are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)),

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined 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.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the department relied upon the data and assumptions for the counterpart Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 2, 1997.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 97–32222 Filed 12–9–97; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[WI74–01–7303; FRL–5929–8]**

## Approval and Promulgation of Implementation Plans; Wisconsin

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The purpose of this action is to propose approval of the State of Wisconsin's Prevention of Significant Deterioration (PSD) rules, Natural Resources (NR) 405.01 through NR 405.17, as a revision to the Wisconsin State Implementation Plan (SIP). The State developed rules as Wisconsin's plan to prevent significant deterioration of air quality in areas designated as unclassifiable or attainment of the National Ambient Air Quality Standards (NAAQS) and to satisfy the requirements of part C of the Clean Air Act (Act). EPA is approving these rules because they meet EPA's regulation governing State PSD programs. In addition to the PSD rules, Wisconsin has submitted rules as a revision to the SIP to establish breathable particulates (PM–10) as a basis for the determination of particle concentrations for permitting purposes under the PSD program and, therefore, tie the new source permit evaluations directly to human health standards. Finally, Wisconsin submitted as a revision to the SIP changes of a ''clean-up'' nature, intended to correct errors in content or style, to improve consistency, or clarify existing policy and procedures.

**DATES:** Comments on this revision and on the proposed EPA action must be received by January 9, 1998. Comments received in response to EPA's January 4, 1994 proposed disapproval of NR 405 will, if still applicable, be responded to at the time of EPA's final rulemaking on this rule and need not be resubmitted.

**ADDRESSES:** Comments should be submitted to Carlton Nash, EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Copies of the State's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the above Region 5 address. Please contact Constantine Blathras at (312) 886–0671 to arrange a time if inspection of these materials is desired.

Copies of the submittal are also located at the Bureau of Air Management, Wisconsin Department of Natural Resources, 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707.

**FOR FURTHER INFORMATION CONTACT:** Constantine Blathras, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–0671.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Purpose

The 1977 Amendments to the Act added part C to Title I, which required implementation of a PSD program. On June 19, 1978, EPA promulgated a PSD program to meet the requirements of part C, 50 CFR 52.21, which contains the procedures and requirements which EPA follows when it carries out the mandates of part C itself. These Section 52.21 requirements were then promulgated into those State SIPs where a State did not have an approvable plan in place. Section 52.21 provides that its requirements and authorities, or part thereof, can be delegated to the State and local air programs if EPA determines they have the ability and authority to carry out its mandates.

On June 19, 1978, (43 FR 26410), EPA promulgated the Federal PSD program, 40 CFR 52.21 (b–v), into the Wisconsin SIP at 40 CFR 52.2581 because Wisconsin had not submitted an approvable PSD program. On August 19, 1980, EPA gave Wisconsin partial delegation to run the Federal PSD program and on November 13, 1987, gave Wisconsin full delegation of the program, except for sources within the exterior boundaries of a Tribal reservation.

Section 301(d) of the Act authorizes the Administrator to determine which Act authorities are appropriate for Tribes to administer within the exterior boundaries of its reservations and to promulgate rules as to how Tribes can assume these authorities. These rules were proposed, but have yet to be promulgated. EPA recognizes that a Tribe will upon promulgation generally have inherent sovereign authority over air resources within the exterior boundaries of its reservation, if requested and approved. Until such time, EPA will continue to implement these programs within the exterior

boundaries of Indian reservations. Therefore, EPA did not delegate and is proposing to not approve Wisconsin's PSD or PM–10 rules for application with the exterior boundaries of Tribal reservations.

On March 16, 1987, the Wisconsin Department of Natural Resources (WDNR) requested the Regional Administrator to include Chapter NR 405 of the Wisconsin Administrative Code as part of the SIP to meet the requirements of part C of the Act and as a replacement for EPA's delegated program (40 CFR 52.2581). Rule NR 405 deals exclusively with PSD permitting requirements. On January 4, 1994 (59 FR 278), EPA proposed to disapprove Wisconsin's PSD SIP revision, NR 405.01 through NR 405.17. The deficiencies in the proposal were addressed by the WDNR in comments on March 8, 1994, and, to avoid having the SIP revision formally disapproved, the WDNR withdrew the original submittal.

