



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2018-0148; FRL-9979-69-Region 8]

### Approval and Promulgation of Air Quality Implementation Plans; South Dakota; Revisions to the Permitting Rules

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of South Dakota on October 4, 2017 related to South Dakota's Air Pollution Control Program. The October 4, 2017 submittal revises certain definitions and dates of incorporation by reference and contains new, amended and renumbered rules. In this rulemaking, we are taking final action on all portions of the October 4, 2017 submittal, except for those portions of the submittal which do not belong in the SIP. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This final rule is effective on [Insert date 30 days from 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-2018-0148. 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 available information.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The EPA is taking final action to approve all revisions as submitted by the State of South Dakota on October 4, 2017, with the exception of the revisions that we are not acting on, as outlined in section II.A. of our proposed rulemaking published on April 27, 2018 (83 FR 18496).

We provided a detailed explanation of the bases for our proposed approval in our April 27, 2018 rulemaking, which will not be restated here. See 83 FR 18496. We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on May 29, 2018.

In this action, we are responding to the comments we received and taking final rulemaking action on the rules from the State's October 4, 2017, submittal.

### **II. Brief Discussion of Statutory and Regulatory Requirements**

The changes we are taking final action to approve are consistent with the CAA and EPA regulations. Specifically:

1. CAA section 110(a)(2)(C), requires each state plan to include "a program to provide for

... the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter."

2. CAA section 110(a)(2)(A), requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. Chapter 6, Section 13 creates enforceable obligations for sources by removing phrases such as "the plan shall provide" and "the plan may provide."

In addition, the CAA (section 110(a)(2)(C)) and 40 CFR 51.160 requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Such minor NSR programs are for pollutants from stationary sources that do not require Prevention of Significant Deterioration (PSD) or nonattainment new source review (NNSR) permits. States may customize the requirements of the minor NSR program as long as their program meets minimum requirements.

Section 110(l) of the CAA states: "[e]ach revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this chapter." South Dakota's new revisions to ARSD 74:36 will not interfere with attainment, reasonable further progress (RFP), or any other applicable requirement of the CAA.

### III. Response to Comments

We received three comments during the public comment period. The comments were not related to the EPA's proposed rulemaking for South Dakota's permitting program changes which was published on April 27, 2018. As such, we are not providing a response to the comments.

### IV. Final Action

As outlined in our proposed rulemaking, the EPA finds that the addition of new, revised and removed rules to ARSD 74:36 will not interfere with attainment or maintenance of any of the NAAQS in the State of South Dakota and would not interfere with any other applicable requirement of the Act or the EPA regulations; and thus, are approvable under CAA section 110(l). Therefore, we are taking final action to approve South Dakota's revisions as submitted on October 4, 2017.

Specifically, we are taking final action to approve the following revisions: *74:36:01:01 (Definitions)* - 74:36:01:01(8), 74:36:01:01(29), 74:36:01:01(67), 74:36:01:05(1) and 74:36:01:20(5), (7), and (8); *74:36:02 (Ambient Air Quality)* - 74:36:02:02, 74:36:02:03, 74:36:02:04 and 74:36:02:05; *74:36:03 (Air Quality Episodes)* - 74:36:03:01 and 74:36:03:02; *74:36:04 (Operating Permits for Minor Sources)* - 74:36:04:04; *74:36:06 (Regulated Air Pollutant Emissions)* - 74:36:06:07; *74:36:09 (Prevention of Significant Deterioration)* - 74:36:09:02 and 74:36:09:03; *74:36:10 (New Source Review)* - 74:36:10:02, 74:36:10:03.01, 74:36:10:05, 74:36:10:07 and 74:36:10:08; *74:36:11 (Performance Testing)* - 74:36:11:01; *74:36:12 (Control of Visible Emissions)* - 74:36:12:01 and 74:36:12:03; *74:36:18 (Regulations for State Facilities in the Rapid City Area)* - 74:36:18:10; *74:36:20 (Construction Permits for*

*New Sources or Modifications*) - 74:36:20:05; 74:36:21 (Regional Haze Program) – 74:36:21:02(8), 74:36:21:04, 74:36:21:05 and 74:36:21:09.

