Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions must be done in accordance with EMBRAER Service Bulletin 145–53–0027, Revision 03, dated February 5, 2004; and SICMA Aero Seat Service Bulletin 147–25–020, Issue 2, dated December 22, 2003; as applicable. (Pages 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, and 28 of EMBRAER Service Bulletin 145–53–0027 specify an incomplete document date; the date on those pages should read ''05/Feb/2004.'') This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil; or SICMA Aero Seat, 7 Rue Lucien Coupet, 36100 ISSOUDUN, France. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 2002–09–01R1, effective June 2, 2004.

Effective Date

(i) This amendment becomes effective on March 13, 2006.

Issued in Renton, Washington, on January 24, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–990 Filed 2–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 17

Change of Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the address for the Departmental Appeals Board (DAB). This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: This rule is effective February 6, 2006.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–31, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: This document amends FDA's regulations to reflect the address change of the DAB by removing the outdated address in § 17.47(a) (21 CFR 17.47(a)) and by adding the new address in its place.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedures are unnecessary because FDA is merely correcting nonsubstantive errors.

List of Subjects in 21 CFR Part 17

Administrative practice and procedure, Penalties.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 17 is amended as follows:

PART 17—CIVIL MONEY PENALTIES HEARINGS

■ 1. The authority citation for 21 CFR part 17 continues to read as follows:

Authority: 21 U.S.C. 331, 333, 337, 351, 352, 355, 360, 360c, 360f, 360i, 360j, 371; 42 U.S.C. 262, 263b, 300aa–28; 5 U.S.C. 554, 555, 556, 557.

§ 17.47 [Amended]

■ 2. Section 17.47 is amended in paragraph (a) by removing ''rm. 637–D, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201'' and by adding in its place ''Appellate Division MS6127, Departmental Appeals Board, United States Department of Health and Human Services, 330 Independence Ave. SW., Cohen Bldg., rm. G–644, Washington, DC 20201''.

Dated: January 30, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–1040 Filed 2–3–06; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[EPA–R05–OAR–2005–WI–0003; FRL–8020–1]

Approval and Promulgation of Implementation Plans; Wisconsin; General and Registration Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Wisconsin State Implementation Plan (SIP) submitted by the State of Wisconsin on July 28, 2005. These revisions include General and Registration permit programs that provide for the issuance of general and registration permits as part of the State's construction permit and operation permit programs. In addition, these permit programs may include the regulation of hazardous air pollutants (HAPs) which may be regulated under section 112 of the Clean Air Act (the Act). Thus, EPA is also approving Wisconsin's general and registration permit program under section 112(l) of the Act.

These SIP revisions also contain changes to definitions related to Wisconsin's air permit program, as well as a minor technical change to provide correct references to the updated chapter NR 445, which was inadvertently omitted in the processing of that rule package. Additionally, these revisions clarify an existing construction permit exemption and operation permit exemption for certain grain storage and drying operations. This clarification is necessary to ensure that column dryers and rack dryers are included in the exemption criteria.

DATES: This final rule is effective on March 8, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2005–WI–0003. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *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 Susan Siepkowski, Environmental Engineer, at (312) 353–2654 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Susan Siepkowski, Environmental Engineer, Air Permit Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–2654, *siepkowski.susan@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. Background Information for Today's Action

On September 20, 2005, EPA published a proposal to approve Wisconsin's July 28, 2005 SIP revision request, pertaining to registration and general permits. (70 FR 55062). This revision provides for the issuance of general and registration permits as part of the State's construction permit and operation permit programs. It also proposed to approve Wisconsin's general and registration permit program under section 112(l) of the Act, changes to definitions related to Wisconsin's air permit program, and clarifications to permit exemptions for certain grain storage and drying operations. EPA provided in the proposal a summary of these revisions as well as its analysis for determining whether the revisions complied with Federal requirements.

In the proposal EPA solicited comments, which were due October 20, 2005. EPA received one timely adverse comment on the proposed rule. A copy of this comment letter is available in the RME Docket, both electronically and a hard copy. A summary of the comments received and our responses are discussed in the section below.