On November 6, 1996, the WDNR submitted a request for approval of its PSD program, as revised. More specifically, this submittal addresses the deficiencies listed in the January 4, 1994, **Federal Register** document proposing to disapprove the State of Wisconsin's PSD rules as a revision to the Wisconsin SIP. On December 18, 1996, EPA sent a letter to the WDNR deeming the revised submittal complete and initiating the processing of the request. The following analysis addresses the review of the submittal with respect to the requirements found in EPA's regulation governing State PSD programs (40 CFR 51.166).

## II. Approvability Analysis

Wisconsin NR 405 deals exclusively with PSD permitting requirements. EPA evaluated NR 405 by comparing each section of the rule to the appropriate paragraph of 40 CFR 51.166 (formerly 40 CFR 51.24). Listed below are the deficiencies formerly found and raised in the January 4, 1994, **Federal Register** document and how the WDNR addressed those concerns. All other portions of NR 405 were found previously to be approvable and remain so.

### *A. NSPS and NESHAP*

1994 Deficiency: The Federal PSD definitions at 40 CFR 51.166 pertaining to (1) Best Available Control Technology'' (BACT), (2) ''Allowable emissions,'' (3) ''Federally enforceable,'' and (4) the control technology review requirements make reference to applicable standards and standards of performance under 40 CFR part 60 (NSPS) and 40 CFR part 61 (NESHAPS), respectively. In the comparable provisions of the State rule, the State referred to other NR 400 series chapters, i.e., NR 400, 445 to 499, and 400 to 499 of the State code. Although the State may have intended that these chapters approximate the requirements of 40 CFR part 60 and 40 CFR part 61, Wisconsin's NSPS and NESHAP regulations are not federally enforceable and may, in certain circumstances, differ significantly from the parts 60 and 61 requirements in the Federal PSD requirements. Furthermore, the references to parts 60 and 61 requirements in the Federal PSD requirements for BACT and control technology review (sections 51.166 (b)(12) and 51.166 (j)(1), respectively) set minimum emissions requirements. Because under the State rules, the State could set less stringent NSPS and NESHAP emission limits than the Federal standards, or not set any limits at all, the State PSD provisions which were dependent upon the requirements of Chapter NR 400 and Chapters NR 445 to 499 were not approvable. Section 116 of the Act prohibits States from adopting standards and limitations that are less stringent than Federal standards and limitations.

*WDNR Response:* Wisconsin changed the definitions of ''allowable emissions'' (NR 405.02(2), Wis. Adm. Code), ''BACT'' (NR 405.02(7), and ''federally enforceable'' (NR 400.02(39M). Wisconsin also changed section NR 405.08, to reflect the requirement that limits set in a PSD permit can not be less stringent than an applicable requirement in 40 CFR parts 60, 61, or 63, in addition to the requirements contained in the States rules.

*EPA Analysis:* WDNR has adequately addressed the deficiency.

### *B. Stack Height*

*1994 Deficiency:* The provisions in 40 CFR part 51, Subpart I—''Revision of New Sources and Modifications'' set forth both general and specific requirements for permitting PSD sources, including definitions. In order for the State to implement the stack height provision in accordance with 40 CFR 51.164 and 51.166(h), it must have definitions of such terms as ''stack,'' ''dispersion technique,'' and ''good engineering practice.''

*WDNR Response:* On November 6, 1985, the State submitted a letter stating that permits issued for new or modified sources will conform with the requirements with the Stack Height Regulation, as set forth in the **Federal Register** on July 8, 1985, until such time that the State promulgates it own rule.

*EPA Analysis:* As submitted, this provision meets the stack height requirements of the PSD program, and EPA approved Wisconsin's commitment on August 4, 1989 (54 FR 32074), as a portion of Wisconsin's stack height plan. Wisconsin understands that the current commitment stated in the **Federal Register** document is still approvable. No additional corrections are needed.