## **V. 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 state implementation plan as described in section IV. 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 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 in the next update to the SIP compilation.<sup>1</sup>

## **VI. 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 actions, provided that they meet the criteria of the CAA. Accordingly, this action merely approves some state law provisions as meeting federal requirements; this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

- 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 does not 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 CAA, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

June 20, 2018  
Dated: \_\_\_\_\_

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Douglas Benevento,  
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. Section 52.2170(c) is amended by revising the table entries for: 74:36:01:01; 74:36:01:05; 74:36:01:20; 74:36:02:02; 74:36:02:03; 74:36:02:04; 74:36:02:05; 74:36:03:01; 74:36:03:02; 74:36:04:04; 74:36:06:07; 74:36:09:02; 74:36:09:03; 74:36:10:02; 74:36:10:03.01; 74:36:10:05; 74:36:10:07; 74:36:10:08; 74:36:11:01; 74:36:12:01; 74:36:12:03; 74:36:18:10; 74:36:20:05; 74:36:21:02; 74:36:21:04; 74:36:21:05; and 74:36:21:09 to read as follows:

**§52.2170 Identification of plan.**

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Rule no.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
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<b>74:36:01. Definitions</b>					
74:36:01:01	Definitions	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of	Except for 74:36:01:01.(73).

				publication]	
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74:36:01:05	Applicable requirements of the Clean Air Act defined	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
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74:36:01:20	Physical change in or change in the method of operation defined	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
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<b>74:36:02. Ambient Air Quality</b>					
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74:36:02:02	Ambient air quality standards	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
74:36:02:03	Methods of sampling and analysis	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
74:36:02:04	Ambient air	9/13/2017	[Insert date 30	[Insert	

	monitoring network		days after date of publication in the <b>Federal Register</b> ]	<b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
74:36:02:05	Air quality monitoring requirements	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
<b>74:36:03. Air Quality Episodes</b>					
74:36:03:01	Air pollution emergency episode	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
74:36:03:02	Episode emergency contingency plan	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
<b>74:36:04. Operating Permits for Minor Sources</b>					
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74:36:04:04	Standard for issuance of a minor source operating permit	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert	

				<b>Federal Register</b> date of publication]	
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<b>74:36:06. Regulated Air Pollutant Emissions</b>					
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74:36:06:07	Open burning practices prohibited	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
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<b>74:36:09. Prevention of Significant Deterioration</b>					
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74:36:09:02	Prevention of significant deterioration	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	Except for 74:36:09:02.(10).
74:36:09:03	Public participation	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
<b>74:36:10. New Source Review</b>					
* * * * *					
74:36:10:02	Definitions	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal</b>	[Insert <b>Federal Register</b> citation],	

			<b>Register]</b>	[Insert <b>Federal Register</b> date of publication]	
74:36:10:03.01	New source review preconstruction permit required	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register]</b>	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
74:36:10:05	New source review preconstruction permit required	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register]</b>	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
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74:36:10:07	Determining credit for emissions Offsets	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register]</b>	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
74:36:10:08	Projected actual emissions	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register]</b>	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
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<b>74:36:11. Performance Testing</b>					
74:36:11:01	Stack performance testing or other testing methods	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
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<b>74:36:12. Control of Visible Emissions</b>					
74:36:12:01	Restrictions on visible emissions	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
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74:36:12:03	Exceptions granted to alfalfa pelletizers or dehydrators	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
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<b>74:36:18. Regulations for State Facilities in the Rapid City Area</b>					
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74:36:18:10	Visible emission limit for construction and continuous operation activities	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	

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<b>74:36:20. Construction Permits for New Sources Or Modifications</b>					
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74:36:20:05	Standard for issuance of construction permit	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
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<b>74:36:21. Regional Haze Program</b>					
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74:36:21:02	Definitions	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
* * * * *					
74:36:21:04	Visibility impact analysis	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
74:36:21:05	BART determination	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	

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74:36:21:09	Monitoring, recordkeeping, and reporting	9/13/2017	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
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[FR Doc. 2018-13598 Filed: 6/25/2018 8:45 am; Publication Date: 6/26/2018]