

(c) of this Ruling for calculating projected actual emissions.

* * * * *

6. A “reasonable possibility” under paragraph IV.J of this Ruling occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph II.A.23 of this Ruling (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph II.A.24(ii)(c), sums to at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph II.A.23 of this Ruling (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph IV.J.6(ii) of this Ruling, and not also within the meaning of paragraph IV.J.6(i) of this Ruling, then provisions IV.J.2 through IV.J.5 do not apply to the project.

* * * * *

PART 52—[AMENDED]

■ 5. The authority citation for part 52 continues to read as follows:

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

Subpart A—[Amended]

■ 6. Section 52.21 is amended by revising paragraph (r)(6) introductory text and adding paragraph (r)(6)(vi) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

(r) * * *

(6) Except as otherwise provided in paragraph (r)(6)(vi)(b) of this section, the provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(a) through (c) of this section for calculating projected actual emissions.

* * * * *

(vi) A “reasonable possibility” under paragraph (r)(6) of this section occurs when the owner or operator calculates the project to result in either:

(a) A projected actual emissions increase of at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (b)(41)(ii)(c) of this section, sums to at least 50 percent of the amount that is a “significant emissions increase,” as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (r)(6)(vi)(b) of this section, and not also within the meaning of paragraph (r)(6)(vi)(a) of this section, then provisions (r)(6)(ii) through (v) do not apply to the project.

* * * * *

[FR Doc. E7-24714 Filed 12-20-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2006-0928; FRL-8509-4]

Approval and Promulgation of Air Quality Implementation Plan; South Dakota; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to Chapter 74:36:09 of the South Dakota Administrative Rules (Prevention of Significant Deterioration) for incorporation into the South Dakota State Implementation Plan (SIP). South Dakota adopted these rule revisions on August 29, 2006 and May 14, 2007, and submitted the requests for approval to EPA on September 1, 2006 and June 28, 2007. One rule provision that EPA had proposed to disapprove has been corrected by South Dakota. Therefore, EPA is also approving that provision. South Dakota was granted delegation of authority by EPA on July 6, 1994, to implement and enforce the federal Prevention of Significant Deterioration (PSD) permitting regulations. As part of this final rule EPA is rescinding South Dakota’s delegation of authority for implementing the federal PSD regulations. This action is being taken

under section 110 of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective January 22, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2006-0928. All documents in the docket are listed on the www.regulations.gov Web site. 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 either electronically through www.regulations.gov or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Cindy Cody, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6228, cody.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *South Dakota* mean the State of South Dakota, unless the context indicates otherwise.

Table of Contents

- I. What is being addressed in this document?
- II. What are the changes that EPA is approving?
- III. What were the comments received and EPA’s response?
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

I. What is being addressed in this document?

Chapter 74:36:09 was submitted to EPA for inclusion in the State

Implementation Plan (SIP) by the South Dakota Department of Environment and Natural Resources (DENR) on September 1, 2006. Chapter 74:36:09 relates to the Prevention of Significant Deterioration (PSD) permit program of the State of South Dakota. Revisions to Chapter 74:36:09 were adopted by the South Dakota Board Interim Rules Committee on August 29, 2006. EPA proposed on February 1, 2007 (72 FR 4671) to partially approve and partially disapprove Chapter 74:36:09 (Prevention of Significant Deterioration) of the Administrative Rules of South Dakota under section 110 of the CAA.¹ Comments were received on our February 2007 proposal (see discussion in section III. below). Subsequent to the public comment period, South Dakota revised 74:36:09:02, adopted May 14, 2007, to address EPA's concern (see Section II) and submitted the revised provision to EPA on June 28, 2007. After considering the comments received, EPA is finalizing its approval of Chapter 74:36:09, including the now-corrected provision that EPA had proposed to disapprove. EPA is also rescinding its delegation to South Dakota of the federal PSD regulations.

II. What are the changes that EPA is approving?

EPA is approving a revision to South Dakota's SIP that incorporates by reference the federal PSD requirements, found at 40 CFR 52.21, into the State's SIP. The revision to the South Dakota Administrative Rules Chapter 74:36:09 incorporates by reference the provisions of 40 CFR 52.21, as they exist on July 1, 2005, with the exceptions noted below.

South Dakota did not incorporate by reference those sections of the federal rules that do not apply to State activities or are reserved for the Administrator of the EPA. These sections are 40 CFR 52.21(a)(1) (plan disapproval), 52.21(q) (public participation), 52.21(s) (environmental impact statements), 52.21(t) (disputed permit or redesignations), and 52.21(u) (delegation of authority).