### *C. Federally issued PSD permits*

*1994 Deficiency:* The State's definition of ''major modification,'' NR 405.02(21)(b)(c), exempted increases in hours of operation or production rates from review unless such increases were prohibited by permits issued after January 6, 1975, under NR 405. This rule was deficient for not requiring review of sources with such increases if the increases were prohibited by previously issued Federal permits or during the period when EPA issued the permits prior to the delegation of the program's authority. The State rule only exempted from the exclusion those permits with conditions ''pursuant to this chapter,'' i.e., the Wisconsin rule. There was no requirement for review of modifications to federally issued permits with exemptions pursuant to 40 CFR 52.21.

*WDNR Response:* Wisconsin changed the definition of ''major modification'' (NR 405.02(21)(b)6., to include any language excluding from exemption actions prohibited by federally issued permits pursuant to 40 CFR 52.21.

*EPA Analysis:* WDNR has adequately addressed the deficiency.

### *D. Source specific allowable emissions*

*1994 Deficiency:* NR 405.02(1) contains the term ''source specific allowable emissions''. The meaning of the term was unclear. The analogous Federal rule in 40 CFR part 52 depends upon the preamble language published in the **Federal Register** on August 7, 1980 (45 FR 154) to quantify the term to exclude cases where data on actual emissions are available. EPA recommended that the language in NR 405.02(1) be clarified so that the State term would have the same meaning as the Federal term.

*WDNR Response:* Wisconsin disagreed with EPA's assessment and consequently did not take action to clarify the phrase ''source specific allowable emissions'' contained in NR 405.02(1)(b).

Wisconsin noted that EPA implements the Federal PSD program under 40 CFR part 52 whereas part 51 contains SIP requirements. EPA has promulgated the requirements for SIP

approval of the PSD program in 40 CFR 51.166.

Section 40 CFR 51.166(b) states:

''All State plans shall use the following definitions for the purposes of this section. Deviations from the following wording will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definitions below.''

Section NR 405.02(1)(b), which contains the phrase ''source specific allowable emissions'' uses this term in exactly the same manner as EPA uses it in 40 CFR 51.166(b)(21)(iii), the definition which 40 CFR 51.166(b) requires the State plan to use. Nowhere in 40 CFR 51.166 is there a requirement that ''source specific allowable emissions'' be defined even though it appears in the part 52 Federal regulation. Wisconsin asserted that if EPA wanted States to define this term in State rules, EPA could have and should have put such a requirement in 40 CFR 51.166(b).

WDNR also demonstrated that the requirements in the State rule meet the SIP requirements in 40 CFR part 51, and that the preamble in the **Federal Register** regarding 40 CFR part 52 does not apply to 40 CFR part 52 approvals.

*EPA Analysis:* The State definition meets the Federal definition found in 40 CFR 51.166(b)(21)(iii) and is approvable.

*E. PSD Increments*

*1994 Deficiency:* The State PSD increments for sulfur dioxide and particulate matter are found in Chapter NR 404.05. The increments were not included in Wisconsin's March 16, 1987 PSD submittal.

*WDNR Response:* Wisconsin included the increments in its November 24, 1992, submittal.

*EPA Analysis:* WDNR has adequately addressed the deficiency.

*F. Modeling Guidelines*

*1994 Deficiency:* The modeling guidelines referenced in NR 405.10 were outdated, although they were current at the time of the 1987 submittal. To make NR 405.10 approvable as a SIP revision, it would either have to reference the most recent guidelines (see 40 CFR 165(1)) or state that the applicant must use EPA's most current applicable guideline models.

*WDNR Response:* Wisconsin changed NR 405.10 to require the use of ''air quality models, data bases, and other requirements specified in the Guideline on Air Quality Models (Revised) in Appendix W of 40 CFR part 51, incorporated by reference in NR 484.04. The rulemaking on this change to NR 405.10 was completed at the same time as the PM–10 increment rules. The PM–10 increment rules (AM–27–94) are being submitted for approval as well.

*EPA Analysis:* WDNR has adequately addressed the deficiency.