II. What Comments Did We Receive and What Are Our Responses?

The comments EPA received on the September 20, 2005, proposal object to giving final approval to Wisconsin's registration and general permit programs. Some of the comments pertain to the draft registration permit templates recently public noticed by WDNR. We will address in this rulemaking only the comments pertaining to the September 20, 2005, proposal. The following is a summary of the comments received and our responses.

Comment: Contrary to EPA's proposed rule, Wisconsin's proposed general and registration permit program is not limited to ''Nonmetallic mineral processing plants, asphalt plants, small natural gas fired generators, small heating units, printing presses, and hospital sterilization equipment.''

Response: The proposal stated, ''Categories of sources that are or could be eligible for general permits include nonmetallic mineral processing plants, asphalt plants, small natural gas fired generators, small heating units, printing presses and hospital sterilization equipment.'' The proposal did not state that these were the only sources eligible, nor did it state the list was inclusive. The list was only meant to provide examples of source types that WDNR had given as examples in its proposal.

Comment: The proposed changes do not comply with the requirements of 40 CFR Part 51, section 110 of the Act and fail to ensure the protection of the National Ambient Air Quality Standards (NAAQS). 40 CFR 51.160 requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any control strategies in the SIP or interfere with attainment or maintenance of the NAAQS. NR 406.11(1)(g), the proposed provision that would prevent coverage for sources that cause or exacerbate a NAAQS (or increment) does not actually include a pre-construction determination of air quality impacts. The air quality review in this provision is retrospective, not prospective pre-construction review.

The general and registration permits being proposed allow construction or modification in areas of the state with very different existing background air pollution concentrations, number of sources, and terrain. There can be no pre-permit air analysis that will determine whether air quality standards will be violated by any specific source that will construct or modify under a general or registration permit. Additionally, there is no limit on the emission rate or the number of sources that can be covered by a general or registration permit. As a result, a large number of relatively-small sources can locate into the same area and, cumulatively, cause a violation of NAAQS, or a facility can emit large quantities of pollutants over a short period of time.

Response: WDNR must assure that these permit programs do not violate the NAAQS. WDNR is requiring the applicant to perform an air dispersion modeling analysis as part of its application for coverage. The analysis must include modeling for all criteria pollutants; however, because there are no increments for volatile organic compounds (VOC) (a pre-curser to ozone), an applicant must submit an analysis for VOC only if the emissions are above the major source threshold for permitting. Regarding ozone, ''No significant ambient impact concentration has been established. Instead, any net emissions increase of 100 tons per year of VOC subject to PSD would be required to perform an ambient impact analysis.'' 1990 New Source Review Workshop Manual, Page C.28, footnote b. However, because the pollutant of concern is ozone and the standard Gaussian models used for PSD (*i.e.*, ISCST3 or AERMOD) don't estimate ozone concentrations, determining ozone impacts from individual sources is difficult. Thus, states often use another type of analysis for VOC.

Upon receipt of the application and analysis, the WDNR has 15 days to determine whether the source is eligible for coverage under a general or registration construction permit, as provided in NR 406.16(3)(c) and 407.17(4)(c).

NR 406.11(1)(g) provides that the source may conduct the air quality determination after the determination that the source is covered under the general or registration construction permit. However, NR 406.16(2)(c) and 406.17(3) also provide that if an emissions unit or units cause or exacerbate, or may cause or exacerbate, a violation of any ambient air quality standard or ambient air increment, a source is ineligible for coverage under the general or registration construction permit. By requiring the permittee to submit a modeling analysis, combined with these provisions in NR 406, WDNR will ensure that a source will not violate the NAAQS.

Further, nothing in the proposed revisions relieves any source from the requirement to submit its yearly emissions for inclusion in the emissions inventory. A note in the rule after section NR 406.17(4)(e) and 407.105(4)(e) states, ''**Note:** The permit terms and conditions may include capture and control efficiencies. The Air Emissions Management System (AEMS) requires the owner or operator of a source to calculate actual annual emissions for reporting to the inventory using the terms and conditions in a

permit.'' The data in the emissions inventory is also used for purposes of determining compliance with NAAQS.