South Dakota did not incorporate by reference provisions for Clean Units and Pollution Control Project (PCPs). These provisions were vacated by a June 24, 2005, ruling by the United States Court of Appeals for the District of Columbia Circuit. References to Clean Units and PCPs were removed by EPA from Federal regulation on June 13, 2007 (see

72 FR 32526). In addition, South Dakota did not incorporate by reference the provisions for equipment replacement (40 CFR 52.21(cc)), which were stayed indefinitely by a court order on December 24, 2003, and subsequently vacated. See, *New York v. EPA*, 443 F.3d 880 (D.C. Cir. 2006). Therefore, the following federal provisions found in 40 CFR 52.21 are not incorporated by reference in Chapter 74:36:09: 40 CFR 52.21(x), 52.21(y), 52.21(z), 52.21(cc), 52.21(a)(2)(iv)(e), the second sentence of 52.21(a)(2)(iv)(f), 52.21(a)(2)(vi), 52.21(b)(2)(iii)(h), 52.21(b)(3)(iii)(b), 52.21(b)(3)(vi)(d), 52.21(b)(32), 52.21(b)(42), (b)(55), (b)(56), (b)(57), (b)(58), and the phrase "other than projects at a Clean Unit or at a source with a PAL" in 40 CFR 52.21(r)(6).

The phrase "reasonable possibility" used in the federal rule at 40 CFR 52.21(r)(6) limits the recordkeeping provisions to modifications at facilities that use the actual-to-future-actual methodology to calculate emissions changes and that may have a "reasonable possibility" of a significant emissions increase. The South Dakota rule does not incorporate by reference the phrase "reasonable possibility" as it is used at 40 CFR 52.21(r)(6). On March 8, 2007, EPA published a proposed rule in response to the D.C. Circuit Court's remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules (see 72 FR 10445), but EPA has not yet made a final decision with regard to the remand. Therefore, EPA may need to take further action on this portion of South Dakota's PSD rule. At this time, however, South Dakota's recordkeeping provisions are as stringent as the federal requirements, and are therefore, approvable.

The South Dakota incorporation by reference describes the circumstances in which the term "Administrator" continues to mean the EPA Administrator and when it means the Secretary of the South Dakota DENR instead. South Dakota rule 74:36:09:02(1) identifies the following provisions in Chapter 74:36:09 where the term "Administrator" continues to mean the Administrator of EPA: 40 CFR 52.21(b)(17), 52.21(b)(37)(i), 52.21(b)(43), 52.21(b)(48)(ii)(c), 52.21(b)(50)(i), 52.21(g)(1) to 52.21(g)(6), 52.21(l)(2), and 52.21(p)(2). As submitted on September 1, 2006, this list did not include 40 CFR 52.21(p)(2), and under South Dakota's PSD rule, the term "Administrator" in 40 CFR 52.21(p)(2) referred to the Secretary of the DENR.

This was inconsistent with EPA's determination that 40 CFR 52.21(p)(2) must still refer to the Administrator of

EPA, and EPA proposed to disapprove the incorporation by reference of 40 CFR 52.21(p)(2). On June 28, 2007, South Dakota submitted to EPA a revision of Chapter 74:36:09, effective June 13, 2007, that added 40 CFR 52.21(p)(2) to the list of provisions in Chapter 74:36:09 where the term "Administrator" continues to mean the Administrator of EPA. Therefore, EPA is approving the incorporation by reference of 40 CFR 52.21(p)(2) as part of the approval of Chapter 74:36:09.

As noted above, South Dakota did not incorporate by reference 40 CFR 52.21(q) (public participation). South Dakota has instead incorporated by reference 40 CFR 51.166(q) (public participation) at 74:36:09:03. The regulations at 40 CFR 51.166 are what a SIP must contain for EPA to approve a PSD permit program, and generally mirror the federal PSD regulations at 40 CFR 52.21. In addition, South Dakota added in 74:36:09:03 six additional provisions that revise 40 CFR 51.166(q) in order to make the PSD permit public participation requirements specific to South Dakota.

The requirements included in South Dakota's PSD program, as specified in Chapter 74:36:09, are substantively the same as the federal PSD provisions due to South Dakota's incorporation of the federal rules by reference. EPA reviewed the revisions South Dakota made to 40 CFR 52.21 and 40 CFR 51.166 noted above and found them to be as stringent as the federal rules. EPA has, therefore, determined that the revisions are consistent with the program requirements for the preparation, adoption, and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, as set forth at 40 CFR 51.166, and are approvable as part of the South Dakota SIP.

