



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2017-0019; FRL-9969-05-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Revisions to Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of North Dakota on January 28, 2013, and April 22, 2014. The revisions are to Article 33-15 Air Pollution Control rules of the North Dakota Administrative Code. The revisions include amendments to add EPA Reference Method 22 to determine compliance with a visible emissions limit, add significance levels for PM_{2.5}, modify existing significance levels for NO₂ and SO₂ and remove the significance level for PM₁₀. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2017-0019. All documents in the docket are listed on the <http://www.regulations.gov> website. 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 through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In our notice of proposed rulemaking published on July 28, 2017 (82 FR 35153), the EPA proposed to approve revisions to Article 33-15 Air Pollution Control rules of the North Dakota Administrative Code submitted by the State of North Dakota on January 28, 2013, and April 22, 2014. In this rulemaking, we are taking final action on a revision submitted in the January 28, 2013 submittal to revise significance levels. The North Dakota State Health Council adopted those amendments on August 14, 2012 (effective January 1, 2013). In addition, we are also taking final action on a revision that was included in the April 22, 2014 submittal to add EPA Reference Method 22 for determining opacity for limits expressed as zero percent opacity. The North Dakota State Health Council adopted those amendments on February 11, 2014 (effective April 1, 2014). The reasons for our approval are provided in detail in the proposed rule.

II. Response to Comments

We received no comments on our proposed rule.

III. Final Action

For the reasons expressed in the proposed rule, the EPA is approving revisions to sections of the State’s Air Pollution Control rules from the January 28, 2013, and April 22, 2014 submittals. A summary of the revisions in North Dakota’s Air Pollution Control rules the EPA is approving is provided in Table 1.

Table 1 - List of North Dakota Revisions that the EPA is Approving

Revisions in January 28, 2013 and April 22, 2014 Submittals that EPA is Approving
<u>January 28, 2013 submittal:</u> 33-15-14-02.5.a
<u>April 22, 2014 submittal:</u> 33-15-03-05.2

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of North Dakota Air Pollution Control rules described in the amendments set forth to 40 CFR part 52 below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s

approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹

V. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves some state law as meeting federal requirements; this final action does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 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 USC 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 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks

¹ 62 FR 27968 (May 22, 1997).

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 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide the 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, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the 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).

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. The EPA will submit a report containing this action 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 **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: September 25, 2017.

Suzanne J. Bohan,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended to read as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart JJ--North Dakota

2. In §52.1820, the table in paragraph (c) is amended by revising the entries “33-15-03-05” and “33-15-14-02” to read as follows:

§52.1820 Identification of plan.

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(c) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
* * * * *					
33-15-03. Restriction of Emission of Visible Air Contaminants					
* * * * *					
33-15-03-05	Method of measurement	4/1/2014	[insert date 30 days after date of publication in the Federal Register]	[insert Federal Register citation], [insert date of publication in the Federal Register]	
* * * * *					
33-15-14. Designated Air Contaminant Sources Permit to Construct Minor Source Permit to Operate Title V Permit to Operate					
* * * * *					
33-15-14-02	Permit to construct	1/1/2013	[insert date 30 days after date of	[insert Federal Register citation],	Excluding subsections 1, 12, 13, 3.c., 13.b.1., 5, 13.c., 13.i(5), 13.o.,

			publication in the Federal Register]	[insert date of publication in the Federal Register]	and 19 (one sentence) which were subsequently revised and approved. See 57 FR 28619 (6/26/92), regarding State's commitment to meet requirements of EPA's "Guideline on Air Quality Models (revised)."
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[FR Doc. 2017-21606 Filed: 10/6/2017 8:45 am; Publication Date: 10/10/2017]