*G. Nitrogen dioxide ($NO_2$) Increments*

*Original Deficiency:* On October 17, 1988 (53 FR 40656), EPA promulgated PSD air quality increments for $NO_2$. The States were required to submit to EPA by July 17, 1990 plan revisions to protect the $NO_2$ increments.

*WDNR Response:* Wisconsin submitted such increments to EPA on November 24, 1992.

*EPA Analysis:* This submittal meets the $NO_2$ increment requirements and is approvable.

*H. Particulate Matter (PM) significant level*

*1994 Deficiency:* On July 1, 1987 (52 FR 24713), EPA promulgated the significant level for PM at 15 tons per year. Wisconsin submitted two PM SIP revisions on March 13, 1989 and May 10, 1990 to meet the Federal PM requirements. These submittals were proposed for approval on March 13, 1989, (NR 400.02, 404.02, 405.02, 406.04, 484.03) which contains the PM significant level, and May 10, 1990 (NR 404.04, 484.03). EPA then proposed to disapprove the package on December 23, 1992.

*WDNR Response:* After receiving comments from the State, EPA moved to approve the package. The final rulemaking approving the PM–10 SIP rules was published on June 28, 1993 (58 FR 34528).

*EPA Analysis:* All necessary actions regarding this deficiency are completed.

Because of the revisions made to NR 405 as a result of the deficiencies raised in previous analysis, and because the remainder of NR 405 remains approvable, NR 405 is being proposed for approval with respect to meeting the Act part C requirements.

Chapter NR 405 presumes to apply PSD regulation within the total area of the State of Wisconsin. As stated above, EPA is proposing to approve this rule for all portions of the State of Wisconsin except for those sources within the exterior boundaries of Indian reservations. EPA will issue PSD permits, as needed, to all such sources.

## III. Final Action

The EPA is proposing to approve the November 6, 1996, request by the State of Wisconsin for approval as a revision to its SIP of its rules meeting the requirements of part C of the Act, the adoption of the Federal PM–10 increments, and clarification changes intended as a ''clean-up'' of existing air pollution control rules.

Copies of the State's submittal and other information relied upon for this proposal are contained in a rulemaking file maintained at the EPA Regional office. The file is an organized and complete record of all information submitted to, or otherwise considered by, EPA in the development of this proposed approval. The file is available for public inspection at the location listed under the **ADDRESSES** section of this document.

## IV. Administrative Review

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604) Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action is exempt from OMB review.

## V. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more the private sector, or to State, local, or tribal governments in the aggregate.

EPA has determined that the approval action promulgated does not constitute a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in

the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Reporting, and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: November 14, 1997.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 97–31280 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[FRL–5932–2]**

### Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of California; San Luis Obispo County Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to section 112(l) of the Clean Air Act (CAA) and through the California Air Resources Board, San Luis Obispo County Air Pollution Control District (SLOCAPCD) requested approval to implement and enforce its ''Rule 432: Perchloroethylene Dry Cleaning Operations'' (Rule 432) in place of the ''National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities'' (dry cleaning NESHAP) for area sources under SLOCAPCD's jurisdiction. In the Rules section of this **Federal Register**, EPA is granting SLOCAPCD the authority to implement and enforce Rule 432 in place of the dry cleaning NESHAP for area sources under SLOCAPCD's jurisdiction as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by January 9, 1998.

**ADDRESSES:** Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted request are available for public inspection at EPA's Region IX office during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

**SUPPLEMENTARY INFORMATION:** This document concerns SLOCAPCD Rule 432, Perchlorothylene Dry Cleaning Operations, adopted on November 13, 1996. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

**Authority:** This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: November 23, 1997.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 97–32330 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### 42 CFR Part 1001

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

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

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

**SUMMARY:** In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal and State health care programs' anti-kickback statute, as well as developing new OIG Special Fraud Alerts. The purpose of developing these documents is to clarify OIG enforcement policy with regard to program fraud and abuse.

**DATES:** To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 9, 1998.

**ADDRESSES:** Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–21–N, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201. We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–21–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, (202) 619–0089, OIG Regulations Officer.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. The OIG Safe Harbor Provisions*

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Federal or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

The types of remuneration covered specifically include kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Federal or State health care programs.

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution. As a response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93,