III. What were the comments received and EPA's response?

EPA received three comment letters on our February 1, 2007 (72 FR 4671) proposal. Two commenters supported, and one commenter opposed, our proposed action. We have considered the comments received and we are generally finalizing our action as proposed. Following is a summary of the comments.

A. Two commenters support the inclusion of Chapter 74:36:09 Prevention of Significant Deterioration into the South Dakota State Implementation Plan.

Response: EPA acknowledges receipt of the comments and agrees with the commenters.

¹ Our proposal notice discusses EPA's December 31, 2002 NSR Reform rules and the provisions that have subsequently been clarified, and vacated and remanded by the courts.

B. One commenter submitted comments opposing our proposed partial approval and supporting our proposed partial disapproval of the inclusion of Chapter 74:36:09 Prevention of Significant Deterioration into the South Dakota State Implementation Plan.

1. The commenter stated that our proposed approval “appears to be a thinly-veiled attempt by the state to rollback critical public health and environmental safeguards in South Dakota by substituting a delegated program with a more lax state-administered program” and that “the proposed changes would eliminate the public’s opportunity to obtain review of a PSD permit by the U.S. Environmental Protection Agency’s Environmental Appeals Board and remove the automatic stay provision that provides the public with an opportunity to obtain review of a permit before construction commences.”

Response: Federal regulations specify the parameters that state-administered programs must meet and these regulations help ensure that public health and safety safeguards remain in place with the transition from a federal to a state program. Regulations at 40 CFR 51.166 set forth the criteria for PSD program approvals that EPA applies. EPA has determined that South Dakota’s PSD rules meet these criteria. As discussed above, South Dakota’s rules satisfy the public participation criteria in 40 CFR 51.166(q). Since these minimum criteria are satisfied, we have no grounds to conclude that South Dakota’s SIP approved program will be less rigorous than the federal permitting program that the State currently administers through a delegation.

Although permits issued under SIP approved programs are not subject to appeal to EPA’s Environmental Appeals Board, such actions are instead subject to the opportunities for review and appeal provided under state law. We interpret the statute and regulations to require at minimum an opportunity for state judicial review of PSD permits. See, 61 FR 1880, 1882 (Jan. 24, 1996). South Dakota has specified procedures for contesting a final PSD permit determination and requesting an administrative hearing at Chapter 74:09 of the South Dakota Administrative Rules (Contested Case Procedure). These procedures are referenced in 74:36:09:03 (Public participation). South Dakota law also provides for the right to judicial review of contested cases (SDCL 1–26–30). We, thus, have no grounds to deny PSD program approval based on the nature of review of final permit decisions under South Dakota law.

2. The commenter stated that the proposed approval “appears to be an attempt to reduce U.S. EPA’s obligation to protect endangered and threatened species in South Dakota.” The commenter noted that the Endangered Species Act (ESA) applies to EPA’s proposal to approve to South Dakota’s PSD permit program such that EPA “must determine whether this proposed action—approving major changes to the South Dakota PSD permit program—may affect any listed species” and “consult with the [U.S. Fish and Wildlife Service] prior to transferring air permitting authority to the State of South Dakota.” In addition, the commenter stated that EPA “must structure its approval * * * in such a manner as to preserve the agency’s duties to protect and restore listed species and their habitat.”

Response: EPA disagrees with the commenter. EPA’s approval of the South Dakota permitting program into the SIP is not an attempt to reduce ESA requirements in connection with PSD permitting in the State. As a practical matter, EPA has not carried out ESA consultation requirements in its prior approvals of PSD permitting programs for other states. Moreover, under relevant CAA provisions, states are entitled to administer approved PSD permitting programs, and EPA is required to approve a state’s program that satisfies applicable CAA requirements. The CAA SIP approval authority does not provide the Agency with the discretion to refrain from taking the action of approving the South Dakota PSD permit program if it meets all applicable CAA requirements. Accordingly, and as confirmed by recent Supreme Court precedent, the ESA requirements cited in the comments do not apply to EPA’s decision to approve South Dakota’s PSD permitting program into the SIP. See 50 CFR 402.03; *National Ass’n of Home Builders v. Defenders of Wildlife*, 127 S. Ct. 2518 (2007).

Section 7(a)(2) of the ESA generally requires federal agencies to consult with the relevant federal wildlife agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of federally-listed endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat of such species. 16 U.S.C. 1536(a)(2). In accordance with relevant ESA implementing regulations, this requirement applies only to actions in which there is discretionary federal involvement or control. 50 CFR 402.03. In the *Defenders of Wildlife* case, the Supreme Court examined these

provisions in the context of EPA’s decision to approve a state permitting program under the Clean Water Act (CWA). In that case, the Court held that when a federal agency is required by statute to undertake a particular action once certain specified triggering events have occurred, there is no relevant agency discretion, and thus the requirements of ESA section 7(a)(2) do not apply. 127 S. Ct. at 2536.

