



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2016-0424; FRL-9950-38-Region 8]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of South Dakota on October 23, 2015 and July 29, 2013 related to South Dakota's Air Pollution Control Program. The October 23, 2015 submittal revises certain definitions and dates of incorporation by reference and contains new, amended and renumbered rules. In this rulemaking, we are taking final action on all portions of the October 23, 2015 submittal, except for those portions of the submittal which do not belong in the SIP. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[Insert date 30 days after publication in the FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2016-0424, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from 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>.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

What should I consider as I prepare my comments for the EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the 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:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and
- Make sure to submit your comments by the comment period deadline identified.

## **II. Background**

### July 29, 2013 Submittal

On July 29, 2013, the State of South Dakota submitted a SIP revision containing amendments 74:36:10:06 (Causing or contributing to a violation of any national ambient air quality standard). This revision added significant impact levels (SILs) for particulate matter less than 2.5 microns (PM<sub>2.5</sub>) as required in the EPA's October 20, 2010, PM<sub>2.5</sub> "Increment Rule." However, on January 22, 2013, the United States Court of Appeals for the District of Columbia Circuit vacated the SILs for PM<sub>2.5</sub>. On December 9, 2013, the EPA issued a final rule that removes the PM<sub>2.5</sub> SILs from the EPA's PSD regulations (78 FR 73698). As a result of this court decision and the EPA's rulemaking, in the October 23, 2015, submittal, South Dakota removed

the SILs for PM<sub>2.5</sub> from section 74:36:10:06. This action effectively supersedes the July 29, 2013 action for 74:36:10:06.

#### October 23, 2015 Submittal

##### *A. Chapter 74:36:01 – Definitions*

Chapter 74:36:01 defines the terms used throughout Article 74:36 – Air Pollution Control Program. There are six definitions in Chapter 74:36:01 that reference federal regulations. The sections in Chapter 74:36:01 that are being updated to the version of the federal reference as of July 1, 2014, involve the following: 74:36:01:01(8), 74:36:01:01(29), 74:36:01:01(67), 74:36:01:01(73), 74:36:01:05, and 74:36:01:20. We will be acting on the revision to 74:36:01:01(73) in a separate rulemaking. This is addressed in more detail under section III of this rulemaking.

South Dakota's October 23, 2015 submittal also added the phrase "insignificant increase in allowable emissions" to the definition of "permit revision" in section 74:36:01(50) and revised the definition of "modification" in section 74:36:01:10 to allow an exception for insignificant increases in allowable emissions. This proposed rulemaking also adds a new definition for "Insignificant increases in allowable emissions" in section 74:36:01:10.01. This addition to the definition for "insignificant increase in allowable emissions" is to account for all of the new federal standards covering small sources of air pollutants, to streamline the permitting actions for these small sources, and to be consistent with federal permitting requirements. This definition was derived from Table I in 40 CFR 49.153 and is addressed in more detail under section III of this rulemaking.

##### *B. Chapter 74:36:02 – Ambient Air Quality*

Chapter 74:36:02 established air quality goals and ambient air quality standards for South Dakota. The sections in Chapter 74:36:02 that are being updated to the version of the federal reference as of July 1, 2014, involve the following: 74:36:02:02, 74:36:02:03, 74:36:02:04 and 74:36:02:05.

*C. Chapter 74:36:03 – Air Quality Episodes*

Chapter 74:36:03 identifies the contingency plan the South Dakota Department of Environment and Natural Resources (DENR) will follow during an air pollution emergency episode. The sections in Chapter 74:36:03 that are being updated to the version of the federal reference as of July 1, 2014, involve the following: 74:36:03:01 and 74:36:03:02.

*D. Chapter 74:36:04 – Operating Sources for Minor Sources*

Chapter 74:36:04 is South Dakota's minor source air quality operating permit program. The section in Chapter 74:36:04 that is being updated to the version of the federal reference as of July 1, 2014, involve the following: 74:36:04:04.

