

**Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Extension of Comment Period—Commission Voting Summary and Statements of Commissioners**

**Appendix 1—Commission Voting Summary**

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

[FR Doc. 2011–10880 Filed 5–11–11; 8:45 am]

BILLING CODE 6351–01–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2011–0142; FRL–9304–3]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Large Appliance Coatings**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. This SIP revision includes amendments to Maryland's regulation for Volatile Organic Compounds from Specific Processes and meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for large appliance coatings. These amendments will reduce emissions of volatile organic compound (VOC) emissions from large appliance coating facilities. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by June 13, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0142, by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail:*  
*fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2011–0142, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2011–0142. 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* website 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.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is

not publicly available, i.e., 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 in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov*.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, "Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Large Appliance Coatings," that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 26, 2011.

**James W. Newsom,**  
*Acting Regional Administrator, Region III.*

[FR Doc. 2011–11558 Filed 5–11–11; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R08–OAR–2010–0301; FRL–9304–7]

**Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; South Dakota**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP) submission from the State of South Dakota to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their

SIPs to ensure that they meet the requirements of the “infrastructure elements” of section 110(a)(2). The State of South Dakota submitted a certification of their Infrastructure SIP for the 1997 ozone NAAQS, dated February 1, 2008, which was determined to be complete on March 27, 2008 (73 FR 16205). EPA does not propose to act on the State’s February 1, 2008 submission to meet the requirements of section 110(a)(2)(D)(i) of the CAA, relating to interstate transport of air pollution, for the 1997 ozone NAAQS. EPA approved the State’s interstate transport SIP submission on May 8, 2008 (73 FR 26019).

**DATES:** Written comments must be received on or before June 13, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2010–0301, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* [dolan.kathy@epa.gov](mailto:dolan.kathy@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 Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 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–2010–0301. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 <http://www.regulations.gov> or e-mail. The <http://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 <http://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 <http://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 <http://www.regulations.gov> or in hard copy at the Air 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:** Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, [dolan.kathy@epa.gov](mailto:dolan.kathy@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.

#### **Table of Contents**

- I. General Information
- II. Background
- III. What Infrastructure elements are required under sections 110(a)(1) and (2)?
- IV. How did the State of South Dakota address the infrastructure elements of Sections 110(a)(1) and (2)?
- V. What action is EPA taking?
- VI. Statutory and Executive Order Reviews

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

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

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. 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 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

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several “infrastructure elements,” listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submission may also vary depending upon what provisions the state’s existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only certify that fact via a letter to EPA.<sup>1</sup>

On 3/27/08, EPA published a final rulemaking entitled, “Completeness Findings for section 110(a) State Implementation Plans; 8-hour Ozone NAAQS” (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that the State of South Dakota had submitted a complete SIP to meet these requirements.

<sup>1</sup> Memorandum from William T. Harnett, Director, Air Quality Policy Division, “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” (Oct. 2, 2007).

## III. What infrastructure elements are required under Section 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D)(ii): Interstate and international pollution.
- 110(a)(2)(E): Adequate resources and authority.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and prevention of significant deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs (known as “nonattainment new source review (NSR)”) required under part D, and (ii) section 110(a)(2)(I) pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

This action also does not address the “interstate transport” requirements of

element 110(a)(2)(D)(i). In a separate action, EPA approved the State’s submission to meet the requirements of 110(a)(2)(D)(i) for the 1997 ozone NAAQS (73 FR 26019).

## IV. How did the State of South Dakota address the elements of the infrastructure provisions of Section 110(a)(2)?

1. Emission limits and other control measures: Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

a. South Dakota’s response to this requirement: The rules in the Administrative Rules of South Dakota (ARSD) Chapter 74:36:04 (Operating permits for minor sources), 74:36:05 (Operating permits for part 70 sources), 74:35:06 (Regulated air pollutant emissions), 74:36:07 (New source performance standards), 74:36:08 (National emission standards for hazardous air pollutants), 74:36:09 (Prevention of significant deterioration), and 74:36:10 (New source review) provide enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters necessary to maintain South Dakota in attainment with the federal NAAQS. Authority to promulgate these rules is contained in South Dakota Codified Laws (SDCL) 34A–1–1, 34A–1–6, 34A–1–18, 34A–1–19.

b. EPA analysis: South Dakota’s SIP meets the requirements of CAA section 110(a)(2)(A) for the 1997 ozone NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 1997 ozone NAAQS. Furthermore, South Dakota has no areas designated as nonattainment for the 1997 ozone NAAQS. As a result, the South Dakota SIP contains no emissions limitations specific to ozone and/or its precursors. Instead, South Dakota regulates emissions of ozone and its precursors through its SIP-approved major and minor source permitting programs.<sup>2</sup> This suffices, in the case of

<sup>2</sup> Certain rules cited by South Dakota—its title V program (ARSD 74:36:05), new source performance standards (ARSD 74:36:07), and national emissions standards for hazardous air pollutants (ARSD 74:36:08)—are not required for inclusion into South Dakota’s SIP and are therefore not considered by EPA in this action.