Comment: Even when the WDNR revokes a permit due to a violation of NAAQS or an increment, the violating source is authorized to continue operating under the general or registration permit until a subsequent permit is issued. NR 406.11(1)(g)(2) provides that the permittee is ''deemed to be in compliance with the requirement to obtain a construction permit until the department takes final action on a subsequent application for a construction permit. . .''

Section NR 407.105 of the proposed revisions, also allow a facility to be deemed ''in compliance'' with the SIP for 90 days even if the facility did not determine that a SIP requirement applied and is not in compliance with the limit. Additionally, the ''safe harbor'' language in the proposed provision is essentially a permit shield, which extends to requirements which were never included specifically in a permit, either as an applicable requirement or in a non-applicability determination.

Response: Since EPA's September 20, 2005, proposed approval of this rule, WDNR has withdrawn provisions NR 406.11(1)(g)(2), 407.105(7), and 407.15(8)(b) for inclusion in its SIP.

Comment: The proposed changes do not comply with the public participation requirements and procedures required by 40 CFR parts 51 and 70. The public notice and comment procedure required by part 51 is not satisfied by merely allowing notice and comment on a generic permit, which WDNR later applies to specific facilities. The required public notice and comment process requires public inspection of the information provided by the applicant and the agency's analysis of the effect on air quality. There is no provision in the proposed general and registration permit program whereby the public gets notice and the ability to comment on ''the information submitted by the owner or operator and of the State or local agency's analysis of the effect on air quality.'' 40 CFR 51.161(b).

Further, proposed section NR 406.16(1)(c) states that ''the procedural requirements in s. 285.61(2) to (8), Stats., do not apply to the determination of whether an individual source is covered by a general construction permit for a source category.'' Proposed section NR 406.17(1)(b) contains similar language for registration permits.

In addition, the general part 70 permits don't comply with the public notice requirements of part 70. The WDNR must provide the public with, *inter alia*: the identity of the affected facility; the name and address of the permittee; the name and address of the permitting authority processing the permit; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, and all other materials available to the permitting authority that are relevant to the permit decision. The Act also requires application materials, including compliance certification and compliance plans, to be made public.

Response: As discussed in the proposal, EPA has determined that, in cases where standardized permits have been adopted, EPA and the public need not be involved in their application to individual sources as long as the standard permits themselves have been subject to notice and opportunity to comment. Specifically, EPA's January 25, 1995 memorandum ''Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits'' states that ''since the rule establishing the program does not provide the specific standards to be met by the source, each general permit, but not each application under each general permit, must be issued pursuant to public and EPA notice and comment.'' P.10

EPA's April 14, 1998, guidance from John S. Seitz, ''Potential to Emit (PTE) Guidance for Specific Source Categories'' states, ''There are two overall approaches that States and local agencies can use to establish enforceable emission limits* * * Under the second approach, generally appropriate for less complex sources, States and local agencies create a standard set of terms and conditions for many similar sources at the same time. The terms air quality agencies use to describe this approach include ''general permits,'' ''prohibitory rules,'' ''exclusionary rules,'' and ''permits-by-rule.'' (From this point on, rather than to repeat each of these terms, this guidance will use the term ''prohibitory rule'' for the latter three terms.)'' This guidance further states, ''State ''prohibitory rules'' are similar to general permits, but States or local agencies put them in place with a regulation development process rather than a permitting process.''

Additionally, EPA's January 25, 1995, Memorandum from John S. Seitz, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act'', states, ''A concept similar to the exclusionary rule is the establishment of a general permit for a given source type. A general permit is a single permit that establishes terms and conditions that must be complied with by all sources subject to that permit. The establishment of a general permit provides for conditions limiting potential to emit in a one-time permitting process, and thus avoids the need to issue separate permits for each source within the covered source type or category.''

The State of Massachusetts, ''Summary of Comments and Responses to Comments from Public Hearing on Proposed Amendments to 310 CMR 7.00'', to which the commenters cite, states, ''EPA interprets its regulations at 40 CFR 51.160 to require that all proposed sources undergo full permit review before construction, with the exception of sources constructed pursuant to prohibitory rules.''

