

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction.

Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Revise paragraphs (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), (c)(1)(iii) and (c)(2) and add (c)(3) of § 100.518 to read as follows:

§ 100.518 Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, Maryland.

* * * * *

(c) *Enforcement period.* (1) This section will be enforced from 5 a.m. to 6 p.m. on days when the following events are held:

- (i) Safety at Sea Seminar, held on the fourth Saturday in March;
- (ii) Naval Academy Crew Races held on the last weekend in March and every weekend in April and May;
- (iii) Blue Angels Air Show, held on the fourth Tuesday and Wednesday in May.

(2) Should the event’s daily activities conclude prior to 6 p.m., enforcement of this section may be terminated for that day at the discretion of the Coast Guard Patrol Commander.

(3) The Commander, Fifth Coast Guard District will publish a notice in the Fifth Coast Guard District Local Notice to Mariners announcing the specific event dates and times. Notice will also be made via marine Safety Radio Broadcast on VHF–FM marine band radio channel 22 (157.1 MHz).

Dated: January 10, 2007.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E7–1613 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0928; FRL–8275–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove revisions adopted by South Dakota on August 29, 2006 to Chapter 74:36:09 of the South Dakota Administrative Rules (Prevention of Significant Deterioration of Air Quality). South Dakota submitted the request for approval of these rule revisions into the State Implementation Plan (SIP) on September 1, 2006. 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. EPA’s delegation of authority to South Dakota for the PSD regulations would be rescinded if EPA issues final approval of this SIP revision, except for the one rule provision that EPA is proposing to disapprove. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before March 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0928, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* daly.carl@epa.gov and ostrand.laurie@epa.gov.

- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- *Mail:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

- *Hand Delivery:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2006–0928. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the 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 either electronically in 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: Carl Daly, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6416, daly.carl@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.

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I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is

claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

These revisions are commonly referred to as the “NSR Reform” regulations and became effective nationally in areas not covered by a SIP on March 3, 2003. Since South Dakota is delegated for PSD and not covered by a SIP, the NSR Reform regulations became effective in South Dakota at that time. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future-actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). As stated in the December 31, 2002 rulemaking, State and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of that rulemaking no later than January 2, 2006 (67 FR 80240). As noted above, South Dakota is currently delegated for the PSD program and is not subject to this requirement, but the State requests in their submittal to have the PSD program incorporated into South Dakota’s SIP.

II. What Is Being Addressed in This Document?

EPA is proposing to approve revisions to Chapter 74:36:09 (Prevention of Significant Deterioration of Air Quality) of the Administrative Rules of South Dakota. These revisions were submitted to EPA by the South Dakota Department of Environment and Natural Resources (DENR) on September 1, 2006, and relate to the Prevention of Significant Deterioration (PSD) permit program of the State of South Dakota. These revisions to Chapter 74:36:09 were adopted by the South Dakota Board Interim Rules Committee on August 29, 2006. South Dakota was granted delegation of authority by EPA on July 6, 1994 to implement and enforce the federal PSD permitting regulations. EPA provided notice of this delegation in the **Federal Register** on September 15, 1994 (59 FR 47260).

On December 31, 2002, EPA published revisions to the federal PSD and non-attainment NSR regulations in 40 CFR parts 51 and 52 (67 FR 80186).

On November 7, 2003, EPA published a reconsideration of the NSR Reform regulations that clarified two provisions in the regulations by including a definition of “replacement unit” and by clarifying that the plantwide applicability limitation (PAL) baseline calculation procedures for newly constructed units do not apply to modified units.

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR Reform revisions (*State of New York et al. v. EPA*, 413 F.3d 3 (D.C. Cir. 2005)). Although the Court upheld most of EPA’s rules, it vacated both the Clean Unit and the Pollution Control Project provisions and remanded back to EPA the recordkeeping provision at 40 CFR 52.21(r)(6) that required a stationary source to keep records of projects when there was a “reasonable possibility” that the project could result in a significant emissions increase.

On October 27, 2003 EPA published the Routine Equipment Replacement Provision (68 FR 61248), which specified at 40 CFR 52.21(cc) the criteria for routine equipment. On March 17, 2006, the Court of Appeals for the D.C. Circuit vacated EPA’s final Routine Equipment Replacement Provision (ERP).

In its revision to Chapter 74:36:09 of the South Dakota Administrative Rules, South Dakota did not incorporate the vacated Clean Unit, PCP, and ERP provisions.

III. What Are the Changes That EPA Is Approving?

EPA is proposing to approve a revision to South Dakota's SIP that would incorporate by reference the federal PSD requirements, found at 40 CFR 52.21, into the State's PSD program. 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 the vacated federal requirements for Equipment Replacement, Clean Unit, and Pollution Control Project. 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 incorporate by reference the phrase "reasonable possibility" as it is used at 40 CFR 52.21(r)(6). EPA has not yet responded to the D.C. Circuit Court's remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules. As a result, EPA's final decision with regard to the remand may require EPA to take further action on this portion of South Dakota's 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 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), and 52.21(l)(2). This list does not include 40 CFR 52.21(p)(2). Therefore, under South Dakota's PSD rule, the term "Administrator" in 40 CFR 52.21(p)(2) refers to the Secretary of the DENR.

