



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2013-0558, FRL-9969-00-Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2010 SO₂ and 2012 PM_{2.5} National Ambient Air Quality Standards; North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) revisions from the State of North Dakota to demonstrate the State meets infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for sulfur dioxide (SO₂) on June 2, 2010, and fine particulate matter (PM_{2.5}) on December 14, 2012.

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-2013-0558. 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 either electronically through <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: Kate Gregory, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6175, gregory.kate@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Infrastructure requirements for SIPs are set forth in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking published on June 6, 2017 (82 FR 25999).

In our proposed rule, the EPA proposed to approve some infrastructure elements and to take no action on others for the 2010 SO₂ and 2012 PM_{2.5} NAAQS from the State's March 7, 2013 and August 23, 2015 certifications,¹ respectively. In this rulemaking, we are taking final action to approve those infrastructure elements from the State's certifications for which we proposed approval.

¹ "Where an air agency determines that the provisions in or referred to by its existing EPA approved SIP are adequate with respect to a given infrastructure SIP element (or sub element) even in light of the promulgation of a new or revised NAAQS, the air agency may make a SIP submission in the form of a certification." EPA's "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)," September 13, 2013, at 7.

II. Response to Comments

No comments were received on our June 29, 2017 notice of proposed rulemaking.

III. Final Action

For reasons expressed in the proposed rule, the EPA is taking final action to approve infrastructure elements from the State’s certifications as shown in Table 1. Elements we are taking no action on are reflected in Table 2.

TABLE 1 - LIST OF NORTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THE EPA IS APPROVING

Approval
<u>March 7, 2013 submittal</u> - 2010 SO₂ NAAQS: (A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
<u>August 23, 2015 submittal-</u> 2012 PM_{2.5} NAAQS: (A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).

TABLE 2 - LIST OF NORTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS TAKING NO ACTION ON

No Action (Revision to be made in separate rulemaking action.)
<u>March 7, 2013 submittal</u> - 2010 SO₂ NAAQS: (D)(i)(I) prongs 1 and 2.
<u>August 23, 2015 submittal-</u> 2012 PM_{2.5} NAAQS: (D)(i)(I) prongs 1 and 2.

IV. Statutory and Executive Orders Review

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);
- 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 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 18, 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. Section 52.1833 is amended by adding paragraph (f) to read as follows:

§ 52.1833 Section 110(a)(2) infrastructure requirements.

* * * * *

(f) The North Dakota Department of Health provided submissions to meet infrastructure requirements for the State of North Dakota for the 2010 SO₂ and 2012 PM_{2.5} NAAQS on March 7, 2013 and August 23, 2015, respectively. The State's Infrastructure SIP for the 2010 SO₂ and 2012 PM_{2.5} NAAQS is approved with respect to section (110)(a)(1) and the following elements of section (110)(a)(2): (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2017-21520 Filed: 10/5/2017 8:45 am; Publication Date: 10/6/2017]