With regard to EPA’s transfer of CWA permitting authority to a state, the Court found that because the relevant CWA provision mandated that EPA “shall approve” a state permitting program if a list of CWA statutory criteria are met, EPA lacked the discretion to deny a transfer application that satisfied those criteria. *Id.* at 2531–32. The Court also found that the relevant CWA program approval criteria did not include consideration of endangered or threatened species, and stated that “[n]othing in the text of [the relevant CWA provision] authorizes EPA to consider the protection of threatened or endangered species as an end in itself when evaluating [an] application” to transfer a permitting program to a state. *Id.* at 2537. Accordingly, the Court held that the CWA required EPA to approve the state’s permitting program if the statutory criteria were met; those criteria did not include the consideration of ESA-protected species; and thus, consistent with 50 CFR 402.03, the non-discretionary action to transfer CWA permitting authority to the state did not trigger relevant ESA section 7 requirements.

Similar to the CWA program approval provision at issue in *Defenders of Wildlife*, section 110(k)(3) of the CAA mandates that EPA “shall approve” a SIP submittal that meets applicable CAA requirements. 42 U.S.C. 7410(k)(3). The CAA provides a list of SIP submittal criteria in section 110. See 42 U.S.C. 7410(a)(2). With respect to SIP submittals involving PSD permitting program applications, the relevant program approval criteria are found in the general CAA provisions regarding the PSD program, Title I, Part C, and EPA’s relevant regulations implementing those provisions, 40 CFR 51.166. See 42 U.S.C. 7410 (a)(2)(f).

As was the case with the CWA requirements in *Defenders of Wildlife*, the SIP requirements contained in section 110 of the CAA do not include protection of listed species, and neither Title I, Part C of the CAA nor EPA’s PSD implementing regulations explicitly state that consideration of the impacts on listed species is a required factor in PSD permitting decisions. EPA has interpreted sections 169(3) and

165(e)(3)(B) of the CAA as providing EPA with the relevant discretion to carry out ESA section 7(a)(2) obligations during its review of individual applications for federally-issued PSD permits under section 165. See, *In re: Indeck-Elwood, LLC*, PSD Appeal No. 03–04 (EAB Sept. 27, 2006), slip. op at 108 (holding EPA has discretion to consider impacts to listed species in Best Available Control Technology and soils and vegetation analysis). However, the use of this discretion in individual PSD permitting decisions does not provide EPA similar discretion in its SIP approval decisions under section 110.

In issuing individual PSD permits, EPA is required to complete an environmental impacts analysis in the best available control technology determination of CAA section 169(3) and an additional impacts analysis, including impacts on soils and vegetation, under section 165(e)(3)(B) of the CAA. In carrying out these analyses, EPA has interpreted these provisions as affording the Agency discretion to determine whether listed species are impacted by individual federal PSD permitting decision. In contrast, EPA's action on state SIP submittals is governed by section 110 of the CAA, which unequivocally directs EPA to approve state plans meeting applicable CAA requirements. Section 110 does not provide for similar impact analyses in reviewing PSD SIP submittals. Thus, although EPA's approval of an individual federal PSD permit and its approval of a state PSD permitting program both involve PSD, they are entirely different actions arising under different provisions of the CAA. An ESA obligation triggered by one provision of the statute—consideration of ESA in individual federal PSD permitting decisions—cannot be bootstrapped to raise that obligation in another provision—approval of a PSD SIP submittal—that does not provide EPA with similar discretion. See generally *Defenders of Wildlife* (finding that while EPA undertakes ESA consultation when issuing individual federal NPDES permits, it was not required to do so in approving state NPDES permitting programs). EPA recognizes that it exercises some judgment when evaluating whether a SIP submittal meets specific statutory PSD criteria. However, as the Supreme Court held in *Defenders of Wildlife*, the use of such judgment does not allow the Agency “the discretion to add another entirely separate prerequisite”—such as the ESA section 7(a)(2) consultation requirements—to the list of required criteria EPA considers when

determining whether it “shall approve” a state permitting program. 127 S. Ct. at 2537.

