions from point sources, area sources, on-road mobile sources, and off-road mobile sources. The point source emissions were compiled from Wisconsin's Air Reporting System (ARS), and the mobile source emissions were calculated using the MOVES2014 model. The point source emissions are dominated by the emissions from the Ahlstrom-Munksjo facility but also include a small amount of emissions from the Red Arrow facility. Table 1 summarizes 2011 base year SO<sub>2</sub> emissions inventory data for the nonattainment area, categorized by emission source type (rounded to the nearest whole number).

**TABLE 1—SUMMARY OF BASE YEAR (2011) SO<sub>2</sub> EMISSIONS INVENTORY FOR THE ONEIDA COUNTY SO<sub>2</sub> NONATTAINMENT AREA**

Source	Emissions (tpy)
Point Sources .....	2,430
Area Sources .....	13
On-Road Mobile Sources .....	3
Off-Road Mobile Sources .....	5
<b>Total .....</b>	<b>2,451</b>

In addition to addressing its obligation to inventory emissions within the nonattainment area, Wisconsin also evaluated whether any point sources nearby but outside the nonattainment area might have significant impacts. Based on this evaluation, Wisconsin identified PCA, emitting about 50 tons per year and located over 30 kilometers from the area of concern (in neighboring Lincoln County) as warranting inclusion in the modeling. However, this source was not included in the nonattainment area inventory summarized above.

EPA has evaluated Wisconsin's 2011 base year inventory and finds this inventory and the methodologies used for its development to be consistent with EPA guidance. As a result, EPA is proposing to determine that the Oneida County SO<sub>2</sub> plan meets the requirements of CAA section 172(c)(3) and (4) for the Oneida County SO<sub>2</sub> nonattainment area.

<sup>14</sup> CAA section 172(c)(3).

### *B. RACM and RACT and Enforceable Emission Limitations and Control Measures*

CAA section 172(c)(1) states that nonattainment plans shall provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT) and shall provide for attainment of the national primary ambient air quality standards. CAA section 172(c)(6) requires plans to include enforceable emissions limitations, and such other control measures as may be necessary or appropriate to provide for attainment of the NAAQS. Because the emissions limits for the Ahlstrom-Munksjo facility provided in the Oneida County plan were not calculated in compliance with the stack height regulations, and because as a result the plan cannot be considered to provide an appropriate attainment demonstration, the area does not demonstrate RACM/RACT or meet the requirement for necessary emissions limitations or control measures. EPA is therefore proposing that the State has not satisfied the requirements in CAA sections 172(c)(1) and (6) to adopt and submit all RACM/RACT and emissions limitations or control measures as needed to attain the standard as expeditiously as practicable.

### *C. Nonattainment New Source Review*

Wisconsin has a fully approved nonattainment new source review program. The State has implemented chapter NR 408 of the Wisconsin Administrative Code to satisfy the nonattainment new source review requirements. The program was approved by EPA into the SIP on January 18, 1995 (60 FR 3538), and the most recent update was approved on November 5, 2014 (79 FR 193). NR 408 addresses nonattainment permitting requirements for SO<sub>2</sub> and other pollutants. Therefore, EPA is proposing to affirm that the new source review requirements for the area have been met.

### *D. Reasonable Further Progress*

EPA's policy, that RFP for SO<sub>2</sub> may be satisfied by adherence to an ambitious compliance schedule, is based on the fact that, "for SO<sub>2</sub> there is usually a single 'step' between pre-control nonattainment and post-control attainment."<sup>15</sup> In this instance, however, Wisconsin has not demonstrated that implementation of the control measures required under the plan is sufficient to provide for

attainment of the NAAQS in the Oneida County SO<sub>2</sub> nonattainment area consistent with EPA requirements (in particular consistent with EPA regulations governing creditable stack heights). Since the plan does not satisfy the prerequisites for a stack height above formula GEP height to be creditable, and in the absence of a demonstration that the limit in the plan provides for attainment at the creditable (formula GEP) stack height, a compliance schedule to implement these controls is not sufficient to provide for RFP. Therefore, EPA proposes to conclude that the State has not satisfied the requirement in section 172(c)(2) to provide for RFP toward attainment in the Oneida County SO<sub>2</sub> nonattainment area.

### *E. Contingency Measures*

In the Oneida County SO<sub>2</sub> plan, Wisconsin explained its rationale for concluding that the plan meets the requirement for contingency measures. Specifically, Wisconsin relied on the 2014 SO<sub>2</sub> Guidance, which notes the special circumstances that apply to SO<sub>2</sub> and explains on that basis why the contingency requirement in CAA section 172(c)(9) is met for SO<sub>2</sub> by having a comprehensive program to identify sources of violations of the SO<sub>2</sub> NAAQS and to undertake an aggressive follow-up for compliance and enforcement of applicable emission limits. Wisconsin stated that if SO<sub>2</sub> attainment is not measured in the Oneida County SO<sub>2</sub> attainment area, it will reevaluate the stationary source SO<sub>2</sub> emission limit requirements.