Section 74:36:04:03 lists emission units that are exempt from inclusion in a minor air quality operating permit. Emission units may not be exempted if federally enforceable limits have been included in the permit to avoid other permits. The revisions are being proposed to clarify that any unit that is subject to a federal rule in Chapter 74:36:07 – New Source Performance Standards and Chapter 74:36:08 – National Emission Standards for Hazardous Air Pollutants may not be exempted from inclusion in the minor air quality operating permit.

A definition for “insignificant increase in allowable emissions” is being added to Chapter 74:36:01 to account for all of the new federal standards covering small sources of air pollutants, to stream line the permitting actions for these small sources, and to be consistent with the federal

permitting requirements. As such, the revisions are proposing to add section 74:36:04:21.01 which will identify procedures for processing an application for activities that are considered an “insignificant increase in allowable emissions.” This process will allow construction projects to move forward if the air pollution increase meets the definition of an “insignificant increase in allowable emissions.”

*E. Chapter 74:36:05 – Operating Sources for Part 70 Sources*

We are not taking action on revisions to this chapter. Title V permits are not part of the SIP.

*F. Chapter 74:36:07 – New Source Performance Standards*

We are not taking action on revisions to this chapter. New source performance standards (NSPS) are not part of the SIP.

*G. Chapter 74:36:08 – National Emission Standards for Hazardous Air Pollutants*

We are not taking action on revisions to this chapter. National emission standards for hazardous air pollutants (NESHAPs) are not part of the SIP.

*H. Chapter 74:36:09 – Prevention of Significant Deterioration*

Chapter 74:36:09 is South Dakota’s PSD preconstruction program for major sources located in areas of the state that attain the federal national ambient air quality standards (NAAQS). The sections in Chapter 74:36:09 that are being updated to the version of the federal reference as of July 1, 2014, involve the following: 74:36:09:02 and 74:36:09:03. This chapter also adds 74:36:09:02(7), 74:36:09:02(8) and 74:36:09:02(9). These provisions remove 40 CFR 52.21(b)(49)(v) and references to 40 CFR 52.21(b)(49)(v) from the SIP.

*I. Chapter 74:36:10 – New Source Review*

Chapter 74:36:10 is South Dakota's New Source Review (NSR) preconstruction permit program for major sources in areas of the state that are not attaining the NAAQS. All of South Dakota is in attainment with the federal standards; therefore, there are no facilities that require a preconstruction permit under this program.

The sections in Chapter 74:36:10 that are being updated to the version of the federal reference as of July 1, 2014, involve the following: 74:36:10:02, 74:36:10:03.01, 74:36:10:05, 74:36:10:07 and 74:36:10:08.

On March 30, 2011, the EPA extended the stay of the "Fugitive Emissions Rule" under the new source review program. The extension clarified the stay and revisions of specific paragraphs in the new source review program affected by the "Fugitive Emissions Rule." Changes to 74:36:10:02 are proposed revise South Dakota's SIP to remove these references.

On January 22, 2013, the United States Court of Appeals for the District of Columbia Circuit vacated the significant impact levels for PM<sub>2.5</sub> in the new source review program. The revisions to 74:36:10:06 reflect this court decision.

*J. Chapter 74:36:11 – Performance Testing*

Chapter 74:36:11 identifies the performance testing requirements used by permitted facilities to demonstrate compliance with permit limits. The sections in Chapter 74:36:11 that are being updated to the version of the federal reference as of July 1, 2014, involve the following: 74:36:11:01.

*K. Chapter 74:36:12 – Control of Visible Emissions*

Chapter 74:36:12 identifies visible emission limits for units that emit air pollution. The sections in Chapter 74:36:12 that are being updated to the version of the federal reference as of July 1, 2014, involve the following: 74:36:12:01 and 74:36:12:03.

*L. Chapter 74:36:13 – Continuous Emission Monitoring Systems*

Continuous Emission Monitoring Systems are part of South Dakota’s Title V program and are not part of the SIP.