South Dakota, to meet the requirements of section 110(a)(2)(A) for the 1997 ozone NAAQS.

Second, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing SIP provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance<sup>3</sup> and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

2. Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

a. South Dakota's response to this requirement: The rules in ARSD 74:36:02 define the goals, NAAQS, air monitoring methods and monitoring requirements provided for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data and making these data available to EPA. Authority used to promulgate these rules is contained in SDCL 34A-1-6 and 34A-1-15.

b. EPA analysis: South Dakota's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 1997 ozone NAAQS. The South Dakota Department of Environment and Natural Resources

(DENR) 2008 Ambient Air Monitoring Annual Network Plan was approved by EPA Region 8 on March 23, 2009.

3. Program for enforcement of control measures: Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.

a. South Dakota's response to this requirement: SDCL 34A-1-39 through 34A-1-54 and 34A-1-62 provides DENR with the authority to provide enforcement of all South Dakota SIP measures and the regulations under ARSD Chapter 74:36:09 (Prevention of significant deterioration) and 74:36:10 (New source review).

b. EPA analysis: As explained above, in this action EPA is not evaluating non-attainment related provisions, such as the nonattainment New Source Review (NSR) program required by part D of the Act. In addition, South Dakota has no nonattainment areas for the 1997 ozone NAAQS and is therefore not required at this point to have a corresponding nonattainment NSR program. In this action, EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

South Dakota's SIP-approved PSD program incorporates by reference (with certain exceptions) the federal PSD program in 40 CFR 52.21 as of July 1, 2005 (72 FR 72617). As described in our notice of approval of the program (72 FR 72617), South Dakota's PSD program met the general requirements of CAA section 110(a)(2)(C) as of that date.

#### *Greenhouse Gas Regulation*

EPA notes a potential inconsistency between South Dakota's February 1, 2008 infrastructure SIP certification and EPA's recently promulgated rule, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans" ("PSD SIP Narrowing Rule"), 75 FR 82536 (Dec. 30, 2010). In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of South Dakota's PSD program to the extent that it applied PSD permitting to greenhouse gas (GHG) emissions increases from GHG-emitting sources below thresholds set in EPA's June 3, 2010 "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" ("Tailoring Rule"), 75 FR 31514. EPA withdrew its approval on the basis that

the State lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of South Dakota's PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. In its February 1, 2008 certification, South Dakota relied on its PSD program as approved at that date—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy the requirements of infrastructure element 110(a)(2)(C). Given EPA's basis for the PSD SIP Narrowing Rule, EPA proposes approval of the South Dakota infrastructure SIP for infrastructure element (C) if either the State clarifies (or modifies) its certification to make clear that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010, and for which the State has sufficient resources to implement, or the State acts to withdraw from EPA consideration the remaining portion of its PSD program submission that would have applied PSD permitting to GHG sources below the Tailoring Rule thresholds. In the alternative, if South Dakota does not take either action, EPA proposes to disapprove the infrastructure SIP to the extent it incorporates that portion of the previously-approved PSD program from which EPA withdrew its approval in the PSD SIP Narrowing Rule, which is the portion which would have applied PSD permitting requirements to GHG emissions increases from GHG-emitting sources below the Tailoring Rule thresholds. Such disapproval, if finalized, would not result in a need for South Dakota to resubmit a SIP revision, sanctions, or a federal implementation plan (FIP).

#### *Regulation of Ozone Precursors*

In order for South Dakota's SIP-approved PSD program to satisfy the requirements of section 110(a)(2)(C) for the 1997 ozone NAAQS, the program must also properly regulate ozone precursors. On November 29, 2005, EPA promulgated the phase 2 implementation rule for the 1997 ozone NAAQS, which includes requirements for PSD programs to treat nitrogen oxides as a precursor for ozone (72 FR 71612). The phase 2 implementation rule accordingly updated the federal program at 40 CFR 52.21 to meet these requirements, effective January 30, 2006. This effective date is after the July 1, 2005 date of incorporation of 40 CFR 52.21 by the currently approved South

<sup>3</sup> Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown." (Sept. 20, 1999).