However, EPA's policy that a comprehensive enforcement program can satisfy the contingency measures requirement for SO<sub>2</sub> plans is premised on the idea that full compliance with the controls and limits required in the plan will assure attainment. In this case, as explained above, Wisconsin's plan lacks necessary enforceable limits, calculated in compliance with stack height regulations, at the primary SO<sub>2</sub> source in the area and therefore cannot be credited as demonstrating attainment with the NAAQS. Consequently, vigorous enforcement of the currently insufficient limits cannot be assumed to constitute adequate contingency measures in the face of a NAAQS violation. Therefore, EPA proposes that the State has not satisfied the requirement in section 172(c)(9) to provide for contingency measures to be undertaken if the area fails to make RFP or to attain NAAQS by the attainment date.

### *F. Conformity*

Generally, as set forth in section 176(c) of the CAA, conformity requires that actions by Federal agencies do not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS. General conformity applies to Federal actions, other than certain highway and transportation projects, if the action takes place in a nonattainment area or maintenance area (*i.e.*, an area which submitted a maintenance plan that meets the requirements of section 175A of the CAA and has been redesignated to attainment) for ozone, particulate matter, nitrogen dioxide, carbon monoxide, lead, or SO<sub>2</sub>. EPA's General Conformity Rule establishes the criteria and procedures for determining if a Federal action conforms to the SIP.<sup>16</sup> With respect to the 2010 SO<sub>2</sub> NAAQS, Federal agencies are expected to continue to estimate emissions for conformity analyses in the same manner as they estimated emissions for conformity analyses under the previous NAAQS for SO<sub>2</sub>. EPA's General Conformity Rule includes the basic requirement that a Federal agency's general conformity analysis be based on the latest and most accurate emission estimation techniques available.<sup>17</sup> When updated and improved emission estimation techniques become available, EPA expects the Federal agency to use these techniques.

Transportation conformity determinations are not required in SO<sub>2</sub> nonattainment and maintenance areas. EPA concluded in its 1993 transportation conformity rule that highway and transit vehicles are not significant sources of SO<sub>2</sub>. Therefore, transportation plans, transportation improvement programs, and projects are presumed to conform to applicable implementation plans for SO<sub>2</sub>.<sup>18</sup>

### **VII. What action is EPA taking?**

EPA is proposing to approve the base year emissions inventory and to affirm that the new source review requirements for the area have been met. EPA is also proposing to approve the Ahlstrom-Munksjo SO<sub>2</sub> emission limit as SIP strengthening. Specifically, EPA is proposing to approve the specific portions of Wisconsin's Administrative Order AM-15-01 identified above, including emission limits and associated compliance monitoring, recordkeeping, and reporting requirements. EPA is proposing to disapprove the attainment

<sup>16</sup> 40 CFR 93.150 to 93.165.

<sup>17</sup> 40 CFR 93.159(b).

<sup>18</sup> 58 FR 3768, 3776 (January 11, 1993).

<sup>15</sup> 2014 SO<sub>2</sub> Guidance, 40.

demonstration, as well as the requirement for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations as necessary to attain the NAAQS, and contingency measures. Finalizing the proposed disapproval will start sanctions clocks for this area under CAA section 179(a)–(b).

### VIII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference only the specific portions of Wisconsin Administrative Order AM–15–01, effective January 15, 2016, as described in section V. above. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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

### List of Subjects in 40 CFR Part 52

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

Dated: November 12, 2020.

**Kurt Thiede,**

*Regional Administrator, Region 5.*

[FR Doc. 2020–25827 Filed 11–24–20; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Chapter III

[Docket No. FMCSA–2020–0194]

### Transportation Intermediaries Association Petition for Rulemaking Concerning Property Broker Transaction Records and Regulatory Guidance Concerning Dispatch Services

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Petition for rulemaking; request for public comments.

**SUMMARY:** FMCSA requests public comments on the Transportation Intermediaries Association (TIA) petition for rulemaking concerning the rights of parties to a brokered transaction to review the records of the transaction and its request that the Agency issue regulatory guidance concerning dispatch services. TIA believes transparency in broker transactions is provided through other means in today's market place and that the regulatory guidance would ensure that interested parties can distinguish between a dispatch service and an authorized broker.

**DATES:** Comments must be submitted by January 25, 2021.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2020–0194 using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. La Tonya Mimms, Chief, Driver and Carrier Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, by telephone at (202) 366–4001, or by email at [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

### SUPPLEMENTARY INFORMATION:

#### A. Submitting Comments

If you submit a comment, please include the docket number for this document (Docket No. FMCSA–2020–0194), indicate the specific section of this document to which each comment