*M. Chapter 74:36:16 – Acid Rain Program*

The Acid Rain Program is not part of the SIP.

*N. Chapter 74:36:18 – Regulations for State Facilities in the Rapid City Area*

The sections in Chapter 74:36:18 that are being updated to the version of the federal reference as of July 1, 2014, involve the following: 74:36:18:10.

*O. Chapter 74:36:20 – Construction Permits for New Sources or Modifications*

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2014. This revision will update any minor inconsistency between South Dakota’s SIP and EPA’s federal regulations as of July 1, 2014. These proposed changes involve section 74:36:20:05.

South Dakota’s October 23, 2015, submittal adds certain pre-permit construction activities and also adds procedures for an “insignificant increase in allowable emissions.” These revisions are discussed in more detail in Section III of this rulemaking.

### **III. What is the EPA Proposing to Approve?**

#### **A. What the EPA is Not Acting On**

1. The EPA is not acting on revisions to 74:36:05 (Operating Permits for Part 70 Sources), 74:36:07 (New Source Performance Standards) and 74:36:08 (National Emission Standards for Hazardous Air Pollutants) and 74:36:16 (Acid Rain) because these sections are not part of the SIP.

2. The EPA will act on revisions to 74:36:01(73) (definition for Subject to Regulation), and 74:36:09:02(10) in a separate rulemaking. These revisions revise the definition of “Subject to Regulation” in the SIP. The definition of “Subject to Regulation” is located in 40 CFR 51.166(a)(48)(i) – (v) and 40 CFR 52.21(b)(49)(i) – (v).

On June 23, 2014, the U.S. Supreme Court (*Utility Air Regulatory Group (UARG) v. EPA*) held that the EPA may not treat greenhouse gases (GHGs) as an air pollutant for the specific purposes of determining whether a source is a major source and thus required to obtain a PSD or title V permit. On April 10, 2015, the D.C. Circuit issued a Coalition Amended Judgement, which reflects the *UARG v. EPA* Supreme Court Decision. The EPA issued a final rulemaking addressing the court decision on August 19, 2015 (80 FR 50199).

The Coalition Amended Judgement only specifically ordered that the EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v)) be vacated. In the EPA’s final rulemaking titled “Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Element,” which was published on August 19, 2015 (80 FR 50199), we state:

“This final action removes from the CFR several provisions of the PSD and title V permitting regulations that were originally promulgated as part of the Tailoring Rule and that the D.C. Circuit specifically identified as vacated in the Coalition Amended

Judgement. Because the D.C. Circuit specifically identified the Tailoring Rule Step 2 PSD permitting requirements in 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v) and the regulations that require the EPA to consider further phasing-in the GHG permitting requirements at lower GHG emission thresholds in 40 CFR 52.22, 70.12 and 71.13 as vacated, the EPA is taking the ministerial action of removing these provisions from the CFR.”

EPA further states:

“The EPA intends to further revise the PSD and title V regulations to fully implement the Coalition Amended Judgement in a separate rulemaking. This future rulemaking will include revisions to additional definitions in the PSD regulations.”

We are acting on 74:36:01(73) in a separate rulemaking because South Dakota added the sentence “Greenhouse gases are not subject to regulation unless a PSD preconstruction permit is issued regulating greenhouse gases in accordance with chapter 74:39:09.” This sentence is not in compliance with the current definition of “Subject to Regulation” in 40 CFR 51.166(b)(48) and 52.21(b)(49). As mentioned previously in this rulemaking, the EPA intends to publish a future rulemaking which will revise additional definitions in the PSD regulations. However, the EPA’s rulemaking in 80 FR 50199 only removes 40 CFR 51.166(b)(48)(v).

We are acting on 74:36:09(02)(10) in a separate rulemaking because 74:36:09(02)(10) revises the definition of 40 CFR 52.21(b)(49)(iv)(b). The revision is not in compliance with the current definition of “Subject to Regulation” in 40 CFR 51.166(b)(48) and 52.21(b)(49)(iv)(b). Section 52.21(b)(49)(iv)(b) was not addressed in 80 FR 50199.

