



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2019-0064; FRL-9999-16-Region 8]

South Dakota; Approval of Revisions to the State Air Pollution Control Rules and to the Permitting Rules for the Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) and Operating Permit Program revisions submitted by the State of South Dakota on October 23, 2015, related to South Dakota's Air Pollution Control Program. The October 23, 2015 submittal revises certain definitions in the Prevention of Significant Deterioration (PSD) permitting rules and general definition section related to greenhouse gases (GHGs). In this rulemaking, we are also taking final action on portions of the October 23, 2015 submittal, which were not acted on in our previous final rulemaking published on October 13, 2016. The effect of this rulemaking is to ensure that certain definitions in South Dakota's PSD rules are in compliance with the Federal PSD requirements. This action is being taken under the Clean Air Act (CAA).

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

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2019-0064. 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., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available 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: Kevin Leone, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, leone.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

South Dakota’s PSD preconstruction permitting program consists of sections 74-36-09-01 through 74-36-09-03. The State’s submittal incorporated by reference as of October 23, 2015, the revisions to remove the GHG Tailoring Rule Step 2 PSD permitting requirements in 40 CFR 52.21(b)(49)(v) from their SIP in 74:36:09:02(7) – (9) (removing 40 CFR 52.21(b)(49)(v) as well as the references to 40 CFR 52.21(b)(49)(v)). These revisions were approved in 81 FR 70626 and published on October 13, 2016 (see docket).

In this action we are taking final action to approve two additional revisions contained in the State’s 2015 submittal: South Dakota’s revision to the definition of “subject to regulation” in 74:36:01:01(73)¹ and the addition of the new provision in 74:36:09-02(10).² In our October 13, 2016 action, we did not act on South Dakota’s revisions in 74:36:01:01(73) and 74:36:09(02)(10) for reasons stated in our proposed rulemaking. Those reasons will not be re-stated here; please refer to our proposed rulemaking which was published on June 27, 2019 (84 FR 30686.) We also provided a detailed explanation of the basis for our proposed approval in our June 27, 2019, rulemaking. We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on July 29, 2019.

¹ The State’s proposed rule changes appear in the document titled “Appendix A, Proposed Amendment to ARSD 74-36 – Air Pollution Control Program”, which is in the Docket. Appendix A, p. A-14, PDF p. 431.

² Appendix A, p. A-175, PDF p. 330.

II. Response to Comments

We received no comments during the public comment period.

III. Final Action

For the reasons outlined in our proposed rulemaking, the EPA is taking final action to approve the revisions to the definition of “subject to regulation” in 74:36:01:01(73) and the addition of the new provision in 74:36:09-02(10) that were submitted by South Dakota on October 23, 2015. Specifically, we are taking final action to approve:

A. Chapter 74:36:01 – Definitions

Chapter 74:36:01 defines the terms used throughout Article 74:36 – Air Pollution Control Program. South Dakota’s October 13, 2015 submittal revises the definition of “subject to regulation” by removing its existing reference to the definition of “subject to regulation” as defined in 40 CFR 70.2 (July 1, 2012), as revised in publication 75 FR 31607 (June 3, 2010), in accordance with EPA requirements. This definition is being replaced with the first paragraph of the definition of “subject to regulation” found in 40 CFR 52.21(b)(49), with the addition of the phrase “Greenhouse Gases are not subject to regulation unless a PSD preconstruction permit is issued regulating greenhouse gases in accordance with chapter 74:36:09.”

B. Chapter 74:36:09 – Prevention of Significant Deterioration (PSD)

Chapter 74:36:09 is South Dakota’s PSD preconstruction program for major sources located in areas of the State that attain the Federal national ambient air quality standards (NAAQS). South Dakota is adding new paragraph 74:36:09:02(10), which states: “For the purposes of this section, 40 CFR 52.21(b)(49)(iv)(b), the term ‘also will have an emissions increase of a regulated NSR pollutant’ means ‘also will have a major modification of a regulated NSR pollutant that is not GHG.’”

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 the State of South Dakota's revisions to its SIP as described in section III of this preamble. The EPA has made, and will continue to make, these materials generally available through 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). 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 in the next update to the SIP compilation.³

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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.*);

³ 62 FR 27968 (May 22, 1997).

- 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, 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 CAA; and
- Does not provide 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 approved to apply on any Indian reservation land or in any other area where 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 section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: September 4, 2019.

Gregory Sopkin,
Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

follows:

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

Subpart QQ – South Dakota

2. In § 52.2170, paragraph (c) is amended by revising the table entries for “74:36:01:01”

and “74:36:09:02” to read as follows:

§52.2170 Identification of plan.

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(c) * * *

Rule no.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
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74:36:01:01	Definitions	10/15/2015	[Insert date 30 days after date of publication in the Federal Register]	[insert date of publication in the Federal Register , [insert Federal Register citation]	
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74:36:09:0 2	Prevention of Significant Deterioratio n	10/15/2015	[Insert date 30 days after date of publicati on in the Federal Register]	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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