Dakota SIP. In other words, South Dakota's current SIP-approved PSD program does not meet the requirements of the phase 2 ozone implementation rule.

On June 14, 2010, the State submitted to EPA a SIP revision that (among other things) revises ARSD 74:36:09 (Prevention of significant deterioration) to incorporate by reference the federal PSD program in 40 CFR 52.21 as of July 1, 2009. As a result of the revised incorporation date, the submitted PSD program meets the requirements of the phase 2 ozone implementation rule. EPA therefore proposes to concurrently approve the portion of the June 14, 2010 submission revising ARSD 74:36:09, with the following exception.

Consistent with the Tailoring Rule, the SIP PSD Narrowing Rule, and the discussion above, EPA proposes to disapprove the revision of ARSD 74:36:09 in the June 14, 2010 submission to the extent that the revision applies PSD permitting to GHG emissions increases from GHG-emitting sources below Tailoring Rule thresholds. The Tailoring Rule modified the federal PSD program at 40 CFR 52.21, effective August 2, 2010, to incorporate the Tailoring Rule thresholds.<sup>4</sup> 75 FR at 31606–07. This effective date is after July 1, 2009, the date of incorporation of 40 CFR 52.21 in South Dakota's June 14, 2010 submission. Therefore, in order to ensure consistency with the Tailoring Rule and the PSD SIP Narrowing Rule, it is necessary for EPA to propose to disapprove the revision to the extent it applies PSD permitting to GHG emissions increases from GHG-emitting sources below Tailoring Rule thresholds. As mentioned above, this disapproval will not result in a need for South Dakota to submit a SIP revision, sanctions, or a FIP.

#### *Minor New Source Review*

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act, which regulates emissions of ozone and its precursors. On September 6, 1995, EPA approved extensive changes to the State's minor NSR program for incorporation into the SIP, and there was at the time no objection to the provisions of this program (60 FR 46222). Since then, the State and EPA have relied on the existing State minor NSR program to assure that new and modified sources not captured by the major NSR

permitting programs do not interfere with attainment and maintenance of the NAAQS.

In this action, EPA is proposing to approve South Dakota's infrastructure SIP for the 1997 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. A number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

4. Interstate transport: Section 110(a)(2)(D)(i) requires SIPs to contain adequate provisions prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state, with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality or to protect visibility.

a. South Dakota's response to this requirement: South Dakota submitted its Interstate Transport SIP to EPA on May 25, 2007.

b. EPA Analysis: EPA approved the State's Interstate Transport provisions for the 1997 ozone NAAQS on May 8, 2008 (73 FR 26019). EPA is taking no action relevant to section 110(a)(2)(D)(i) in this proposal.

5. Interstate and International transport provisions: Section 110(a)(2)(D)(ii) requires that each SIP shall contain adequate provisions insuring compliance with applicable

requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

a. South Dakota's response to this requirement: South Dakota submitted its Interstate Transport SIP to EPA on May 25, 2007.

b. EPA Analysis: Section 126(a) of the CAA requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 of the CAA similarly pertains to international transport of air pollution.

South Dakota's SIP-approved PSD program incorporates by reference the Federal PSD program at 40 CFR 52.21. However, South Dakota separately implements public notice requirements by incorporating by reference (with certain modifications) 40 CFR 51.166(q). In particular, the SIP's incorporation of 51.166(q)(2)(iii), which requires notice to states whose lands may be affected by the emissions of sources subject to PSD, satisfies the notice requirement of section 126(a).

South Dakota has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. The SIP therefore meets the requirements of 110(a)(2)(D)(ii) for the 1997 ozone NAAQS.

6. Adequate resources and authority: Section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under section 128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

a. South Dakota's response to this requirement: SDCL 34A–1–4, 34A–1–7 through 34A–1–10 provides DENR with adequate personnel to carry out South Dakota's SIP and related issues. SDCL 34A–1–57 through 34A–1–60, and DENR's agreement with EPA for 103 and 105 grants and associated matching state funds provides DENR with the funding necessary to carry out South Dakota's SIP and related issues. SDCL 34A–1 provides DENR with the legal authority

<sup>4</sup> Note that this is the effective date of the modification of 52.21, not the initial date of applicability of the thresholds, which was January 2, 2011.

to carry out South Dakota's SIP and related issues.

b. EPA Analysis: South Dakota's SIP meets the requirements of section 110(a)(2)(E) for the 1997 ozone NAAQS. SDCL 34A-1-57 through 34A-1-60 provides adequate authority for the State of South Dakota and the DENR to carry out its SIP obligations with respect to the 1997 ozone NAAQS. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out South Dakota's SIP requirements. South Dakota's resources meet the requirements of CAA section 110(a)(2)(E). Finally, SDCL 1-40-25.1 requires the Board of Minerals and Environment to be composed in accordance with section 128 of the CAA.