The EPA intends to act on these revisions after a future EPA rulemaking is published to include revisions to additional definitions in the PSD regulations.

#### B. What the EPA is Acting On

The EPA is proposing to approve all revisions as submitted by the State of South Dakota on October 23, 2015, with the exception of the revisions mentioned in section III. A. of this rulemaking. This includes the following revisions:

##### The removal of PM<sub>2.5</sub> SILs

We are proposing to approve the removal of PM<sub>2.5</sub> SILs from 74:36:10:06.

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia Circuit ruled on a challenge brought by the Sierra Club to the SILs and significant monitoring concentration (SMC) established for PM<sub>2.5</sub> in the EPA's October 20, 2010 rule for implementing the PM<sub>2.5</sub> NAAQS. The court found there was no authority for the SMC established for PM<sub>2.5</sub> and, as a result, vacated the SMC. With respect to the PM<sub>2.5</sub> SIL, the court vacated and remanded the SIL to the EPA at the agency's request. SILs and SMCs have been important screening tools that have been used to prevent unnecessary PSD permitting delays when the impact of the emission increases are considered de minimis. On December 9, 2013, the EPA issued a final rule that removes the PM<sub>2.5</sub> SIL from the EPA's PSD regulations. The final rule also sets the SMC in the EPA's PSD regulations at 0 ug/l, thus triggering the preconstruction monitoring requirement for any increase in ambient concentrations of PM<sub>2.5</sub> from a major project.

##### Pre-permit construction activities

Chapter 74:36:20 requires an air quality construction permit for new businesses/facilities and existing businesses/facilities that modify their operations that do not meet the requirements

for obtaining a preconstruction permit in Chapters 74:36:09 and 74:36:10. DENR submitted Chapter 74:36:20 to the EPA for inclusion in South Dakota's SIP. The EPA approved Chapter 74:36:20 in South Dakota's SIP on June 27, 2014, except for the phrase, "unless it meets the requirements in section 74:36:20:02.01," and all of section 74:36:20:02.01 (79 FR 36419). This section was disapproved because construction was not limited to construction of concrete foundations, below ground plumbing, ductwork, or other infrastructure and/or excavation work prior to the issuance of the construction permit and there was no requirement for the source to receive a completeness determination (or some type of administrative approval) from the reviewing authority prior to construction. In this submittal, Section 74:36:20:02.01 allows small projects to start construction, which is limited to construction of concrete foundations, below ground plumbing, ductwork, or other infrastructure and/or excavation work, after they receive a completeness determination and prior to receiving a construction permit but does not allow them to start operation until the construction permit has been issued. The intention of the language was to allow construction of small sources that would not impact South Dakota's ability to achieve and/or maintain the NAAQS because of South Dakota's relative short construction season due to ground freezing during the winter season or other inclement weather that could potentially and unnecessarily delay the construction project. These changes were made to resolve the issue with the EPA's prior disapproval of section 74:36:20:02.01 in South Dakota's SIP.

South Dakota's proposed language sets specific conditions that must be met prior to a source commencing construction (but before a construction permit has been issued): 1) The owner/operator has submitted a construction permit application; 2) The owner/operator provided five days notice of their intention to initiate construction; 3) The new source or modification to

an existing source is not subject to PSD or NSR (it has to be a true minor source); 4) The new source or modification is not subject to case-by-case MACT; 5) The owner/operator is liable for all construction conducted before the permit is issued, and the applicant may not operate any source equipment that may emit any air pollutant prior to receiving a permit; 6) The owner/operator must cease construction if the DENR demonstrates that the construction will interfere with the attainment or maintenance of a NAAQS or increment; and 7) The owner/operator must make any changes to the new source or modification of an existing source that may be imposed in the issued construction permit.

