

2017 RACT Supplement, because we believe these SIP submissions correct the deficiencies identified in our April 14, 2016 partial disapproval action. Based on today's proposed approval, we are taking this interim final rulemaking action, effective on publication, to defer the imposition of the offset sanctions and highway sanctions triggered by our April 14, 2016 partial disapproval.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full approval of the RACM/RACT and RFP demonstrations in the 2012 PM_{2.5} Plan, we would take subsequent final action to reimpose sanctions pursuant to 40 CFR 52.31(d). If no comments are submitted that change our assessment, we will take final action to approve the RACM/RACT and RFP demonstrations in the 2012 PM_{2.5} Plan, and all sanctions and sanction clocks related to the May 16, 2016 disapproval action with respect to these elements of the 2012 PM_{2.5} Plan will be permanently terminated on the effective date of the final approval.

II. EPA Action

We are making an interim final determination to defer the imposition of CAA section 179 sanctions associated with our partial disapproval of the 2012 PM_{2.5} Plan based on our concurrent proposal to determine that our prior approvals of the District's revised RECLAIM rules and 2017 RACT Supplement correct the deficiencies that initiated sanctions clocks.

Because the EPA has preliminarily determined that the State has corrected the deficiencies previously identified in the EPA's partial disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action the EPA is providing the public with an opportunity to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's revised RECLAIM rules and 2017 RACT Supplement and, through a separate action, is proposing to find that the State has corrected the deficiencies

that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions when the State has most likely taken appropriate action to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's actual submission addressing those deficiencies. Therefore, the EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submission addressing the deficiencies. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this action is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers federal sanctions and imposes no additional requirements. 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 (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 Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such good cause finding, including the reasons therefore, and established an effective date of October 10, 2017. EPA will submit a report containing this rule 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 rule 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 December 11, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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, Ammonia,

Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: September 26, 2017.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2017–0019; FRL–9969–05–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Revisions to Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of North Dakota on January 28, 2013, and April 22, 2014. The revisions are to Article 33–15 Air Pollution Control rules of the North Dakota Administrative Code. The revisions include amendments to add EPA Reference Method 22 to determine compliance with a visible emissions limit, add significance levels for PM_{2.5}, modify existing significance levels for NO₂ and SO₂ and remove the significance level for PM₁₀. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on November 9, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2017–0019. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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: Jaslyn Dobrahner, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In our notice of proposed rulemaking published on July 28, 2017 (82 FR 35153), the EPA proposed to approve revisions to Article 33–15 Air Pollution Control rules of the North Dakota Administrative Code submitted by the State of North Dakota on January 28, 2013, and April 22, 2014. In this rulemaking, we are taking final action on a revision submitted in the January 28, 2013 submittal to revise significance levels. The North Dakota State Health Council adopted those amendments on August 14, 2012 (effective January 1, 2013). In addition, we are also taking final action on a revision that was included in the April 22, 2014 submittal to add EPA Reference Method 22 for determining opacity for limits expressed as zero percent opacity. The North Dakota State Health Council adopted those amendments on February 11, 2014 (effective April 1, 2014). The reasons for our approval are provided in detail in the proposed rule.

II. Response to Comments

We received no comments on our proposed rule.

III. Final Action

For the reasons expressed in the proposed rule, the EPA is approving revisions to sections of the State's Air Pollution Control rules from the January 28, 2013, and April 22, 2014 submittals. A summary of the revisions in North Dakota's Air Pollution Control rules the EPA is approving is provided in Table 1.

TABLE 1—LIST OF NORTH DAKOTA REVISIONS THAT THE EPA IS APPROVING

Revisions in January 28, 2013 and April 22, 2014 submittals that EPA is approving

January 28, 2013 submittal: 33–15–14–02.5.a.
April 22, 2014 submittal: 33–15–03–05.2.

IV. 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 North Dakota Air Pollution Control rules

described in the amendments set forth to 40 CFR part 52 below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or 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 by the Director of the Federal Register in the next update to the SIP compilation.¹

V. Statutory and Executive Orders Review

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 final action merely approves some state law as meeting federal requirements; this final action does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- 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, Aug. 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);

¹ 62 FR 27968 (May 22, 1997).