



Billing Code: 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2013-0145; FRL-9954-15-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 update the Prevention of Significant Deterioration (PSD) rules and the definition of “volatile organic compounds”; to add particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>) methods of measurement; to modify the PM<sub>2.5</sub> state ambient air quality standard, permissible open burning rule, and permit fee processes; and, to remove permitting fees for sources that operate an air monitoring site. The revisions also make clarifying changes. 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-2013-0145. All documents in the docket are listed on the <http://www.regulations.gov> web site. 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](mailto:dobrahner.jaslyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In our notice of proposed rulemaking published on August 25, 2016 (81 FR 53438), 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 revisions submitted in the January 28, 2013 submittal to update the PSD rules; add PM<sub>2.5</sub> methods of measurement; revise permit fee processing; remove permitting fees for sources that operate an air monitoring site; and make clarifying changes. 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 revisions submitted in the April 22, 2014 submittal to update the PSD rules and the definition of “volatile organic compounds”; revise the PM<sub>2.5</sub> state ambient air quality standard and permissible open burning rule; and clarify excess emissions reporting requirements. 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, 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 comprehensive summary of the revisions in North Dakota’s Air Pollution Control rules organized by the EPA’s action, reason for “no action” and submittal date are provided in Table 1 and Table 2 below.

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

<b>Revisions in January 28, 2013 and April 22, 2014 Submittals that EPA is Approving</b>
<u>January 28, 2013 submittal:</u> 33-15-01-05; 33-15-01-13.3; 33-15-03-04.5; 33-15-05-04.3; 33-15-14-02.13.c(4); 33-15-15-01.2 <sup>†</sup> ; 33-15-17-02.4; 33-15-17-02.6; 33-15-23-02.2.c; 33-15-23-03.1
<u>April 22, 2014 submittal:</u> 33-15-01-04; 33-15-02, Table 1.; 33-15-04-02.2.a; 33-15-06-05.1; 33-15-15-01.2; 33-15-23-03

<sup>†</sup> Except for the incorporation by reference date in the first paragraph and the revision associated with 40 CFR 52.21(1)(1)

Table 2 - List of North Dakota Revisions that the EPA is Taking No Action On

<b>Revisions in January 28, 2013 and April 22, 2014 Submittals that EPA is Taking No Action On</b>			
Revised Section	Reason for “No Action”		
	Revision superseded by April 22, 2014	Revision acted on in 79 FR 63045	Revision will be acted on in a future submittal

	submittal		
<b>January 28, 2013 Submittal</b>			
33-15-01-04	x		
33-15-03-04.4		x	
33-15-05-01.2a(1)		x	
33-15-14-02.1			x
33-15-14-02.5.a			x
33-15-15-01.2 <sup>‡</sup>	x		
33-15-15-01.2 <sup>§</sup>			x
<b>April 22, 2014 Submittal</b>			
33-15-03-05			x

<sup>‡</sup> Only the revision to the incorporation by reference date in the first paragraph

<sup>§</sup> Only the revision associated with 40 CFR 52.21(l)(1)

#### **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. Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, 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.<sup>1</sup> The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://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).

## **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

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

43255, Aug. 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 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 29, 2016.

Shaun L. McGrath,  
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. Section 52.1820 (c) is amended as follows:

- a. Under “33-15-01. General Provisions” by revising entries “33-15-01-04”, “33-15-01-05”, and “33-15-01-13”;
- b. Under “33-15-02. Ambient Air Quality Standards” by revising entry “Table 1”;
- c. Under “33-15-03. Restriction of Emission of Visible Air Contaminants” by revising entry “33-15-03-04”;
- d. Under “33-15-04. Open Burning Restrictions” by revising entry “33-15-04-02”;
- e. Under “33-15-05. Emissions of Particulate Matter Restricted” by revising entry “33-15-05-04”;
- f. Under “33-15-06. Emissions of Sulfur Compounds Restricted” by revising entry “33-15-06-05”;
- g. Under “33-15-14. Designated Air Contaminant Sources Permit to Construct Minor Source Permit to Operate Title V Permit to Operate” by revising entry “33-15-14-02”;
- h. Under “33-15-15. Prevention of Significant Deterioration of Air Quality” by revising entry “33-15-15-01.2”;
- i. Under “33-15-17. Restriction of Fugitive Emissions” by revising entry “33-15-17-02”; and
- j. Under “33-15-23. Fees” by revising entries “33-15-23-02” and “33-15-23-03.”