7. Stationary source monitoring and reporting: Section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) period reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

a. South Dakota's response to this requirement: The rules in ARSD Chapter 74:36:04 (Operating permits for minor sources), 74:35:05 (Operating permits for part 70 sources), 74:37:11 (Performance testing) and 74:36:13 (Continuous emission monitoring systems) establish a system to monitor emissions from stationary sources and periodic emissions reports. Authority to promulgate these rules is contained in SDCL 34A-a-6 and SDCL 34A-1-12.

b. EPA Analysis: South Dakota's SIP provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting. As mentioned above, the SIP contains no other, specific emissions limitations on ozone or its precursors. South Dakota's SIP therefore meets the requirements of section 110(a)(2)(F) for the 1997 ozone NAAQS.

8. Emergency powers: Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

a. South Dakota's response to this requirement: The rules in ARSD Chapter 74:36:03 (Air quality episodes) adopt by reference the criteria in 40 CFR 51.151 as the air quality episode plan to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions of the South Dakota SIP. Authority to promulgate these rules is contained in SDCL 34A-1-6, 34A-1-15, and 34A-1-45. The episode criteria specified in this chapter for ozone are based on an 8-hour average ozone level at a monitoring site. These criteria have previously been approved by EPA as adequate to address ozone emergency episodes.

b. EPA analysis: SDCL 34A-1-45 provides DENR with general emergency authority comparable to that in section 303 of the Act. The SIP also requires DENR to follow criteria in 40 CFR 51.151 in proclaiming an emergency episode and to develop a contingency plan. The contingency plan, though, has not itself been incorporated into the SIP. However, South Dakota has not monitored any values above the priority cut point for ozone. See 40 CFR 51.150(b)(5). The SIP therefore meets the requirements of 110(a)(2)(G) for the 1997 ozone NAAQS.

9. Future SIP revisions: Section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this Act.

a. South Dakota's response to this requirement: SDCL 34A-1-6 provides DENR with the authority to revise South Dakota's SIP in response to changes to the federal NAAQS, availability of improved methods for attaining the federal standards, or in response to an EPA finding that the SIP is substantially inadequate.

b. EPA analysis: South Dakota's statutory provision at SDCL 34A-1-6 gives DENR sufficient authority to meet the requirements of 110(a)(2)(H).

10. Nonattainment Area Plan or Plan Revision under Part D: Section 110(a)(2)(I) requires that a SIP or SIP revision for an area designated as a nonattainment area must meet the

applicable requirements of part D of this subchapter (relating to nonattainment areas).

a. EPA analysis for Section 110(a)(2)(I): As noted above, the specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirement of section 172, not the timing requirement of section 110(a)(1). This element is therefore not applicable to this action. EPA will take action on part D attainment plans through a separate process.

11. Consultation with government officials, public notification, PSD and visibility protection: Section 110(a)(2)(J) requires that each SIP meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection).

a. South Dakota's response to this requirement: SDCL 34A-1-1 and 34A-1-10 provide DENR with the authority to consult with local governments, other states, federal government, etc. SDCL 1-40-31 and 34A-1-9 provide DENR with the authority to collect and disseminate information and provide full public inspection and disclosure of all non-confidential public records related to DENR and those activities within its jurisdiction. The public is notified of any concentrations that exceed the NAAQS through DENR's Air Quality program website that contains the daily concentrations updated hourly from five sites covering 17 parameters from continuous analyzers and monitors located throughout the state. Four of these sites report hourly ozone levels to the website and to the *AirNow* EPA database. Through this site, the public is notified of high concentration periods. The rules in ARSD Chapter 74:36:09 (Prevention of significant deterioration) adopt by reference federal regulations under 40 CFR parts 51 and 52 and provide DENR with regulations necessary to meet the applicable requirements of part C of the federal CAA related to PSD and visibility protection. South Dakota's PSD rules were approved in South Dakota's SIP on January 22, 2008. Authority to promulgate these rules is contained in SDCL 34A-1-6.

b. EPA Analysis: The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies,

consistent with the requirements of CAA section 121. Furthermore, EPA previously addressed the requirements of CAA section 127 for the South Dakota SIP. (45 FR 58528, Sept. 4, 1980.)

As discussed above, the State has a SIP-approved PSD program that incorporates by reference the federal program at 40 CFR 52.21. EPA has further evaluated South Dakota's SIP-approved PSD program in this proposed action under IV.3, element 110(a)(2)(C).

