



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2020-0739; FRL-10020-10-Region 8]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of South Dakota on January 3, 2020 that revises the Administrative Rules of South Dakota (ARSD), Air Pollution Control Program, updating the chapter pertaining to definitions. The EPA is taking this action pursuant to the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2020-0739, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically in [www.regulations.gov](http://www.regulations.gov). To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

**FOR FURTHER INFORMATION CONTACT:** Kate Gregory, (303) 312-6175, [gregory.kate@epa.gov](mailto:gregory.kate@epa.gov). Mail can be directed to the Air and Radiation Division, U.S. EPA, Region 8, Mail-code 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado, 80202-1129.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

On January 3, 2020 the State of South Dakota submitted proposed revisions and additions to the ARSD. In this action, we are proposing to approve the additions to the ARSD pertaining to the definitions section.

## **II. EPA’s Evaluation**

On January 3, 2020 the EPA received revisions for the ARSD for the State of South Dakota. The submittal was signed by the Governor and received a 30-day State public comment period starting on November 26, 2019 (no requests were made for a public hearing). The EPA is proposing to approve the revisions to the ARSD, specifically the additions to the definitions section, for the State of South Dakota submitted by the State on January 3, 2020 in this action.

### III. Proposed Action

In this action, the EPA is proposing to approve the revisions to the ARSD submitted by the State of South Dakota on January 3, 2020, specifically the additions of 74:36:01(74) and 74:36:01(75) in the definitions section of the ARSD.<sup>1</sup> The subsections of the ARSD definitions section we are proposing to approve, 74:36:01(74) and 74:36:01(75), contain the definitions of ‘closed landfill’ and ‘closed landfill subcategory’ respectively. In this action, we are proposing to approve the addition of the abovementioned subsections to the definitions section of the ARSD. Additional revisions and additions to the ARSD, related to content including ‘closed landfill’ and ‘closed landfill subcategory’ have been proposed for approval in a separate document [(85 FR 68538) Approval and Promulgation of State Plans for Designated Facilities and Pollutants; South Dakota; Control of Emissions From Existing Municipal Solid Waste Landfills].

**TABLE 1: ARSD ADDITIONS THAT THE EPA IS PROPOSING TO ACT ON**

In the table below, the key is as follows:

A - *Approve*.

D - *Disapprove*.

<b>Additions the Administrative Rules of South Dakota (ARSD)</b>	
74:36:01(74)	A
74:36:01(75)	A

### IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference South Dakota’s January 3, 2020 submission of the

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<sup>1</sup> The additional revisions and additions to the ARSD as they relate to the SIP referenced in the January 3, 2020 ARSD rule revision submission by the State of South Dakota were approved in a prior rule: Air Quality State Implementation Plans; Approval and Promulgation of Implementation Plans; South Dakota; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; Revisions to Administrative Rules (85 FR 67653).

ARSD of the State of South Dakota as described in the Proposed Action section 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 persons identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **V. 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 choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve 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, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 proposed 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).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: February 3, 2021.

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Debra Thomas,  
Acting Regional Administrator,  
Region 8.