Applying the reasoning of *Defenders of Wildlife*, ESA consultation obligations do not apply to EPA's approval of South Dakota's PSD permit program, because the SIP approval criteria contained in the CAA do not provide EPA with the discretionary authority to consider whether approval of the State PSD permitting program into the SIP may affect any listed species. EPA has determined that the State has submitted a SIP for a PSD program that satisfies all of the applicable SIP requirements contained in section 110 of the CAA, as well as the applicable PSD requirements found in CAA Title I, Part C, and 40 CFR 51.166. Thus, given this Supreme Court precedent and applicable regulations, see 50 CFR 402.03, EPA is without discretion to disapprove or condition the State's program based on concerns for listed species, and the ESA requirements cited by the commenter are thus inapplicable to this approval action.

3. The commenter “supports U.S. EPA disapproving SD's attempt to have the state conduct the necessary consultation with a Federal Land Manager when a proposed source may impact a class 1 area.”

Response: EPA's proposed disapproval concerned only the narrow issue of the Federal Land Manager's (FLM) responsibility to consult with the EPA Administrator under 40 CFR 51.166(p)(2). See EPA's February 1, 2007 Notice of Proposed Rule (72 FR 4673) for additional discussion of this issue. On June 28, 2007, South Dakota submitted to EPA a revision of Chapter 74:36:09, effective June 13, 2007, that added 40 CFR 52.21(p)(2) to the list of provisions incorporated in Chapter 74:36:09 where the term “Administrator” continues to mean the Administrator of EPA. Therefore, in South Dakota, an FLM will continue to have the responsibility to consider, in consultation with the EPA, whether a proposed source or modification in South Dakota will have an adverse impact on air quality related values (including visibility). This is consistent with 40 CFR 51.166(p)(2).

EPA is approving the incorporation by reference of 40 CFR 52.21(p)(2) as part of the approval of Chapter 74:36:09. However, the State will have the responsibility to consider and respond to the FLM's analysis under the procedures set forth in sections 40 CFR 52.21(p)(3)–(8). In accordance with 40 CFR 51.166(p)(3) and 165(d)(2)(C)(ii) of the CAA, when there is no projected

violation of the PSD increments, the FLM bears the burden of demonstrating to the satisfaction of the state permitting authority that a project will have an adverse impact on air quality related values.

IV. What action is EPA taking?

We are approving the inclusion of Administrative Rules of South Dakota, Chapter 74:36:09, Prevention of Significant Deterioration, into the South Dakota SIP, including 74:36:09:02's incorporation of 40 CFR 52.21(p)(2). Additionally, EPA is rescinding its delegation of the PSD regulations to South Dakota.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely

approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 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 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 February 19, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 12, 2007.

Stephen S. Tuber,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 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 adding a new entry for chapter 74:36:09 after the existing entry for 74:36:07 to read as follows:

State citation	Title/subject	State effective date	EPA approval date and citation ¹	Explanations
*	*	*	*	*
74:36:09 Prevention of Significant Deterioration				
74:36:09:01	Applicability	9/18/06	[Insert Federal Register page number where the document begins and date]	
74:36:09:01.01	Prevention of significant deterioration permit required	9/18/06	[Insert Federal Register page number where the document begins and date]	
74:36:09:02	Prevention of significant deterioration	6/13/07	[Insert Federal Register page number where the document begins and date]	
74:36:09:03	Public participation	9/18/06	[Insert Federal Register page number where the document begins and date]	
*	*	*	*	*

¹ In order to determine the EPA effective date for a specific provision that is listed in this table, consult the **Federal Register** cited in this column for that particular provision.

■ 3. Section 52.2178 is amended by revising paragraphs (a) and (b) to read as follows and by deleting paragraph (c):

§ 52.2178 Significant deterioration of air quality.

(a) The South Dakota plan, as submitted, is approved as meeting the requirements of part C, subpart 1 of the

CAA, except that it does not apply to sources proposing to construct on Indian reservations;

(b) Regulations for preventing significant deterioration of air quality.

The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the South Dakota State implementation plan and are applicable to proposed major stationary sources or major modifications to be located on Indian reservations.

* * * * *

[FR Doc. E7-24717 Filed 12-20-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2007-0029; FRL-8342-3]

Glufosinate-ammonium; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation modifies the tolerances for the combined residues of glufosinate-ammonium and its metabolites expressed as butanoic acid in or on raw agricultural commodities. Bayer CropScience LLC requested this revision under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 21, 2007. Objections and requests for hearings must be received on or before February 19, 2008 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0029. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP

Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Kathryn V. Montague, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-1243; e-mail address: montague.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at

<http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2007-0029 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before February 19, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2007-0029, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

II. Petition for Tolerance

In the **Federal Register** of February 28, 2007 (72 FR 9000) (FRL-8115-5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7161) by Bayer CropScience LLC, 2 T.W. Alexander Dr.,