Environmental Protection Agency

40 CFR Part 52

[EPA-R08-OAR-2020-0739; FRL-10023-50-Region 8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving 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: 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-2020-0739. 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 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: Kate Gregory, (303) 312-6175, 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 “we,” “us,” and “our” means the EPA.

I. Background

On January 3, 2020 the State of South Dakota submitted revisions and additions to the ARSD. In this action, we are approving the additions to the ARSD pertaining to the definitions section. The subject of this action is described in detail in our notice of proposed rulemaking (NPRM) published on February 24, 2021 (86 FR 11211).

II. Final Action

In this rulemaking, the EPA is approving the revisions to the ARSD submitted by the State of South Dakota on January 3, 2020, specifically the additions of 74:36:01:01(71) and 74:36:01:01(72) in the definitions section of the ARSD. The subsections of the ARSD definitions section we are approving, 74:36:01:01(71) and 74:36:01:01(72), contain the definitions of ‘closed landfill’ and ‘closed landfill subcategory,’ respectively. In this action, we are approving the addition of the abovementioned subsections to the definitions section of the ARSD. Additional revisions and additions to the ARSD, related to content that includes ‘closed landfill’ and ‘closed landfill subcategory’ have been approved in a separate action [(85 FR 16538) 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 APPROVING**

In the table below, the key is as follows:

A - Approve.
D - Disapprove.

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1 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).

2 ARSD numbering in the notice of proposed rulemaking for this action (86 FR 11211) was listed as 74:36:01:01(74) and 74:36:01:01(75). The correct numbering of the ARSD we are acting on is listed in this notice of final rulemaking as 74:36:01:01(71) and 74:36:01:01(72). The definitions we are approving of ‘closed landfill’ and ‘closed landfill subcategory’ remain unchanged in both the proposal and final action.
Additions the Administrative Rules of South Dakota (ARSD)

<table>
<thead>
<tr>
<th>74:36:01:01(71)</th>
<th>A</th>
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<tbody>
<tr>
<td>74:36:01:01(72)</td>
<td>A</td>
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</table>

### III. 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 ARSD, Air Pollution Control Program, updating the ARSD chapters pertaining to definitions as is described in the 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 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.3

### IV. 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:

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3 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, 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 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.
40 CFR part 52 is amended 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 QQ—South Dakota

2. In §52.2170, the table in paragraph (c) is amended by revising the entry for “74:36:01:01” to read as follows:

§52.2170 Identification of plan.

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(c) * *

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<th>EPA effective date</th>
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<th>Comments</th>
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<td>[insert date 30 days after date of publication in the Federal Register]</td>
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[FR Doc. 2021-09863 Filed: 5/7/2021 8:45 am; Publication Date: 5/10/2021]