This revision is in compliance with federal requirements, including: 1) CAA section 110(a)(2)(c), which requires states to include a minor NSR program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are achieved; 2) The regulatory requirements under 40 CFR 51.160, including section 51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS; and 3) the statutory requirements under CAA section 110(l), which provides that the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

#### Insignificant Increase in allowable emissions

On July 1, 2011, the EPA promulgated a federal minor source review program in Indian country (Tribal NSR Rule) (76 FR 38748). The Tribal NSR Rule does not require a construction

permit for new sources or modifications to existing sources if emissions are below the minor NSR threshold in Table 1 of 40 CFR 49.153.

In this rulemaking, the EPA established de minimis thresholds at which sources are to be exempt from permitting requirements for each regulated NSR pollutant (see 40 CFR 49.153 – Table 1) utilizing an allowable-to-allowable applicability test. The EPA stated in this rulemaking that these threshold levels represent a reasonable balance between environmental protection and economic growth (76 FR 38758). The EPA further recognized in designing the tribal NSR rule, that the overarching requirement is ensuring NAAQS protection (76 FR 38756) as described in CAA section 110(a)(2)(C). In order to determine that the sources below minor NSR permit thresholds in 40 CFR 49.153 – Table 1 would be inconsequential to attainment or maintenance of the NAAQS, the EPA performed a national source distribution analysis (see 71 FR 48702). In this analysis, the EPA looked at size distribution of existing sources across the country. Using the National Emissions Inventory (NEI), which includes the most comprehensive inventory of existing U.S. stationary point sources that is available, the EPA determined how many of these sources fall below the proposed minor NSR thresholds (see 71 FR 48702, Table 2). For each pollutant, the EPA found that only around 1 percent (or less) of total emissions would be exempt from review under the minor NSR program. At the same time, the thresholds would promote an effective balance between environmental protection and source burden because anywhere from 42 percent to 76 percent of sources (depending on the pollutant) would be too small to be subject to preconstruction review (76 FR 38758). South Dakota, which contains areas of Indian country that are subject to the permitting thresholds in the tribal NSR rule, has established the same exemption levels as those in the tribal NSR rule. In addition, as the EPA explained in the tribal

NSR rule, this will “allow us to begin leveling the playing field with the surrounding state programs and will result in a more cost-effective program by reducing the burden on sources and reviewing authorities.” (see 76 FR 38758)

In order to be consistent with the EPA and to streamline the process for insignificant increases in air emissions, DENR is proposing to add “insignificant increase in allowable emissions” to the definition of “permit revision” in section 74:36:01(50) and an exemption to the definition of “modification” in section 74:36:01:10, which will allow construction if the air emission increases meet the definition of an “insignificant increase in allowable emissions.” This can also be referred to as a “de minimus exemption.” DENR is proposing to add a definition for “insignificant increase in allowable emissions,” which is derived from Table 1 in 40 CFR 49.153, in 74:36:01:10.01. This process would still require the project to be covered by a permit but would use a process similar to the EPA’s administrative amendment process.

We have also reviewed South Dakota’s air monitoring data over the last 5 years (see docket). This data shows South Dakota is below the NAAQS for all criteria pollutants.

The EPA notes that we have approved several similar de minimis exemption provisions in other states as follows:

1. On January 16, 2003, the EPA approved a minor NSR program for the State of Idaho (68 FR 2217). This rule allows changes to be considered exempt from permitting if the source’s uncontrolled potential emissions are less than ten percent (10%) of the NSR significant emissions rate. For example: 1.5 tons per year for PM<sub>10</sub>, 4 tons per year for volatile organic compounds (VOCs), nitrogen dioxide (NO<sub>2</sub>), and sulfur dioxide (SO<sub>2</sub>), and 10 tons per year for carbon monoxide (CO). The EPA determined in this instance that states may exempt from minor

NSR certain categories of changes based on de minimis or administrative necessity grounds in accordance with the criteria set out in *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979). De minimis sources are presumed to not have an impact and the state has determined that their emissions would not prevent or interfere with attainment of the NAAQS, even within nonattainment areas.