EPA has stated in guidance that prohibitory rules and general permits are essentially similar, and that neither require individual permit review. Thus, a one-time permit process can be used if the general permit receives full review. While EPA's guidance documents pertaining to general permits generally apply to operation permits, the concept can also be applied to general construction permits, as these are similar to construction pursuant to prohibitory rules. Every general permit issued to a source would not need to go through full review if the general permit did, provided certain materials are still made available to the public.

WDNR must make available to the public all of the permit information listed in parts 51 and 70. Similar to the construction and operation permits WDNR issues, the registration and general permits will also be available on a WDNR Web site. An up-to-date list of sources covered by registration or general permits, with all of the required permittee and facility information, as well the electronic application, will be available to view on-line. In addition, anyone can request to view any permit related materials by contacting the WDNR.

Regarding NR 406.16(1)(c) which states that, ''The department may issue the general construction permit if the applicable criteria in s. 285.63, Stats., are met. The procedural requirements in s. 285.61(2) to (8), Stats., do not apply to the determination of whether an individual source is covered by a general construction permit for a source category.'' There is a note that follows

this section which states, ''The statutes cited above require that when issuing a general construction permit, the department distribute a notice of the availability of the proposed general construction permit and of the department's analysis and preliminary determination, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing. There will be a 30-day public comment period and the department may hold a public hearing within 60 days after the deadline for requesting one.''

Wisconsin Stat. 285.63, which contains the criteria for permit approval, requires the source to meet all applicable emission limitations; and prohibits the source from violating or exacerbating an air quality standard or ambient air increment, and from precluding construction or operation of other sources. Wisconsin Stat. 285.61(2) to (8) contains the procedural requirements for construction permit application and review, and requires the WDNR to: prepare an analysis regarding the effect of the proposed construction, distribute and publicize the analysis and a notice of the opportunity to request a public hearing, receive public comments, and hold a public hearing on the construction permit if requested.

As discussed above, because the general permit will go through the procedures in Stat. 285, these procedures will not be required each time the general permit is issued to a specific source.

Comment: The proposed revisions allow the WDNR to determine that the requirements of NR 424.03(2)(a) or (b) are technologically infeasible for every source that will potentially be covered under a general or registration permit. Provision NR 424.03 requires WDNR to determine whether 85% reduction of VOCs is technologically infeasible.

Response: NR 406.16(1)(d) states, ''* * * Notwithstanding the requirement in s. NR 424.03(2)(c) to determine the latest available control techniques and operating practices demonstrating best current technology (LACT) for a specific process line, the department may include conditions in the general construction permit that represent LACT, if the requirements of s. NR 424.03(2)(a) or (b) are determined to be technologically infeasible.'' Similar language is included in and 406.17(1)(d), 407.10(1)(d), and 407.105(1)(c).

Wisconsin Stat. NR 424.03 requires 85% control of VOCs for certain sources. NR 424.03(2)(b)(2) states, ''Where 85% control has been demonstrated to be technologically infeasible for a specific process line, control organic compound emissions by the use of the latest available control techniques and operating practices demonstrating best current technology, as approved by the Department.'' NR 424.03(3) further states, ''Surface coating and printing processes subject to the requirements of this section may instead elect, with the approval of the Department, to meet the emission limitations of s. NR 422.01 to 422.155, notwithstanding ss. NR 422.03(1), (2), (3) or (4) and 425.03, provided that: (a) The process line meets the specific applicability requirements of ss. NR 422.05 to 422.155; and (b) The owner or operator submits a written request to the department * * *'' (NR 422.01 to 422.155 provides specific conditions for the control of VOC emissions for various types of surface coating, printing and asphalt surfacing operations.)

Wisconsin's rule 424.03(2)(b)(2) does not require a case-by-case or permit-by-permit analysis, and gives the WDNR the authority to made such determinations. The WDNR is making such a determination for the general construction permits. EPA believes this is consistent with Wisconsin's authority under 424.03.