The revisions read as follows:

**§ 52.1820 Identification of plan.**

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(c) \* \* \*

<b>Rule No.</b>	<b>Rule title</b>	<b>State effective date</b>	<b>EPA effective date</b>	<b>Final rule citation/date</b>	<b>Comments</b>
<b>33-15-01. General Provisions</b>					
* * * * *					
33-15-01-04	Definitions	4/1/2014	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b><u>Federal Register</u></b> citation], [Insert <b><u>Federal Register</u></b> date of publication]	
33-15-01-05	Abbreviations	1/1/2013	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b><u>Federal Register</u></b> citation], [Insert <b><u>Federal Register</u></b> date of publication]	
* * * * *					
33-15-01-13	Shutdown and malfunction of an installation— Requirement for notification	1/1/2013	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b><u>Federal Register</u></b> citation], [Insert <b><u>Federal Register</u></b> date of publication]	
* * * * *					
<b>33-15-02. Ambient Air Quality Standards</b>					
* * * * *					

Table 1	Ambient Air Quality Standards	4/1/2014	[Insert date 30 days after date of publication in the <u>Federal Register</u> ]	[Insert <u>Federal Register</u> citation], [Insert <u>Federal Register</u> date of publication]	
* * * * *					
<b>33-15-03. Restriction of Emission of Visible Air Contaminants</b>					
* * * * *					
33-15-03-04	Exceptions	1/1/2013	[Insert date 30 days after date of publication in the <u>Federal Register</u> ]	[Insert <u>Federal Register</u> citation], [Insert <u>Federal Register</u> date of publication]	
* * * * *					
<b>33-15-04. Open Burning Restrictions</b>					
* * * * *					
33-15-04-02	Permissible open burning	4/1/2014	[Insert date 30 days after date of publication in the <u>Federal Register</u> ]	[Insert <u>Federal Register</u> citation], [Insert <u>Federal Register</u> date of publication]	
<b>33-15-05. Emissions of Particulate Matter Restricted</b>					
* * * * *					
33-15-05-04	Methods of measurement	1/1/2013	[Insert date 30 days after date of publication in the <u>Federal Register</u> ]	[Insert <u>Federal Register</u> citation], [Insert <u>Federal Register</u> date of	

				publication]	
<b>33-15-06. Emissions of Sulfur Compounds Restricted</b>					
* * * * *					
33-15-06-05	Reporting and recordkeeping requirements	4/1/2014	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b><u>Federal Register</u></b> citation], [Insert <b><u>Federal Register</u></b> date of publication]	
* * * * *					
<b>33-15-14. Designated Air Contaminant Sources Permit to Construct Minor Source Permit to Operate Title V Permit to Operate</b>					
* * * * *					
33-15-14-02	Permit to construct	1/1/2013	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b><u>Federal Register</u></b> citation], [Insert <b><u>Federal Register</u></b> date of publication]	Excluding subsections 1, 12, 13, 3.c., 13.b.1., 5, 13.c., 13.i(5), 13.o., 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)."
* * * * *					
<b>33-15-15. Prevention of Significant Deterioration of Air Quality</b>					
* * * * *					
33-15-15-01.2	Scope	1/1/2013 4/1/2014	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b><u>Federal Register</u></b> citation], [Insert <b><u>Federal Register</u></b> date of	Except for the revision associated with 40 CFR 52.21(i)(1).

				publication]	
* * * * *					
<b>33-15-17. Restriction of Fugitive Emissions</b>					
* * * * *					
33-15-17-02	Restriction of fugitive particulate emissions	1/1/2013	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b><u>Federal Register</u></b> citation], [Insert <b><u>Federal Register</u></b> date of publication]	
* * * * *					
<b>33-15-23. Fees</b>					
* * * * *					
33-15-23-02	Permit to construct fees	1/1/2013	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b><u>Federal Register</u></b> citation], [Insert <b><u>Federal Register</u></b> date of publication]	
33-15-23-03	Minor source permit to operate fees	1/1/2013 4/1/2014	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b><u>Federal Register</u></b> citation], [Insert <b><u>Federal Register</u></b> date of publication]	
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**§ 52.1829 [Amended]**

3. Section 52.1829 is amended by removing paragraphs (c) and (d).

[FR Doc. 2016-25302 Filed: 10/20/2016 8:45 am; Publication Date: 10/21/2016]