2. On February 13, 2012, the EPA approved a five tons per year potential emissions level as a de minimis threshold to be exempt from permitting requirements in the State of Montana (77 FR 7531). In this final rulemaking, the EPA determined this de minimis threshold met the requirements of CAA section 110(a)(2)(C), 40 CFR part 51.160 and CAA section 110(l).

3. On May 27, 2008, the EPA approved a 25 tons per year actual emissions level as a de minimis threshold for fossil fuel burning equipment to be exempt from permitting requirements in the State of North Dakota, and a 5 ton per year actual emissions level as a de minimis threshold for any internal combustion engine, or multiple engines to be exempt from permitting requirements. The EPA determined the revision will not adversely impact the NAAQS or PSD increments (73 FR 30308).

4. On February 1, 2006, the EPA approved a 5 tons per year actual emissions level as a de minimis threshold to be exempt from permitting requirements in the State of North Carolina (see 61 FR 3584).

We evaluated the addition of “insignificant increase in allowable emissions” to the South Dakota SIP using the following: 1) the statutory requirements under CAA section 110(a)(2)(c), which requires states to include a minor NSR program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are

achieved; 2) the regulatory requirements under 40 CFR 51.160, including section 51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS; and 3) the statutory requirements under CAA section 110(l), which provides that the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Therefore, the EPA will approve a SIP revision only after it is demonstrated that such a revision will not interfere (“noninterference”) with attainment of the NAAQS, Rate of Progress (ROP), RFP or any other applicable requirement of the CAA.

We are proposing to approve the addition of “insignificant increase in allowable emissions.” These revisions are expected to be inconsequential to attainment and maintenance of the NAAQS because: 1) Section 74:36 has safeguards which prevent circumvention of NSR requirements; 2) Sources are still regulated by other rules within 74:36 and underlying statewide area source rules in the Administrative Rules of South Dakota (ARSD); 3) The insignificant thresholds in 74:36:01:10.01 are the same as the de minimis level threshold in the Tribal NSR rule and similar to many of the federally enforceable minor NSR programs in surrounding states and around the country; 4) South Dakota contains areas of Indian country that are subject to the permitting thresholds in the tribal NSR rule; and 5) The last 5 years of monitoring data for criteria pollutants (see docket) show that all pollutants are below NAAQS levels.

Removal of 40 CFR 52.21(b)(49)(v) from 74:36:09 (PSD)

We are approving the removal of 40 CFR 52.21(b)(49)(v) from 74:36:09 to reflect the Coalition Amended Judgement, which only specifically ordered that the EPA regulations under

review (including 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v)) be vacated. The EPA's final rulemaking titled "Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Element," which was published on August 19, 2015 (80 FR 50199) removed 40 CFR 52.21(b)(49)(v) from the CFR.

#### Proposed Correction to IBR Material in Previous Rulemaking

In our final rule published in the Federal Register on February 16, 2016 (81 FR 7706) we inadvertently used an incorrect approval date in the updates to the South Dakota regulatory table. The EPA is proposing to correct this error with today's action. The IBR material for our February 16, 2016 action is contained within this docket.

#### **IV. What Action is the EPA Taking?**

For the reasons described in section III of this proposed rulemaking, the EPA is proposing to approve South Dakota's October 23, 2015 submittal, with the exceptions noted in section III. Our action is based on an evaluation of South Dakota's revisions against the requirements of CAA section 110(a)(2)(c) and regulatory requirements under 40 CFR 51.160 – 164 and 40 CFR 51.166. The EPA is also proposing to approve a correction to our final rule published in the Federal Register on February 16, 2016 (81 FR 7706).

#### **IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Administrative Rules of South Dakota pertaining to section 74:36 as outlined in this preamble. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at

the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

#### **V. 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 proposed 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 proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 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 (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 Clean Air Act; and
- does not provide the 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **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, Incorporation by reference.

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

Dated: July 26, 2016.

Shaun L. McGrath,  
Regional Administrator,  
Region 8.

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