Comment: The proposed rule provides that no construction permit is required if construction, reconstruction, or modification does not violate the term of a general operating permit. However, many requirements in the Wisconsin SIP are triggered, and become more stringent, when a source is modified or reconstructed. The proposed NR 407.10(4) does not prevent construction and modification, but does not require compliance with the more stringent SIP limits, which may become applicable, such as opacity. In fact, it does not require the source to notify the WDNR or EPA that it made the change. Instead, the proposed NR 407.10(4) merely requires the source to comply with the existing SIP limit.

Response: If a source with a general permit becomes subject to an applicable requirement, such as an opacity limit, that is different from the limit included in the general permit, or that is not included in the general permit, then the source no longer qualifies for that general permit. NR 407.10(4)(a)(1) provides, ''Notwithstanding the provisions in s. NR 406.04(1) and (2), no construction permit is required prior to commencing construction, reconstruction, replacement, relocation or modification of a stationary source if the source is covered under a general operation permit and all of the following criteria are met: 1. The construction, reconstruction, replacement, relocation or modification will not result in the source violating any term or condition of the general operation permit.''

Furthermore, if construction causes a new requirement to become applicable that is not in the general permit, the source would no longer be eligible for the general permit and would need to apply for another permit. NR 407.10(3)(b) provides ''(b) An owner or operator of a stationary source who requests or *requires* emission limits, terms or conditions other than, or in addition to, those contained in the general operation permit shall apply for a different type of permit.'' (Emphasis added.) Further, coverage under a general permit does not preclude a source from complying with Stat. 285.63, which requires sources to comply with all applicable requirements.

Comment: The operating permit program will not require that all emissions, limitations, controls and other requirements imposed by such permits will be at least as stringent as any other applicable imitation or requirement contained in the SIP.

Further, the rules and the draft permits already issued by WDNR under the proposed SIP revision do not identify what limits, controls and requirements apply to a source. Instead, the permit requires the owner or operator to ''meet all applicable air pollution requirements in ch. 285, Wis. Stats., and chs. NR 400–NR 499, and therefore, there is no way for the requirement to be enforced.

Response: The registration and general permit rule is not a prohibitory rule and, thus, the permits, not the rule itself, will contain the emissions limitations, controls and other requirements applicable to the source. The rule requires the operation permits to contain these conditions, and NR 407.105(1)(c) provides, ''The registration operation permit shall contain applicability criteria, emission caps and limitations, monitoring and record keeping requirements, reporting requirements, compliance demonstration methods and general conditions appropriate for determining compliance with the terms and conditions of the registration operation permit. The permit terms and conditions shall be those required to comply with the Act and those required to assure compliance with applicable provisions in ch. 285, Stats., and chs. NR 400 to 499.'' NR 407.10(1)(d) also provides, ''The general operation permit shall contain applicability criteria, emission limits, monitoring and record keeping requirements, reporting

requirements, compliance demonstration methods and general conditions applicable to the stationary source category. The permit terms and conditions shall be those required to comply with the Act and those required to assure compliance with applicable provisions in ch. 285, Stats., and chs. NR 400 to 499.''

As discussed in the previous response, coverage under a general or registration permit does not preclude a source from complying with Stat. 285.63, which requires sources to comply with all applicable requirements. Therefore, the permits must contain conditions that will be at least as stringent as any other applicable imitation or requirement contained in the SIP.

Comment: The proposed permit programs do not ensure that limitations, controls, and requirements are permanent, quantifiable, and otherwise enforceable as a practical matter. The proposed provisions rely on an annual 25 tons per year (TPY) cap on emissions, rather than a production limit. This violates EPA policy that synthetic minor permits must contain a limit on production to be practically enforceable.

Response: The limitations, controls, and requirements in the general and registration construction and minor operation permits are permanent, as these permits do not expire. However, general part 70 permits have a permit term of 5 years as required by 40 CFR 70.6(a)(2). NR 407.10(1)(e) provides, ''The term of a general operation permit issued to a part 70 source category, or granted to an individual part 70 source, may not exceed 5 years. General operation permits issued to a non-part 70 source category, or granted to an individual non-part 70 source, shall only expire if an expiration date is requested by the source owner or operator or the department finds that expiring coverage would significantly improve the likelihood of continuing compliance with applicable requirements, compared to coverage that does not expire.''

