

## Clearinghouse Rule 09-088

Report to  
Legislative Council Rules Clearinghouse  
NR 404, 438, and 484, Wis. Adm. Code  
Natural Resources Board Order No. AM-12-09

### Wisconsin Statutory Authority

Sections 285.11(1) and (6) and 285.21(1)(a), Stats, interpreting s. 285.21(1)(a), Stats.

### Federal Authority

Not applicable.

### Court Decisions Directly Relevant

None

### Analysis of the Rule - Rule Effect - Reason for the Rule

The federal Clean Air Act requires the US Environmental Protection Agency (EPA) to promulgate national ambient air quality standards (NAAQS), which are designed to protect public health (primary standards) and public welfare (secondary standards) for certain criteria pollutants such as ozone, particulate matter, sulfur dioxide and lead. These standards can be found in 40 CFR, Part 50. The EPA is required to periodically review the latest scientific information and standards in order to evaluate if and how the existing NAAQS need to be adjusted to more adequately protect human health and welfare.

In 1997, the EPA promulgated a 0.08 parts per million (ppm) 8-hour ozone NAAQS based on its conclusion that the more restrictive 8-hour ozone standard provided greater public health protection than the 1-hour ozone standard. EPA did not however repeal the 1-hour ozone standard, but left it in place. In 2008, EPA significantly strengthened the 8-hour ozone NAAQS for ground-level ozone to 0.075 ppm. Again, EPA left both the previous 1-hour and 8-hour standards in place. The Department is now proposing to adopt the 2008 8-hour ozone NAAQS.

In addition, based on its review of the air quality criteria, the EPA has promulgated a new primary and secondary NAAQS for lead set at 0.15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to provide requisite protection for public health and welfare respectively. The older standard of  $1.5\mu\text{g}/\text{m}^3$  has been left in place. The Department's proposal to adopt the revised standards for lead is intended to make Wisconsin's air quality standards for lead consistent with the federal NAAQS.

The promulgation of the ozone and lead ambient air quality standards would not have any direct effect on businesses, including those defined as small business. Following the promulgation of

the ozone and lead air quality standards, the EPA will determine if any areas in Wisconsin should be designated as nonattainment for either of the new air quality standards. The Department is required to develop an air quality management state implementation plan (SIP) to ensure that all ambient air quality standards are attained and maintained in all areas of the state. The future development of that SIP to address ozone and lead may result in emission limitations being developed for specific source categories or implementing emission control technologies which may affect businesses, including small businesses. Any prospective SIP revisions would occur through the development of additional rules, which would include analyses of the rules' potential effects on the private sector, including small businesses.

As required by s. 285.21(1)(a), Stats., Wisconsin must promulgate ambient air quality standards similar to the federal NAAQS for the protection of public health and welfare.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Contacts

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Submitted on October 23, 2009

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
RENUMBERING AND AMENDING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **renumber and amend** NR 404.04(7); to **amend** NR 438.03(1) Table 1 and 484.04(3) and to **create** NR 404.04(5)(c) and Note, 404.04(7)(a) and (b) and 484.04(6g) and (6r), relating to ambient air quality standards for ozone and lead and new reporting requirements for lead compounds.

**AM-12-09**

Analysis Prepared by the Department of Natural Resources

1. **Statute interpreted:** s. 285.21(1)(a), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. **Statutory authority:** ss. 285.11(1) and (6) and 285.21(1)(a), Stats.

3. **Explanation of agency authority:**

The Department is required under s. 285.21(1)(a), Stats., to promulgate by rule ambient air standards similar to, but not more restrictive than the national ambient air quality standards (NAAQS). The Department is also authorized under s. 285.11(1) and (6), Stats., to promulgate rules and establish control strategies in order to prepare and implement the State Implementation Plan for the prevention, abatement and control of air pollution in the state.

4. **Related statute or rule:** There are no related statutes that are not identified above.

5. **Plain language analysis:**

Chapter NR 404, Wis. Adm. Code, contains ambient air standards which are intended to be the same as the federal NAAQS promulgated by EPA, as is required under s. 285.21(1)(a), Stats. Chapter NR 438, Wis. Adm. Code, establishes requirements for submission of reports for owners or operators of air contaminant sources related to the ambient air standards that are employed by the Department. The Clean Air Act requires EPA to review the latest scientific information every five years and promulgate NAAQS which are designated to protect public and public welfare. In 2008, EPA strengthened the 8-hour ozone NAAQS to 0.075 ppm and revised the NAAQS for lead from 1.5 micrograms/cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 0.15  $\mu\text{g}/\text{m}^3$ .

The Department is proposing to amend chs. NR 404 and 438, Wis. Adm. Code, to maintain consistency with the federal NAAQS. Specifically, the proposed rule revisions would: A) adopt the ozone and lead NAAQS into ch. NR 404, Wis. Adm. Code; and B) incorporate the corresponding lead reporting requirements into ch. NR 438, Wis. Adm. Code.

6. **Summary of, and comparison with, existing or proposed federal regulation:**

The federally-enforced NAAQS are contained in Title 40, Part 50 of the Code of Federal Regulations (40 CFR Part 50). The purpose of these proposed rules is to make the State-enforced ambient air standards for ozone and lead in ch. NR 404, Wis. Adm. Code, consistent with the corresponding federal NAAQS, as required under s. 285.21(a), Stats.

**7. Comparison with rules in adjacent states:**

These proposed rule revisions are designed to make Wisconsin's ambient air quality standards consistent with federal NAAQS, which are effective and enforced throughout the United States. Consequently, these proposed rules would be identical to the ambient air standard regulations in effect in the adjacent states.

