



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R08-OAR-2019-0689; FRL-10010-33-Region 8**

**Approval and Promulgation of Air Quality Implementation Plans; North Dakota;  
Revisions to Permitting Rules**

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

**ACTION:** Final rule.

**SUMMARY:** In accordance with section 110 of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by North Dakota on May 2, 2019. The revisions contain amendments to the State's Ambient Air Quality Standards, Permit to Construct, and Prevention of Significant Deterioration (PSD) regulations.

**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-2019-0689. 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-IO, 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**

The EPA is taking final action to approve all SIP revisions submitted by the State of North Dakota on May 2, 2019, with the exception of several revisions that we are acting on in a separate action or are taking no action on, as outlined in section II of our proposed rulemaking published on March 20, 2020.<sup>1</sup> The SIP revisions that we are acting on contain amendments to N.D. Admin. Code Chapter 33.1-15-15 (Prevention of Significant Deterioration of Air Quality) and N.D. Admin. Code Chapter 33.1-15-14 (Designated Air Contaminant Sources, Permit to Construct, Minor Source Operating Permit, Title V Operating Permit). The amendments address changes to the State’s Ambient Air Quality Standard for ozone and update the State’s PSD rules and permit-to-construct rules.

Our March 20, 2020 rulemaking contains a detailed summary of the SIP revisions in question and an explanation of the bases for our proposed approval.<sup>2</sup> We invited comment on all aspects of our proposal, and provided a 30-day comment period, which ended on April 20, 2020.

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<sup>1</sup> Proposed rule, Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Revisions to Permitting Rules, 85 FR 16027.

<sup>2</sup> See 85 FR at 16027-16029.

## **II. Response to Comments**

We received no comments during the public comment period.

## **III. Final Action**

As outlined in our proposed rulemaking, the EPA is taking final action to approve the addition of new and revised rules to 33.1-15-15 and 33.1-15-14 as submitted on May 2, 2019.

Specifically, we are taking final action to approve the following revisions: *Revisions to Chapter 33.1-15-15 (Prevention of Significant Deterioration) - 33.1-15-15-01.2.*; *Revisions to Chapter 33.1-15-14 (Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate) – 33.1-15-14-02.*

## **IV. Incorporation by Reference**

In this document, 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 North 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](http://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.<sup>3</sup>

## **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.*);
- 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);

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<sup>3</sup> See Notice of Administrative Change, Approval and Promulgation of Air Quality Implementation Plans; Revised Format of 40 CFR Part 52 for Materials Being Incorporated by Reference, 62 FR 27968 (May 22, 1997).

- 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. 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, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 29, 2020.

Gregory Sopkin,  
Regional Administrator,  
Region 8.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 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. In § 52.1820, amend paragraph (c) by:

- a. Revising, under the center heading “**33.1-15-14. Designated Air Contaminant Sources Permit to Construct Minor Source Permit to Operate Title V Permit to Operate,**” the table entry for: 33.1-15-14-02. Permit to construct;
- b. Revising, under the center heading “**33.1-15-15. Prevention of Significant Deterioration of Air Quality,**” the table entry for 33.1-15-15-01.2. Scope.

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>
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<b>33.1-15-14. Designated Air Contaminant Sources Permit to Construct Minor Source Permit to Operate Title V Permit to Operate</b>					
* * * * *					
33.1-15-14-02	Permit to Construct	7/1/16	[Insert date 30 days after date of publication in the	[Insert Federal Register citation], [Insert date of	

			<b><u>Federal Register]</u></b>	<b>publication in the Federal Register]</b>	
* * * * *					
<b>33.1-15-15. Prevention of Significant Deterioration of Air Quality</b>					
* * * * *					
33.1-15-15-01.2	Scope	7/1/16	<b>[Insert date 30 days after date of publication in the Federal Register]</b>	<b>[Insert <u>Federal Register</u> citation], [Insert date of publication in the Federal Register]</b>	
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[FR Doc. 2020-12059 Filed: 6/24/2020 8:45 am; Publication Date: 6/25/2020]