The limitations in the permits must be quantifiable. NR 407.15(2)(a)(1) requires, ''The calendar year sum of actual emissions of each air contaminant from the facility may not exceed 25% of any major source threshold in s. NR 407.02(4), except that for lead, emissions may not exceed 0.5 tons per calendar year.'' The permits must provide a mechanism to demonstrate the source will meet these limitations, and the rule requires the permits to contain emission limits, monitoring and record keeping requirements, reporting requirements, compliance demonstration methods in order to determine compliance with all limits.

Additionally, the limitations, controls, and requirements in the permits must be practically enforceable. EPA has discussed practical enforceability in various guidance documents. EPA's January 25, 1995, John S. Seitz memorandum, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act'', states,

> Consequently, in all cases, limitations and restrictions must be of sufficient quality and quantity to ensure accountability (see 54 FR 27283). * * * In general, practicable enforceability for a source-specific permit means that the permit's provisions must specify: (1) A technically-accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance including appropriate monitoring, record keeping, and reporting. For rules and general permits that apply to categories of sources, practicable enforceability additionally requires that the provisions: (1) Identify the types or categories of sources that are covered by the rule; (2) where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule; and (3) specify the enforcement consequences relevant to the rule.

Wisconsin's rule meets these requirements. The rule at NR 407.105(1)(c) and 407.10(1)(d) requires the permits to contain adequate emission caps and limitations, monitoring and record keeping requirements, reporting requirements, compliance demonstration methods and general conditions for determining compliance. Additionally, the rule at NR 407.10(1)(b) identifies the types or categories of sources that can be covered by the general permit, and coverage is elective, as provided by NR 407.10(3)(a). Further, if a facility covered by a registration or general permit emits more than its permitted cap, or does not comply with a permit term, it will no longer be eligible for the registration or general permit.

III. What Action Is EPA Taking Today?

After carefully reviewing and considering the issues raised by the commenter, EPA is taking final action to approve the proposed SIP revision. EPA is approving all revisions to Wisconsin SIP rules NR 400, 406, 407, and 410 submitted by the State on July 28, 2005, except the sections which Wisconsin later withdrew from consideration. The general construction and operation permit provisions are codified at NR 406.16 and NR 407.10 of the Wisconsin Administrative Code, respectively. Registration construction and operation permit provisions are codified at NR 406.17 and NR 407.105, respectively. EPA is also approving Wisconsin's general permit program under section 112(l) of the Act for the purpose of creating federally enforceable limitations on the potential to emit HAPs regulated under section 112.

This SIP revision amends provisions of Wisconsin's construction and operation permit programs, NR 406.04(1) and NR 407.03(1), respectively, relating to an existing exemption for certain grain storage and processing facilities from needing to obtain a construction or operation permit. Additionally, several sections in NR 406 and NR 407 are renumbered because of the addition of new provisions and definitions, and changes are being made to NR 410.03(1)(a)(5), NR 410.03(1)(a)(6) and (7), Wisconsin's air permit fee rules. EPA is not approving NR 406.11(1)(g)(2), 407.107(7), and 407.15(8)(b) which were included in the State's July 28, 2005, submittal because WDNR has since withdrawn these provisions from inclusion in its SIP. *See* letter from Lloyd L. Eagan, Director, to Thomas Skinner, Regional Administrator, dated November 14, 2005, in which Wisconsin withdrew the cited sections from its July 28, 2005 submission.

Specifically, the approved SIP revision repeals NR 406.04(1)(c) and 407.03(1)(c); renumbers NR 406.02(1) to (4); amends NR 406.04(1)(ce), (cm) and (m)(intro.), 406.11(1)(intro.) and (c), 407.03(1)(ce) and (cm), 407.05(7), 407.15(intro.) and (3), 410.03(1)(a)(5), and 484.05(1); repeals and recreates NR 407.02(3) and 407.10; and creates NR 400.02(73m) and (131m), 406.02(1) and (2), 406.04(2m), 406.11(1)(g)(1), 406.11(3), 406.16, 406.17, 406.18, 407.02(3m), 407.105(1) to (6), 407.107, 407.14 Note, 407.14(4)(c), 407.15(8)(a) and 410.03(1)(a)(6) and (7).