**8. Summary of factual data and analytical methodologies:**

The EPA, through its Clean Air Scientific Advisory Committee has conducted exhaustive reviews and assessments on the health science of air pollution impacts to human health and welfare. This research has yielded NAAQS that are based upon sound health science designed to protect public health and welfare. The Department is accepting this extensive federal research as this order's factual data and analytical methodologies. Information on the federal rule changes are obtained from the federal registers published on March 27, 2008 (Vol. 73, No. 60) for ozone and on November 12, 2008 (Vol. 73, No. 219) for lead.

**9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:**

In light of the statutory requirement to promulgate by rule new ambient air quality standards similar to but not more restrictive than the federal standards, the Department relies on the federal data and the analytical methodologies EPA used to develop and promulgate the national ambient air quality standards. EPA analysis establishes that NAAQS do not have significant impacts upon small entities, including small businesses because NAAQS themselves impose no regulations upon small entities. Information on the analysis and supporting documents used to determine effect on small entities are contained in the EPA's Regulatory Impact Analysis (RIA) docket EPA-HQ-OAR-2007-0225 for the ozone NAAQS and RIA docket EPA-HQ-OAR-2006-0735 for the lead NAAQS.

An economic impact report has not been requested.

**10. Effect on small business:**

The promulgation of the ozone and lead ambient air quality standards would not have any direct effect on businesses, including those defined as small business. Following the promulgation of the ozone and lead air quality standards, the EPA will determine if any areas in the state should be designated as nonattainment for either of the new air quality standards. The Department is required to develop an air quality management state implementation plan (SIP) to ensure that all ambient air quality standards are attained and maintained in all areas of the state. The future development of that SIP to address ozone and lead may result in emission limitations being developed for specific source categories or implementing emission control technologies which may affect businesses, including small businesses. Any prospective SIP revisions would occur through the development of additional rules, which would include analyses of

the rules' potential effects on the private sector, including small businesses.

**11. Agency contact person:** Larry Bruss, P.O. Box 7921 (AM/7), Madison, WI 53707;  
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**12. Place where comments are to be submitted and deadline for submission:**

A hearing has been scheduled for **December 1, 2009**. Comments on the proposed rule must be received on or before **December 14, 2009**. Written comments may be submitted at the public hearing, by mail, fax, E-mail, or through the Internet, and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

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The consent of the Attorney General will be requested for the incorporation by reference in ch. NR 484 of the federal documents related to the interpretation of the ozone and lead NAAQS.

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SECTION 1. NR 404.04(5)(c) and Note are created to read:

NR 404.04(5)(c) 0.075 – maximum 8-hour concentration. The 8-hour primary and secondary ozone ambient air quality standards are attained at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR part 50, Appendix P, incorporated by reference in s. NR 484.04(6g).

**Note:** The Department promulgated the 1-hour and the 8-hour ozone standards, in pars. (a) and (b), respectively, in response to previous actions by the US EPA. Since the US EPA did not repeal these

standards when it promulgated the 8-hour standard reflected in par. (c), the Department has retained them consistent with its statutory obligation under s. 285.21(1)(a).

SECTION 2. NR 404.04(7) is renumbered NR 404.04(7)(intro.), and as renumbered is amended to read:

NR 404.04(7) LEAD: PRIMARY AND SECONDARY STANDARDS. (intro.) The primary and secondary standards for lead and its compounds, measured as elemental lead, are: ~~1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter, as a constituent of suspended particulate matter.~~

SECTION 3. NR 404.04(7) (a) and (b) are created to read.

NR 404.04(7)(a) 1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter, as a constituent of suspended particulate matter. The primary and secondary standards for lead and its compounds, measured as elemental lead are attained when the maximum arithmetic mean averaged over a calendar quarter is less than or equal to 1.5 micrograms per cubic meter, as determined in accordance with 40 CFR Part 50, Appendix B, incorporated by reference in s. NR 484.04(3).

(b) 0.15 micrograms per cubic meter – maximum arithmetic mean. The primary and secondary ambient air quality standards for lead are attained when the maximum arithmetic 3-month mean concentration for a 3-year period is less than or equal to 0.15 micrograms per cubic meter, as determined in accordance with 40 CFR part 50, Appendix R, incorporated by reference in s. NR 484.04(6r).

SECTION 4. The entry for Lead compounds in Table 1 of NR 438.03(1) is amended to read:

NR 438.03(1) Table 1

| <b>Air Contaminant Name</b> | <b>CAS Number<sup>1</sup></b> | <b>Reporting Level (lbs/yr)</b> |
|-----------------------------|-------------------------------|---------------------------------|
| Lead compounds              | 7439-92-1 <sup>2</sup>        | <del>6,000</del> <u>400</u>     |

SECTION 5. NR 484.04(3) is amended to read:

NR 484.04

|            | <b>CFR Appendix Referenced</b> | <b>Title</b>  | <b>Incorporated by Reference For</b>    |
|------------|--------------------------------|---|---|
| <b>(3)</b> | 40 CFR part 50 Appendix B      | Reference Method for the Determination of suspended Particulate Matter in the Atmosphere (High Volume Method) | NR 404.02(11)<br><u>NR 404.04(7)(a)</u> |

SECTION 6. NR 484.04(6g) and (6r) are created to read:

NR 484.04

|             | <b>CFR Appendix Referenced</b> | <b>Title</b>   | <b>Incorporated by Reference For</b> |
|-------------|--------------------------------|--|--------------------------------------|
| <b>(6g)</b> | 40 CFR part 50 Appendix P      | Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone | NR 404.04(5)(c)                      |
| <b>(6r)</b> | 40 CFR part 50 Appendices R    | Interpretation of the National Ambient Air Quality Standards for Lead                        | NR 404.04(7)(b)                      |

SECTION 7. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 8. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin

Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_

Matthew J. Frank, Secretary

(SEAL)