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective. In conclusion, the South Dakota SIP meets the requirements of section 110(a)(2)(J) for the 1997 ozone NAAQS.

12. Air quality and modeling/data: Section 110(a)(2)(K) requires that each SIP provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

a. South Dakota's response to this requirement: The rules in ARSD Chapter 74:36:04 (Operating permit for minor sources), 74:36:05 (Operating permit for part 70 sources), 74:36:09 (Prevention of significant deterioration), and 74:36:10 (New source review) provide DENR with the authority to perform air quality modeling for predicting effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request. Authority to promulgate these rules is contained in SDCL 34A-1-6 and 34A-1-9.

b. EPA Analysis: South Dakota's SIP meets the requirements of CAA section 110(a)(2)(K) for the 1997 ozone NAAQS. In particular, South Dakota's PSD program incorporates by reference the federal program at 40 CFR 52.21, including the provision at 40 CFR 52.21(l)(1) requiring that estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, and the provision at 40 CFR 52.21(l)(2) requiring that modification or substitution of a model specified in Appendix W must be approved by the

Administrator. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

13. Permitting fees: Section 110(a)(2)(L) requires SIPs to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

a. South Dakota's response to this requirement: The DENR has an approved title V operating permit program (61 FR 2720, Jan. 29, 1996) that requires major stationary sources to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing the title V permit.

b. EPA Analysis: South Dakota's approved title V operating permit program meets the requirements of CAA section 110(a)(2)(L) for the 1997 ozone NAAQS. Final approval of the title V operating permit program became effective February 28, 1996. (See 61 FR 2720, Jan. 29, 1996.) As discussed in the notice proposing approval of the title V program (60 FR 2917, Jan. 12, 1995), the State demonstrated that the fees collected were sufficient to administer the program.

14. Consultation/participation by affected local entities: Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

a. South Dakota's response to this requirement: SDCL 34A-1-1, 34A-1-10 provides DENR with the authority to provide for consultation and participation in South Dakota's SIP development by local political subdivision affected by the SIP. Cooperation by DENR with other agencies provides for the consultation, advise, and cooperation with other state, local, industries, other states, interstate or inter local agencies, and the federal government, and with interested persons or groups on air pollution control issues.

b. EPA Analysis: South Dakota's submittal meets the requirements of CAA section 110(a)(2)(M) for the 1997 ozone NAAQS.

## V. What action is EPA taking?

In this action, EPA is proposing to approve in full the following section 110(a)(2) infrastructure elements for South Dakota for the 1997 ozone NAAQS: (A), (B), (D)(ii), (E), (F), (G), (H), (J), (K), (L), (M). EPA proposes to approve the section 110(a)(2)(C) infrastructure element in full in the event that South Dakota takes one of the actions described in the discussion of that element; in the alternative, EPA proposes to disapprove the section 110(a)(2)(C) element to the extent described and to otherwise approve this element. EPA is taking no action on infrastructure elements (D)(i) and (I) for the 1997 ozone NAAQS. EPA also proposes to approve the portion of South Dakota's June 14, 2010 SIP submission that revises South Dakota's PSD program to incorporate by reference the federal program at 40 CFR 52.21 as of July 1, 2009, except to the extent that revision applies PSD permitting to GHG emissions increases from GHG-emitting sources below the thresholds set out in the Tailoring Rule, 75 FR 31514.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this proposed action 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 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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 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.

Dated: May 4, 2011.

**Judith Wong,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2011-11723 Filed 5-11-11; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2008-0107; MO 92210-0-0009-B2]

**RIN 1018-AV88**

#### Endangered and Threatened Wildlife and Plants; Listing of the Altamaha Spinymussel and Designation of Critical Habitat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended required determinations.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the October 6, 2010, proposed designation of critical habitat for the Altamaha spinymussel (*Elliptio spinosa*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

**DATES:** We will consider comments received on or before June 13, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R4-ES-2008-0107.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2008-0107; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Sandra Tucker, Field Supervisor, U.S. Fish and Wildlife Service, Georgia Ecological Services Office, 105 Westpark Dr., Suite D, Athens, GA 30606; telephone 706-613-9493; facsimile 706-613-6059. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing and designation of critical habitat for the Altamaha spinymussel that was

published in the **Federal Register** on October 6, 2010 (75 FR 61664), our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the Altamaha spinymussel;

(b) The amount and distribution of Altamaha spinymussel habitat; and

(c) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(6) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(8) Which areas would be appropriate as critical habitat for the species.