This is inconsistent with EPA's determination that 40 CFR 52.21(p)(2) must still refer to the Administrator of EPA. EPA bases this determination on a review of its PSD regulations at 40 CFR 51.166. While the PSD regulations at 40 CFR 52.21 apply to EPA's direct implementation of the PSD program in States that do not have an approved PSD SIP, the PSD regulations at 40 CFR 51.166 identify the elements States must include in their SIPs to gain EPA approval. The regulations at 40 CFR 51.166 generally mirror the regulations at 40 CFR 52.21, except that the term "Administrator" in 40 CFR 52.21 is often replaced by the term "reviewing authority" in 40 CFR 51.166. However, 40 CFR 51.166(p)(2), which corresponds to 40 CFR 52.21(p)(2), retains the term "Administrator," indicating that in SIPs the required consultation must continue to occur with the EPA Administrator, not the Administrator of the State program. In contrast, other provisions in 40 CFR 51.166(p) use the term "reviewing authority" in place of Administrator (e.g., 40 CFR 51.166(p)(1) and (p)(3)).

In addition, EPA's determination is consistent with recently EPA approved SIP revisions where the State has incorporated by reference 40 CFR 52.21. Mississippi's PSD regulations identify that "Administrator as it appears in 40 CFR 52.21 shall mean the Mississippi Environmental Quality Permit Board, except that: * * * In the following subsections, it shall continue to mean the Administrator of the USEPA: * * * i. (p)(2) (concerning Federal Land Manager)." (See 71 FR 38773, July 10, 2006). Missouri's PSD regulations identify that "Administrator as it appears in 40 CFR 52.21 shall refer to the director of the Missouri Department of Natural Resources' Air Pollution Control Program except in the following, where it shall continue to refer to the administrator of the U.S. Environmental Protection Agency: * * * 9. (p)(2) Federal Land Manager." (See 71 FR 36486, (June 27, 2006)).

Therefore, we are proposing disapproval of 74:36:09:02's incorporation of 40 CFR 52.21(p)(2), and we are proposing to disapprove 74:36:09:02(1) to the extent it defines "Administrator," as used in 40 CFR 52.21(p)(2), to mean the Secretary of DENR. In all other respects, we are approving 74:36:09:02 and 74:36:09:02(1). Thus, until South Dakota revises its PSD rule to address our concern and gains EPA approval of the revision, 40 CFR 52.21(p)(2) will continue to apply as federal law in lieu of the State-adopted version of 40 CFR 52.21(p)(2). This means that the consultation required by 40 CFR 52.21(p)(2) needs to occur with the EPA Administrator, not the Secretary of DENR.¹

If South Dakota submits a SIP revision that revises their PSD rule to clarify that the term "Administrator," as used in 40 CFR 52.21(p)(2), means the EPA Administrator prior to final EPA action on this SIP rulemaking, EPA will approve the incorporation by reference of 40 CFR 52.21(p)(2).

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. The revisions South Dakota made to 40 CFR 52.21 noted above were reviewed by EPA and found to be as stringent as the federal rules, except for provision 74:36:09:02(1), noted above. EPA has, therefore, determined that, except for 74:36:09:02(1), the proposed revisions are consistent with the program requirements for the preparation, adoption, and submittal of

¹ 40 CFR 52.21(p)(2): "Federal Land Manager. The Federal Land Manager and the Federal official charged with direct responsibility for management of Class I lands have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands and to consider, in consultation with the Administrator, whether a proposed source or modification would have an adverse impact on such values."

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.

IV. What Action Is EPA Taking?

We propose to partially approve revisions to Administrative Rules of South Dakota, Chapter 74:36:09 Prevention of Significant Deterioration into the South Dakota SIP. EPA is proposing to disapprove 74:36:09:02's incorporation of 40 CFR 52.21(p)(2), and we are proposing disapproval of 74:36:09:02(1) to the extent that it defines "Administrator," as used in 40 CFR 52.21(p)(2), to mean the Secretary of DENR. In all other respects, we are approving 74:36:09:02 and 74:36:09:02(1).

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to partially approve and partially disapprove state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 (59 FR 22951, 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 proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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 is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 Clean Air Act. 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, 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: January 23, 2007.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.
[FR Doc. E7-1621 Filed 1-31-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[EPA-R08-OAR-2005-UT-0007; FRL-8275-3]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Administrative Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Governor of Utah on August 15, 2001. This SIP submittal deletes Utah's rules R307-102-3, "Administrative Procedures and Hearings," and R307-414-3, "Request for Review." EPA is proposing to remove Utah's rules R307-102-3 and R307-414-3 from Utah's federally approved SIP, because these rules are not required to be in Utah's SIP. This action is being taken under section 110 of the Clean Air Act.

Furthermore, on August 25, 2006, the Governor of Utah submitted revisions to the New Source Performance Standards (NSPS) rules in Utah's Air Conservation Regulations. We are proposing to approve updates to the NSPS "Delegation Status of New Source Performance Standards" table to indicate the State has been delegated the authority to implement and enforce NSPS and to add entries for newly delegated NSPS.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.