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (*58 FR 51735*, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (*66 FR 28355*, May 22, 2001).

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13132: Federalism

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

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

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

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply.

Paperwork Reduction Act

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

Congressional Review Act

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 7, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 27, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(113) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(113) Approval—On July 28, 2005, Wisconsin submitted General and Registration construction and operation permitting programs for EPA approval into the Wisconsin SIP. EPA also is approving these programs under section 112(l) of the Act. EPA has determined that these permitting programs are approvable under the Act, with the exception of sections NR 406.11(1)(g)(2), 407.105(7), and 407.15(8)(b), which Wisconsin withdrew from consideration on November 14, 2005. Finally, EPA is removing from the state SIP NR 406.04(1)(c) and 407.03(1)(c), the exemption for certain grain storage and processing facilities from needing to obtain a construction or operation permit, previously approved in paragraphs (c)(75) and (c)(76) of this section.

(i) Incorporation by reference.

(A) NR 406.02(1) through (4), amended and published in the (Wisconsin) Register, August 2005, No. 596, effective September 1, 2005.

(B) NR 406.04(1) (ce), (cm) and (m) (intro.), 406.11(1) (intro.) and (c), 407.03(1) (ce) and (cm), 407.05(7), 407.15 (intro.) and (3), 410.03(1)(a)(5), and 484.05(1) as amended and

published in the (Wisconsin) Register, August 2005, No. 596, effective September 1, 2005.

(C) NR 407.02(3) and 407.10 as repealed, recreated and published in the (Wisconsin) Register, August 2005, No. 596 effective September 1, 2005.

(D) NR 400.02(73m) and (131m), 406.02(1) and (2), 406.04(2m), 406.11(1)(g)(1), 406.11(3), 406.16, 406.17, 406.18, 407.02(3m), 407.105 (1) through (6), 407.107, 407.14 Note, 407.14(4)(c), 407.15(8)(a), and 410.03(1)(a)(6) and (7) as created and published in the (Wisconsin) Register, August 2005, No. 596, effective September 1, 2005.

[FR Doc. 06–1030 Filed 2–3–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–8028–2]

RIN 2060–AN18

Protection of Stratospheric Ozone: The 2006 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to exempt methyl bromide production and import for 2006 critical uses. Specifically, EPA is authorizing uses that will qualify for the 2006 critical use exemption, and the amount of methyl bromide that may be produced, imported, or made available from inventory for those uses in 2006. EPA's action is taken under the authority of the Clean Air Act (CAA) and reflects recent consensus Decisions taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) at the 16th and 17th Meetings of the Parties (MOPs) and the 2nd Extraordinary Meeting of the Parties (ExMOP).

DATES: This final rule is effective on February 1, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–OAR–2005–0122. All documents in the docket are listed on the *http://www.regulations.gov* web site. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Marta Montoro, Office of Atmospheric Programs, Stratospheric Protection Division, Mail Code 6205 J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9321; fax number: (202) 343–2337; e-mail address: *mebr.allocation@epa.gov*.

SUPPLEMENTARY INFORMATION: This final rule concerns Clean Air Act restrictions on the consumption, production, and use of methyl bromide (class I, Group VI controlled substance) for critical uses during calendar year 2006. Under the Clean Air Act, methyl bromide consumption and production was phased out on January 1, 2005 apart from certain exemptions, including the critical use exemption and the quarantine and preshipment exemption. With this action, EPA is listing the uses that will qualify for the 2006 critical use exemption, as well as authorizing specific amounts of methyl bromide that may be produced, imported, or made available from inventory for critical uses in 2006.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d) of the CAA, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies.'' CAA section 307(d)(1). Thus, section 553(d) of the APA does not apply to this rule. EPA nevertheless is acting consistently with the policies underlying APA section 553(d) in making this rule effective on February 1, 2006. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. This final rule grants an exemption from the phaseout of methyl bromide.

Table of Contents

I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those associated with the production, import, export, sale, application and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include: