



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2018-0026; FRL-9978-02-Region 8]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of North Dakota on January 28, 2013, and November 11, 2016. The EPA is proposing to approve amendments to North Dakota's general provisions, permit to construct, prevention of significant deterioration (PSD) of air quality, oil and gas, and fees regulations. In addition, amendments to the permit program include the regulation of hazardous air pollutants (HAPs), which may be regulated under section 112 of the Clean Air Act (CAA). Thus, the EPA is taking this action pursuant to sections 110 and 112 of CAA.

**DATES:** *Comments:* Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2018-0026, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jaslyn Dobrahner, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6252, [dobrahner.jaslyn@epa.gov](mailto:dobrahner.jaslyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On January 28, 2013, the State of North Dakota submitted a SIP revision containing amendments to Article 33-15 Air Pollution Control rules. We approved some of these revisions on October 21, 2016 (81 FR 72716) and on October 10, 2017 (82 FR 46919). The remaining amendments revise the PSD rules and add a general permit to construct provision. We will address the PSD revision related to modeling in a separate action. The North Dakota State Health Council adopted the amendments on August 14, 2012 (effective January 1, 2013).

On November 11, 2016, the State of North Dakota submitted a SIP revision containing amendments to Article 33-15 Air Pollution Control rules. The amendments: update the definition of “volatile organic compounds” and PSD rules; revise permit to construct and PSD public participation methods; clarify applicability of oil and gas regulations; increase the application and processing fees; add a significant emission rate for greenhouse gas carbon dioxide equivalent; add a definition of “actively producing” oil and gas wells; remove greenhouse gas provisions relating to the determination of a major source and major modification; remove the expired exemption of greenhouse gases from biogenic sources; and streamline a provision related to oil and gas registration and reporting. The North Dakota State Health Council adopted the amendments on February 24, 2016 (effective July 1, 2016).

## **II. Analysis of State Submittals**

We evaluated North Dakota’s January 28, 2013 and November 11, 2016 submittals regarding revisions to the State’s Air Pollution Control rules.

### *A. January 28, 2013 Submittal*

1. Chapter 33-15-14, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate

The State added a “General permit” to construct rule in 33-15-14-02.1.c. providing the State with authority to issue a general permit to construct “covering numerous similar minor sources.” The addition of North Dakota’s general permit to construct rule establishes the framework for general permits to be issued and references the requirements and procedures that will be followed in developing the conditions and terms for issuing each general permit. Under this new rule, any general permit to construct shall comply with all the requirements applicable to other permits to construct. The general permit rule also specifies that any general permit “shall identify criteria by which sources may qualify for the general permit.” Additionally, the rule requires that sources that would qualify for a general permit must apply to the State for coverage under the terms of the general permit, or apply for an individual permit to construct. The rule also requires that the State “shall grant the conditions and terms of the general permit” to sources that qualify. Finally, the rule allows the State to grant a source’s request for authorization to construct under a general permit without repeating the public participation procedures under subsection 6 of section 33-15-14-02. We propose to approve the State’s general permit regulation into the SIP based on the following analysis.

a. Sources Covered Under the General Permit to Construct Provision

The revision specifies that the State may issue a general permit to construct covering numerous similar sources which are not subject to permitting requirements under chapter 33-15-13 (*Emission Standards for Hazardous Air Pollutants*), 33-15-15 (*Prevention of Significant Deterioration of Air Quality*), or subpart B of 33-15-22-03 (*Emissions Standards for Hazardous Air Pollutants for Source Categories*). Our discussions with the State also revealed that North Dakota interprets the rule to include sources that will voluntarily accept conditions in the general permit that limit emissions below the major source thresholds (i.e., synthetic minor permits).

Thus, the new general permit to construct rule provides the State with an option to develop general permits for the following three types of sources: minor sources of criteria pollutants (potential emissions below the major source thresholds in 33-15-15); minor sources of hazardous air pollutants (potential emissions below the major source thresholds in 33-15-13 and 33-15-22-03); and minor sources of either criteria or hazardous air pollutants that elect to apply for general permits to limit emissions below major source thresholds (i.e., synthetic minor permits). The general permit rule allows sources to comply with the State's existing minor new source SIP rules by obtaining approval to construct via a general permit issued by the State in lieu of obtaining approval to construct via an individual permit. Therefore, we evaluate in II.A.1.c whether the regulation is consistent with the federal requirements associated with SIPs under (i.e., section 110 of the CAA), our regulations, and applicable guidance.

Finally, in addition to criteria pollutants, as explained above, sources of hazardous air pollutants (HAPs) may also be eligible for coverage under North Dakota's general permit program. HAPs are regulated under sections 111 and 112 of the CAA. Section 112(l) allows the EPA to approve a state's permit program if it meets the following statutory criteria for approval under section 112(l)(5): (1) contains adequate authority to assure compliance with any section 112 standards, regulations, or requirements; (2) provides for adequate authority and resources to implement the program; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise in compliance with agency guidance and is likely to satisfy the objectives of the CAA.

Regarding the first criteria, North Dakota’s general permit program contains adequate authority to assure compliance with section 112 requirements since the third criteria of the “Requirements for the Preparation, Adoption, and Submittal of Implementation Plans”<sup>1</sup> (EPA’s 1989 rulemaking) requiring all emissions limitations, controls, and other requirements imposed will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitation or requirements contained in or issued pursuant to the SIP, or that are otherwise “federally enforceable” (e.g., standards established under sections 111 and 112 of the Act), is met by the both the permit to construct and general permit programs, *i.e.*, because the programs do not provide for waiving any section 112 requirement. (Refer to our full analysis in II.A.1.c.) Regarding the requirement for adequate resources, the State has demonstrated that it can provide for adequate resources to implement and enforce the program through the fees it charges. See Chapter 33-15-23, *Fees*, and refer to our full analysis in II.B.5. North Dakota’s general permit meets the third criteria to provide for an expeditious schedule for assuring compliance with section 112 requirements because nothing in the State’s program would allow a source to avoid or delay compliance with federal HAPs requirements if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, North Dakota’s general permit program is consistent with the intent of section 112 and the CAA since its purpose is to enable sources to obtain federally enforceable limits on potential to emit. In addition to the statutory criteria found in section 112(1)(5), the criteria outlined in 40 CFR 51.160 – 51.162 as

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<sup>1</sup> 54 FR 27274 (June 28, 1989).

well as the criteria for approving federally enforceable state operating permits must be met in order to create federally enforceable limits on the potential to emit HAPs under a general permit. We describe how North Dakota's general permit program will meet both of these criteria in II.A.1.c. Thus, the EPA is also proposing to approve the State'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 of the CAA.<sup>2</sup>

b. Background and Requirements for General Permit SIPs and North Dakota's Submittals

Typically, a general permit is a permit document that contains standardized requirements that multiple stationary sources can use. For less complex plant sites, and for source categories involving relatively few operations that are similar in nature, case-by-case permitting may not be the most administratively efficient approach to establishing federally enforceable restrictions. One approach that has been used is to establish a general permit, which creates enforceable restrictions at one time that can then be used for many similar sources. A general permit contains all of the emissions limitations, monitoring, recordkeeping and reporting requirements that a source in a given source category would be subject. Thus, the purpose of a general permit is to provide for protection of air quality while simplifying the permit process for similar minor sources. If the general permit rule is approved by the EPA into the SIP, then the permits are federally enforceable.

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<sup>2</sup> The EPA approved North Dakota's construction permit and federally enforceable state operating permit (FESOP) programs under section 112(l) of the amended CAA for the purposes of creating federally enforceable permit conditions for sources of hazardous air pollutants (HAPs). 60 FR 43396, 43398-43399 (August 21, 1995).

Section 110(a)(2)(C) of the Act requires that each implementation plan include a program to regulate the construction and modification of stationary sources, including a permit program as required by parts C and D of title I of the CAA, as necessary to assure that the National Ambient Air Quality Standards (NAAQS) are achieved. Parts C and D, which pertain to PSD and nonattainment, respectively, address the major new source review (NSR) programs for major stationary sources, and the permitting program for “nonmajor” (or “minor”) stationary sources is addressed by section 110(a)(2)(C) of the CAA. We commonly refer to the latter program as the “minor NSR” program. A minor stationary source is a source whose “potential to emit” is lower than the major source applicability threshold for a particular pollutant as defined in the applicable major NSR program.

To evaluate the approvability of a state minor source SIP permit revision, the changes must meet all applicable requirements (procedural and substantive) of 40 CFR part 51 and the CAA. The EPA's requirements for SIP approval applicable to minor NSR permitting programs are established in 40 CFR part 51, subpart I--Review of New Sources and Modifications, §§51.160 through 51.164. Additionally, since the State interprets this general permit rule to apply to synthetic minor sources, the EPA applies the criteria in the EPA's 1989 rulemaking, and in the EPA's January 25, 1995 memorandum “Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 and General Permits” (EPA's 1995 guidance).<sup>3</sup> Finally, we consider Section 110(l) of the CAA to evaluate whether the SIP revision would

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<sup>3</sup> *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits*. January 25, 1995.

interfere with any applicable requirement concerning attainment, reasonable progress, or any other applicable requirement of the CAA.

c. Evaluation of General Permit to Construct Provisions

As stated previously, the EPA has the authority to approve these types of general permits if they are incorporated into the SIP. In order for North Dakota's general permit to construct rule to be incorporated into the SIP, the rule must meet certain legal and practical federal requirements.

The EPA's regulatory requirements for SIP approval applicable to minor NSR permitting programs are established in 40 CFR part 51, subpart I--Review of New Sources and Modifications, §§51.160 through 51.164. The EPA approved North Dakota's minor NSR permitting program on August 21, 1995 (60 FR 43396). That approval covered permits issued on an individual basis. North Dakota's May 3, 2018 letter to the EPA, explains that the State interprets their general permit rule 33-15-14-02.1.c. to require the same minor NSR permitting program elements the EPA previously approved.<sup>4</sup>

The EPA's 1989 rulemaking describes five criteria that must be met in order for emissions controls and limitation to be federally enforceable and thereby approvable into the SIP. The EPA's 1989 rulemaking criteria are as follows:

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<sup>4</sup> Letter from Terry O'Clair, Director, Division of Air Quality, North Dakota Department of Health to Monica Morales, Director, EPA Region 8 Air Program, May 3, 2018.

- (1) The State operating permit program (i.e., the regulations or other administrative framework describing how such permits are issued) is submitted to and approved by the EPA into the SIP.<sup>5</sup>
- (2) The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provides that permits which do not conform to the operating permit program requirements and the requirements of the EPA’s underlying regulations may be deemed not “federally enforceable” by the EPA.
- (3) The State operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitation or requirements contained in or issued pursuant to the SIP, or that are otherwise “federally enforceable” (e.g., standards established under sections 111 and 112 of the Act).
- (4) The limitations, controls, and requirements in the operating permits are permanent, quantifiable, and otherwise enforceable as a practical matter.
- (5) The permits are issued subject to public participation, which we analyze in section II.B.2. This means that the State agrees, as part of its program to provide the EPA and the public with timely notice of the proposal and issuance of such permits, and to provide the EPA, on a timely

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<sup>5</sup> States are not required to include operating permit programs in their SIP. Participation is voluntary.

basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permit.

When the EPA approved North Dakota's minor source permitting program, the EPA determined that the State's program met the criteria in the EPA's 1989 rulemaking as applied to individual sources.<sup>6</sup> Therefore, in this notice we apply the five criteria from that rulemaking to the general permit regulation and the provisions in the State's current SIP and proposed amendments to other State rules that are also part of the general permit program.

With respect to fulfilling the requirements of the first criteria that requires the permit program regulations and administrative framework to be approved by the EPA into the SIP, the general permit rule requires that general permits comply with all existing permit regulations. The existing permit regulations in the SIP currently include 33-15-01, *General Provisions*, 33-15-14-02, *Permit to Construct*, 33-15-14-03, *Minor Source Permit to Operate*, and 33-15-23, *Fees* including construction and operating fees, which provide the regulations and administrative framework to describe how such permits are issued. Furthermore, North Dakota's general permit rule requires that the "general permit shall comply with all requirements applicable to other permits to construct." We interpret these requirements for minor sources to include the following SIP requirements: the application and submission of plans (33-15-14-02.2 and 33-15-14-02.15, respectively); denial and issuance of permits (33-15-14-02.7 and 33-15-14-02.8, respectively); scope and transfer of permits (33-15-14-02.10 and 33-15-14-02.11, respectively), as well as

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<sup>6</sup> 60 FR 43399 (August 21, 1995).

performance and emission testing (33-15-14-02.14); responsibility to comply (33-15-14-02.15); and permit amendments (33-15-14-02.19), among others. The SIP requirements also include the State's existing minor source permit rules that specify the terms and conditions for a permit application (33-15-14-02.9).

For the second criteria, North Dakota's SIP regulations impose a legal obligation that permit holders adhere to the terms and limitations of the permits, which would include a general permit, so that violation of any conditions of the general permit may result in the revocation or suspension of the permit or other appropriate enforcement action (33-15-14-02.9 and 33-15-14-03.7). Furthermore, 33-15-14-02.7 states "no permit to construct or modify may be granted if such construction, modification, or installation, will result in a violation of this article" and 33-15-14-03.1.b states "no person may operate or cause the operation of an installation or source in violation of any permit to operate or any condition imposed upon a permit to operate or in violation of this article." North Dakota's May 3, 2018 letter confirms the State interprets the general permit regulation to include these legal obligations. Together, these rules satisfy the second criteria that the permittee must comply with the permit conditions.

For the third criteria, which requires that all emission limitations, controls, and other requirements be at least as stringent as any other requirements in the SIP, North Dakota's permit to operate rules (33-15-14-03.6) require "all emission limitations, controls, and other requirements imposed by conditions on the permit to operate must be at least as stringent as any applicable limitation or requirement contained in this article." In addition, if the proposed construction project will cause or contribute to a violation of any applicable air quality standard, the State's May 3, 2018 letter explains that the State will deny approval of the proposed project to be covered under a general permit to construct (33-15-14-02.5.a and 33-15-14-02.7).

North Dakota’s construction and operating permitting rules require a 30-day public comment period (33-15-14-03.5 and 33-15-14-02.6, respectively) in addition to providing the EPA with a copy of the proposed permit and all information considered in the development of the permit in order to provide an opportunity to review the permit and ensure that the limitations, controls, and requirements in the permits are permanent, quantifiable, and otherwise enforceable as a practical matter and thereby meet the fourth criteria that the permit conditions be enforceable as a practical matter. Although the January 28, 2013 SIP submittal does not include an explanation of, or requirements for, the public participation requirements North Dakota is required to provide prior to issuing a general permit, the State subsequently adopted revisions to the general permit rule in 33-15-14-02.1.c that provide for public participation prior to issuance and renewal of general permits. These provisions for public participation are in the SIP submittal the EPA received from the State on November 11, 2016, and are discussed in section II.B.2 of this notice. The November 11, 2016 revisions require that “a proposed general permit, any changes to a general permit, and any renewal of a general permit shall be subject to public comment” and that the public comment procedures under subsection 6 of section 33-15-14-02 shall be used.<sup>7</sup> The EPA determined that with respect to general permits, the EPA and the public do not need to be involved in the review of individual applicants requesting coverage under a general permit “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.”<sup>8</sup> As discussed previously, North Dakota must also provide the EPA with a copy of the proposed general permit for review. Together, these rules meet the fifth criteria that permits issued are subject to public participation. In summary, we propose to conclude that the State’s general permit to construct rule meets the aforementioned five criteria for emissions controls and limitation to be federally enforceable as described by the EPA’s 1989 rulemaking.

In addition to the EPA’s 1989 rulemaking, the general permit to construct rule must also be in accordance with six enforceability criteria, which are described in the EPA’s 1995 guidance, that a rule or a general permit must meet to make limits enforceable as a practical matter:

- (1) Specific applicability: the general permit must apply to a specific and narrow category.
- (2) Reporting or notice to permitting authority: sources electing coverage under general permits where coverage is not mandatory, provide notice or reporting to the permitting authority.
- (3) Specific technically accurate limits: general permits provide specific and technically accurate (verifiable) limits that restrict the potential to emit.
- (4) Specific compliance monitoring: general permits contain specific compliance requirements.
- (5) Practicably enforceable averaging times: limits in general permits are based on practicably enforceable averaging times.

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<sup>8</sup> *Guidance an Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits*. January 25, 1995.

(6) Clearly recognized enforcement: violations of limits by synthetic minor sources are considered violations of the state and federal requirements and result in the source being subject to major source requirements.

When the EPA approved North Dakota's minor source permitting program, the EPA determined that the State's program met the criteria described in the EPA's 1995 guidance as applied to individual sources.<sup>9</sup> Therefore, in this notice we review how the general permit to construct program satisfies the enforceability requirements described in the EPA's 1995 guidance in the context of the general permit program. First, with respect to requirement (1), the general permit to construct provision (33-15-14-02.1.c.) covers similar sources and "shall identify criteria by which sources may qualify for the general permit." Therefore, each general permit is required to include the criteria that will be used as the basis for determining whether a source is eligible for the general permit. These criteria serve to describe and narrow the sources for which general permits may be established. In order to comply with the second enforceability criteria (2) that all sources provide notice or reporting to the permitting authority, all sources that qualify for a general permit must apply to the state for coverage under the terms of the general permit, and provide ongoing reports to the State, including monitoring, recordkeeping, and reporting. Regarding compliance with requirements (3) through (5) with respect to emission limits, compliance requirements, and averaging times under both the general permit to construct and the general permit to operate, sources shall comply with all permit requirements to construct and operate, respectively. Thereby, sources operating under a general permit to operate must

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<sup>9</sup> 60 FR 43399 (August 21, 1995).

follow the emission limits and all other requirements subject to the source under 33-15-14-03.6, *Permit to Operate – Conditions*. Likewise, sources are also subject to similar conditions, including emission limits, averaging times, monitoring, recordkeeping, reporting, and other requirements, under 33-15-14-02.9, *Permit to Construct – Conditions*. Likewise, with respect to the final enforceability requirement (6), violations of any conditions found in 33-15-14-02.9, *Permit to Construct – Conditions* may result in revocation or suspension of the permit or other appropriate action. Thus, violations of the rule or general permit or violations of the specific conditions of the rule or general permit subjects the source to potential enforcement under the CAA and state law. In summary, we propose to conclude that North Dakota’s general permit to construct rule meets the aforementioned criteria for enforceability as described in the EPA’s 1995 guidance.

d. 110(l) Analysis

Finally, the EPA’s evaluation of the general permit to construct rule must consider Section 110(l) of the CAA, which states that the EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment, reasonable progress, or any other applicable requirement of the CAA. The provisions in 33-15-14-02.1.c establish a general permit to construct program that allows the State to develop and issue general permits to construct. Sources may seek authorization under the general permit to construct program in lieu of individual construction permits. Thus, under 110(l) of the CAA, the addition of a general permit to construct program and resulting authorizations allowing sources to construct must not interfere with attainment, reasonable progress, or any other applicable requirements of the CAA.

We evaluated the addition of a general permit to construct program for its impact on attainment, reasonable progress, and other applicable requirements of the CAA. First, under the general permit to construct revision, any general permit shall comply with all of the requirements applicable to other permits, including a determination of whether issuance of a permit to a specific category of proposed construction projects will cause or contribute to a violation of any applicable ambient air standard (33-15-14-02.5.a). Thus, as the State explained in their May 3, 2018 letter, consistent with 33-15-14-02.5.a and 33-15-14-02.7, if the State makes the determination that the proposed category will cause or contribute to a violation of any applicable air standard, the State would not propose a general permit. Ambient air monitoring, modeling, or other assessment techniques will be used to ensure that sources granted authority to construct under the general permit will not violate applicable ambient air quality standards. In addition, the State will consider any air quality concerns unique to specific areas that arise after issuance of the general permit and when determining whether an individual proposed project is eligible for coverage under the general permit. For example, if a source wants to locate in an area with air quality levels approaching or violating the NAAQS, North Dakota may request that a source apply for a site-specific permit so that the potential for greater control than that afforded by the general permit can be evaluated.<sup>10</sup>

North Dakota is bound by State rules to grant the conditions and terms of the general permit to sources that qualify or deny a source's request if the source does not qualify. As the State explains in detail in their May 3, 2018 letter, the SIP rules provide that the State's decision

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<sup>10</sup> Letter from Terry O'Clair, Director, Division of Air Quality, North Dakota Department of Health to Monica Morales, Director, EPA Region 8 Air Program, May 3, 2018.

for denying a source's request is based on 33-15-14-02.5.a and 33-15-14-02.7. Therefore, in addition to assuring that sources granted authority to construct under a general permit will not violate applicable standards, in the event the State determines (33-15-14-02.5) that an individual source will violate the control strategy or interfere with attainment or maintenance of a national standard in the State or in a neighboring state, North Dakota will have the ability to require a proposed source to apply for and obtain an individual air emission permit under 33-15-14-02, *Permit to Construct*, and perform an ambient air quality analysis before the source begins actual construction. Any sources that may be subject to modeling to determine if they will cause or contribute to a violation of any applicable air ambient air standard will not be eligible for a general permit.<sup>11</sup>

Finally, under the general permit to construct rule, a proposed general permit, any changes to a general permit, and any renewal of a general permit shall be subject to the public comment procedures at 33-15-14-02.6 which allow 30 days for public comment. Based on the reasons discussed previously, we propose to find that the addition of the general permit to construct rule found at 33-15-14-02.1.c and the other rules implemented in concert with the general permit rule are equivalent to the permit to construct rules and will not interfere with attainment or reasonable further progress or any other applicable requirement of the CAA, and thereby, demonstrates compliance with section 110(l) of the CAA providing further basis for proposed approval of this SIP revision. There should be no impact on air quality as a result of North Dakota's general permit rule because the sources eligible for coverage under the general

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<sup>11</sup> Ibid.

permit regulation will be subject to terms and conditions in general permits, and those terms and conditions are equivalent to those applicable to source-specific minor permits to construct, which includes the air quality SIP permitting requirements.

Based on our evaluation of North Dakota's new general permit to construct rule and SIP submittal, we propose to find that the general permit rule meets the requirements of EPA rules, the EPA's 1989 rulemaking, criteria described in the EPA's 1995 guidance, and does not interfere with attainment, reasonable progress, or any other applicable requirements of the CAA. Therefore we propose to approve 33-15-14-02.1.c., as amended with North Dakota's January 28, 2103 and November 11, 2016 SIP submittals, into the SIP.

*B. November 11, 2016 Submittal*

1. Chapter 33-15-01, *General Provisions*

The CAA requires the regulation of volatile organic compounds (VOCs) for various purposes which the EPA defines at 40 CFR 51.100(s). In its November 11, 2016 submittal, the State updates 33-15-01-04, *Definitions*, to update the incorporation by reference of 40 CFR 51.100(s) at 33-15-01-04.52 for "volatile organic compounds" as it exists on July 1, 2015. We are proposing to approve this revision because it incorporates by reference the EPA's rule provisions.

2. Chapter 33-15-14, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate

In the January 28, 2013 submittal, North Dakota amended chapter 33-15-14-02, *Permit to Construct*, to include a general permit provision. Refer to II.A.1 for further discussion. In the

November 11, 2016 submittal, the State amended the general permit section to include language pertaining to public participation as required by the EPA’s regulations.<sup>12</sup> Specifically, “a proposed general permit, any changes to a general permit, and any renewal of a general permit shall be subject to public comment” following the public comment procedures found in subsection 6, *Public participation – Final action on application*, of section 33-15-14-02. However, portions of subsection 6(a) contain provisions related to “director’s discretion” that purport to permit revisions to SIP-approved emission limits with limited public process or without requiring further approval by the EPA. Thus, North Dakota committed to revise the reference for “subsection 6 of 33-15-14-02” to “subdivision 6.b of 33-15-14-02” in a future submittal.<sup>13</sup> With the State’s commitment to revise the reference to “subdivision 6.b of 33-15-14-02”, we propose to approve the revisions to the general permit section in the November 11, 2016 submittal because they allow for public participation. For reasons discussed in the following paragraph, we also propose to approve the revision in subsection 33-15-14-02.6.b(2) that allows North Dakota to post the application, proposed permit and analysis on the State’s website.

North Dakota added language in 33-15-14-03.5.a(1)(b) allowing a copy of the proposed permit and copies of or a summary of the information considered in developing the permit to be made available on the State’s website for public participation. This addition aligns with 40 CFR 51.161(b)(1) which allows States to post information submitted by owners and operators along with the State’s analysis of the effect on air quality on a public website. As a result of having the option to make information about proposed permits available on the State’s website instead of

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<sup>12</sup> 40 CFR 51.161.

<sup>13</sup> Letter from Terry O’Clair, Director, Division of Air Quality, North Dakota Department of Health to Monica Morales, Director, EPA Region 8 Air Program, May 3, 2018.

delivering paper copies of the information, North Dakota also revised 33-15-14-03.5.a(1)(d) to reflect this change by allowing the State to “provide notice” of the proposed permit and public notice instead of “delivering a copy” of the permit and notice. We propose to approve both of these revisions.

North Dakota also modified the renewal terms of the permit to operate in 33-15-14-03.9.a by revising the term of the permit from a fixed 5-year period to a maximum term of 5 years. In addition, applications for renewal must be submitted 90 days prior to the expiration date stated in the permit instead of 90 days prior to the 5th anniversary of its issuance. These revisions strengthen the SIP by allowing the State to issue operating permits for a term of less than 5 years, thus we propose to approve these revisions. Finally, North Dakota removed language in 33-15-14-03.9.b referencing the State’s ability to amend permits issued prior to February 9, 1976, because that language is no longer necessary. We agree with North Dakota and propose to approve this revision.

### 3. Chapter 33-15-15, Prevention of Significant Deterioration of Air Quality

North Dakota makes several revisions in their November 2016 submittal to their PSD rules found in chapter 33-15-15.

First, the State updated the incorporation by reference of 40 CFR 52.21 paragraphs (a)(2) through (e), (h) through (r), (v), (w), (aa) and (bb) at 33-15-15-01.2 as they exist on July 1, 2015. The EPA promulgated revisions to 40 CFR 52.21 since July 1, 2015, in response to a court vacatur. Specifically, on June 23, 2014, the *United States Supreme Court, in Utility Air Regulatory Group (UARG) v. EPA*, issued a decision addressing the application of PSD

permitting to greenhouse gas (GHG) emissions.<sup>14</sup> The Supreme Court said the EPA may not treat GHGs as air pollutants for purposes of determining whether a source is a major source (or modification thereof) required to obtain a PSD permit. The Court also said the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limits on GHG emissions based on the application of Best Available Control Technology (BACT). In response to the UARG decision, and the subsequent Amended Judgement issued by the D.C. Circuit (Amended Judgement)<sup>15</sup>, the EPA revised the federal PSD rules to remove the regulatory provisions that were specifically vacated by the Amended Judgement removing 40 CFR 52.21(b)(49)(v) and 40 CFR 51.166(b)(48)(v), among other provisions.<sup>16</sup>

North Dakota's adoption by reference of 40 CFR 52.21 as of July 1, 2015, did not include the EPA's August 19, 2015 revisions to the federal PSD program removing the PSD provisions vacated by the Amended Judgement. The North Dakota SIP currently contains the vacated GHG provisions (through the incorporation by reference of a previous version of 40 CFR 52.21), so the EPA's proposed approval of the CFR incorporation by reference update to July 1, 2015, does not change the North Dakota SIP with respect to the vacated provisions. However, the now-vacated portions of 40 CFR 52.21 incorporated into the North Dakota SIP-approved PSD program are no longer enforceable. This portion of the North Dakota SIP should be revised in light of the D.C. Circuit's Amended Judgement, but the EPA also notes that these provisions

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<sup>14</sup> U.S. Supreme Court's decision in *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014).

<sup>15</sup> April 10, 2015, Amended Judgment by the D.C. Circuit in *Coalition for Responsible Regulation v. EPA*, Nos. 09–1322, 10–073, 10–1092 and 10–1167 (D.C. Cir. April 10, 2015).

<sup>16</sup> 80 FR 50199 (August 19, 2015).

may not be implemented even prior to their removal from the North Dakota SIP because the court decisions described above have determined these parts of the EPA’s regulations are unlawful. Further, North Dakota has advised the EPA that it is not currently enforcing these provisions in light of the Supreme Court decision and that North Dakota will update its incorporation by reference of the CFR, including the August 19, 2015 revisions to 40 CFR 52.21 in a future submittal.<sup>17</sup> We are therefore proposing to approve the State’s revision of the incorporation by reference date with the understanding that the GHG provisions vacated by the court decisions cannot be implemented and are not being enforced by North Dakota.

Second, we evaluate the State’s revisions to their incorporation by reference of the EPA’s PSD regulations to evaluate whether the revisions are consistent with our regulations in effect at this time. The State revised language in their incorporation of 40 CFR 52.21(b)(1) and 40 CFR 52.21(b)(2) exempting greenhouse gases, as defined in 40 CFR 86.1818-12(a), from the definition of a New Source Review (NSR) pollutant for the purposes of defining a “major source” and “major modification,” respectively. Specifically, the State’s regulation indicates for both definitions that “[f]or purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).”<sup>18</sup> Thus, North Dakota eliminated greenhouse gases from consideration when determining whether a source is a “major source” or whether a change to major stationary source is a “major modification.” The EPA amended its rules in a different manner. The EPA’s revisions that amended the rules after the Court’s holding

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<sup>17</sup> Letter from Terry O’Clair, Director, Division of Air Quality, North Dakota Department of Health to Monica Morales, Director, EPA Region 8 Air Program, May 3, 2018.

<sup>18</sup> We note that the definition of GHGs in 40 CFR 86.1818-12(a) is a part of the definition of GHGs in the PSD rules 40 CFR 52.21(b)(49)(i), however, for purposes of analyzing approvability of the State’s SIP there is no practical effect in this difference.

that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD or title V permit, deleted 40 CFR 52.21(b)(49)(v), which required that “[b]eginning July 1, 2011, in addition to the provisions in paragraph (b)(49)(iv) of this section, the pollutant GHGs shall also be subject to regulation, (a) At a new stationary source that will emit or have the potential to emit 100,000 tpy of a carbon dioxide equivalent (CO<sub>2</sub>e); or (b) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO<sub>2</sub>e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.”<sup>19, 20, 21</sup> As discussed previously, North Dakota acknowledges that their July 1, 2015 incorporation by reference date of some of the provisions in 40 CFR 52.21 included the provision at 40 CFR 52.21(b)(49)(v) that was later removed on August 19, 2015, and the State is not currently enforcing this provision in light of the Court decision. Thus, we propose to approve this revision.

Third, in the June 23, 2014 U.S. Supreme Court decision, the Court upheld application of the Best Available Control Technology (BACT) requirement for greenhouse gas emissions from new and modified sources that trigger PSD permitting obligations on the basis of their emissions of air pollutants other than greenhouse gases. Thus, if a source is subject to PSD BACT

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<sup>19</sup> 80 FR 50199 (August 19, 2015).

<sup>20</sup> April 10, 2015, Amended Judgment by the D.C. Circuit in *Coalition for Responsible Regulation v. EPA*, Nos. 09–1322, 10–073, 10–1092 and 10–1167 (D.C. Cir. April 10, 2015).

<sup>21</sup> To clarify potential questions regarding the difference between the State and the EPA rules, we note that consistent with our 2015 rulemaking, “[i]n the case of sources that trigger PSD based on emissions of pollutants other than GHG (“anyway sources”) the PSD BACT requirement continues to apply to GHG emissions from such sources... and that “[w]hen an anyway source is modified, under these provisions, the BACT requirement applies to GHGs if (1) the modification is otherwise subject to PSD for a pollutant other than GHG; and (2) the modification results in a GHG emissions increase and a net GHG emission increase equal to or greater than 75,000 tpy or more on a carbon dioxide equivalent (CO<sub>2</sub>e) basis and greater than zero on a mass basis.” 80 FR 50199, 50201-50202 (August 19, 2015).

requirements for a pollutant other than greenhouse gases, the source remains subject to PSD BACT requirements for greenhouse gases.

North Dakota revised their incorporation of 40 CFR 52.21(b)(23)(i)<sup>22</sup> to include a significant pollutant and emission rate of 75,000 tons per year (tpy) or more of greenhouse gases on a carbon dioxide equivalent basis. Although the North Dakota SIP submittal is structured differently than the EPA's federal rules at 40 CFR 52.21, the primary practical effect of both is the same: the PSD BACT requirement does not apply to GHG emissions from an "anyway source" unless the source emits GHGs at or above the 75,000 tpy threshold, which the State confirmed in their letter.<sup>23</sup> We propose to approve this revision because it is consistent with the relevant provisions of 40 CFR 52.21.

It is important to note, however, that the EPA's proposed approval is not based on determination by either the EPA or the state that 75,000 tpy CO<sub>2</sub>e is an appropriate *de minimis* level for GHGs. The EPA's proposed approval of the significant emissions rate for GHGs in North Dakota's rule is based only on the recognition that North Dakota's rule applies the same applicability level for GHG BACT requirement that is presently reflected in the EPA's regulations.

In establishing the significance level, the State rulemaking does not establish that 75,000 is a *de minimis* amount of GHG. Nothing in North Dakota's rulemaking and nothing in this EPA

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<sup>22</sup> The State recognizes their revised regulation inadvertently does not include (b) after 40 CFR 52.21 and before (23)(i) and will revise the language to read 40 CFR 52.21(b)(23)(i) in a future submittal. Refer to letter from Terry O'Clair, Director, Division of Air Quality, North Dakota Department of Health to Monica Morales, Director, EPA Region 8 Air Program, May 3, 2018.

<sup>23</sup> Letter from Terry O'Clair, Director, Division of Air Quality, North Dakota Department of Health to Monica Morales, Director, EPA Region 8 Air Program, May 3, 2018.

action provide support to substantiate 75,000 tpy significance level as a *de minimis* level. See *UARG*, 134 S. Ct. 2427, at 2449 (noting that the EPA had not established the 75,000 tpy level in the Tailoring Rule as a *de minimis* threshold below which BACT is not required for a source's GHG emissions).

Given the deficiencies in the justification for the GHG BACT applicability level in the existing EPA regulations, the EPA is planning to move forward in a separate, national rulemaking to propose a GHG Significant Emission Rate (SER) that would be justified as a *de minimis* threshold level for applying the BACT requirement to GHG emissions under PSD. In the event that the EPA ultimately promulgates a final GHG SER, North Dakota, like all other SIP-approved states, may be obligated to undertake rulemaking to demonstrate consistency with federal requirements.

Fourth, the State eliminated the exemption for greenhouse gases from biogenic sources found at 40 CFR 52.21(b)(49)(ii)(a)(July 1, 2015). The State explained in the November 2016 submittal that the basis for eliminating the exemption was because the exemption expired.<sup>24</sup> We agree with the State's reason for deleting this provision as it is consistent with the EPA's expired regulation and therefore propose to approve the deletion of the exemption in 40 CFR 52.21(b)(49)(ii)(a).

Finally, the State added language in 40 CFR 52.21(q) to allow copies of: (1) all materials submitted by an applicant; (2) the State's preliminary determination; and (3) a summary of other materials, if any, considered in making a preliminary determination regarding a proposed source

or modification to be posted on the State's website. This addition aligns with 40 CFR 124.10(c)(2)(iii)(B) which allows states to post information related to applications to construct or modify a source on a public web site in lieu of publishing in a daily or weekly newspaper.

Therefore, we propose to approve this language.

4. Chapter 33-15-20, *Control of Emissions from Oil and Gas Well Production Facilities*

North Dakota broadened the applicability of this chapter in 33-15-20-01.1, *Applicability*, from applying to “any oil and gas well production facility which emits sulfur or sulfur compounds” to applying to “any oil and gas well facility which emits air contaminants.” In doing so, North Dakota strengthens the SIP because the chapter now applies to all facilities (an expansion from an oil and gas well “production facility”) and any air contaminant (an expansion from emissions of “sulfur or sulfur compounds”), therefore, we propose to approve these revisions.

In section 33-15-20-01.2, *Definitions*, North Dakota added the definition of “actively producing” to mean that a well has been producing for 30 days or more from initial production through the wellhead equipment. In conjunction, North Dakota also revised section 33-15-20-02.1, *Registration and reporting requirements*, so that only actively producing oil or gas wells, as opposed to any oil and gas well, shall submit an oil and gas well registration form. Revisions to this paragraph also include the requirement that the owner or operator must submit the registration form, along with a gas analysis, within 90 days of the well achieving production status instead of within 90 days of the completion or recompletion of the well. Since completed wells can remain idle for extended periods of time prior to producing, this revision clarifies that only actively producing wells are subject to the registration and reporting requirements thereby reducing the burden on oil and gas well owners and operators. Furthermore, these revisions do not

alter the emission control requirements for oil and gas wells found in Chapter 7, *Control of Organic Compounds Emissions*, and as explained in the State's response to comments contained in the November 2016 submittal, this revision allows the producer to obtain better data for inclusion in the registration form and does not change any of the emission control requirements of the chapter. Thus, we propose to approve these revisions.

Additionally, in 33-15-20-02, North Dakota removed paragraph 33-15-20-02.2 because it was no longer relevant. Paragraph 33-15-20-02.1 contains identical language to 33-15-20-02.2 describing the registration and reporting requirements except for paragraph 33-15-20-02.1 does not cite the applicability emission threshold of 10 tons per year or more of sulfur compounds and instead contains the new revisions to add "actively producing" and "well achieving active production status" to describe the applicability of the registration and reporting requirements (as discussed and proposed for approval elsewhere in this notice). Thus, these differences between 33-15-20-02.1 and 33-15-20-02.2 are the result of the revisions in 33-15-20-02.1 contained in the November 2016 submittal that we are proposing to approve as previously discussed. By deleting 33-15-20-02.2, North Dakota also removed language: (1) pertaining to the original date of January 1, 1988, when the registration form and gas analysis must be submitted to North Dakota for all oil and gas wells completed or recompleted prior to July 1, 1987; and (2) requiring modifications and changes to wells occurring after July 1, 1987, to submit a registration form and gas analysis. With respect to requirement (1), the January 1, 1988 deadline to submit a registration form is over 30 years ago and new regulations have been added to 33-15-20-02.1 for oil and gas wells completed after July 1, 1987, thus as a practical matter, the references to oil and gas wells completed prior to July 1, 1987, and the associated January 1, 1988 deadline are no longer meaningful in the SIP. With respect to requirement (2), the same requirements to inform

the State of changes to information contained on the registration form and gas analysis are now required in 33-15-20-02.3. We agree that the language found in 33-15-20-02.2 is no longer relevant because the regulations are either contained in 33-15-20-02.1 or 33-15-20-02.3, and removing the *reporting requirements* for oil and gas wells completed prior to July 1, 1987, does not impact any emission control requirements and will not lead to a change in emissions or ambient concentrations of a pollutant or its precursors. Thus, we propose to approve this amendment.

We also propose to approve revisions to paragraph 33-15-20-03.1 that determine the applicability of Chapter 33-15-15 to oil and gas well production facilities. North Dakota replaces the applicability threshold of an oil and gas well production facility that “emits or has the potential to emit 250 tons per year or more of any air contaminant regulated under North Dakota Century Code (N.D.C.C.) chapter 23-25, as determined by the department” with an oil and gas well production facility that “is a major stationary source or a major modification as defined in Chapter 33-15-15.” N.D.C.C. 23-25 contains the Department’s statutory authority for air pollution control. Chapter 33-15-15 of North Dakota’s regulations reference 40 CFR 52.21, which define a “major stationary source” and “major modification at 40 CFR 52.21(b)(1) and 52.21(b)(2). Therefore, rather than Chapter 33-15-15, *Prevention of Significant Deterioration of Air Quality*, applying to oil and gas well production facilities that emit 250 tons per year or more of any air contaminant regulated under chapter 23-25 of N.D.C.C., the State’s amendments mean that Chapter 15-15-20 applies to oil and gas well production facilities that meet either of the definitions under 40 CFR 52.21(b)(1) or 52.21(b)(2). Specifically, this would include “any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant” and modifications to stationary sources. This revision is equivalent to

the current SIP because the State interprets the language in the current SIP (33-15-20-03.1), as applying to all oil and gas well production facilities subject to the PSD rules. Because this revision is equivalent to the current SIP and federal regulations, we propose to approve this revision.

Finally, North Dakota makes minor revisions in 33-15-20-01.2 and 33-15-20-03.2 to renumber definitions and add non-substantive clarifying changes to the equation for PSD applicability for sulfur dioxide, respectively. We propose to approve both of these revisions.

5. Chapter 33-15-23, *Fees*

We also propose to approve in the November 2016 submittal revisions to chapter 33-15-23, *Fees*, to: (1) increase the permit to construct application fee from \$150.00 to \$325.00 (33-15-23-02.1); (2) increase the threshold of processing costs incurred by the State (e.g., applications requiring a major engineering analysis and/or computer dispersion modeling) that would trigger a processing fee due by the applicant from \$150.00 to \$325.00 (33-15-23-02.2); and (3) remove the option for an applicant to withdraw an application without paying any processing fees (33-15-23-02.2.b). CAA Section 110(a)(2)(E) requires that a state implementation plan provide assurances that the state will have, among other items, adequate funding to carry out the implementation plan. As explained in a memo to interested parties, increasing the application fee and the processing fee threshold as well as removing the option for an applicant to withdraw an application without paying processing fees reflect both inflation and the increased complexity of

permit to construct applications, thereby ensuring the State has adequate funding to carry out the implementation plan.<sup>25, 26</sup> Therefore, we propose to approve these revisions.

**III. The EPA’s Proposed Action**

In this action, the EPA is proposing to approve SIP amendments to North Dakota Air Pollution Control Rules, shown in Table 1, submitted by the State of North Dakota on January 28, 2013 and November 11, 2016.

**Table 1 - List of North Dakota Amendments that the EPA is Proposing to Approve**

<b>Amended Section in the January 28, 2013 Submittal Proposed for Approval</b>
33-15-14-02.1.c
<b>Amended Sections in the November 11, 2016 Submittal Proposed for Approval</b>
33-15-01-04.52, 33-15-14-02.1.c, 33-15-14-02.6.b(2), 33-15-14-03.5.a(1)(b), 33-15-14-03.5.a(1)(d), 33-15-14-03.9.a, 33-15-14-03.9.b, 33-15-15-01.2, 33-15-20-01.1, 33-15-20-01.2, 33-15-20-02.1, 33-15-20-02.2, 33-15-20-03.1, 33-15-20-03.2, 33-15-23-02.1, 33-15-23-02.2

**IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the amendments described in section III. The EPA has made, and will continue to make, these materials generally available through

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<sup>25</sup> The permit to construct application and processing fees in the SIP were last updated on April 21, 1997 (62 FR 19224).

<sup>26</sup> Memo to Interested Parties from Craig D. Thorstenson, Division of Air Quality, North Dakota Department of Health, June 1, 2016.

www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

## **V. Statutory and Executive Order Reviews**

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 U.S.C. 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 action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; 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, February 16, 1994).

In addition, the SIP is not proposed 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).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

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

Dated:   May 9, 2018.

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 Douglas Benevento,  
 Regional Administrator,  
 Region 8.

