

CHAPTER 74:36:10
NEW SOURCE REVIEW

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74:36:10:01. Applicability. This chapter applies to areas of the state which are designated as nonattainment pursuant to § 107 of the Clean Air Act for any pollutant regulated under the Clean Air Act.

Source: 19 SDR 157, effective April 22, 1993.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-6.

74:36:10:02. Definitions. For the purposes of this chapter, the definitions for new source review are those in 40 C.F.R. § 51.165(a)(1), except for the second sentence of 40 C.F.R. § 51.165(a)(1)(v)(C)(1), and 40 C.F.R. § 51.165(a)(1)(v)(G), (a)(1)(vi)(C)(3), (a)(1)(xliii), (a)(1)(xliv), (a)(1)(xlv), and (a)(1)(xlvi) (July 1, 2016).

For the purposes of this chapter, the term, Act, means the Clean Air Act.

For the purposes of this section, the term, reviewing authority, means the secretary.

Source: 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 30 SDR 26, effective September 1, 2003; 31 SDR 101, effective January 2, 2005; 36 SDR 207, effective June 28, 2010; 39 SDR 219, effective June 25, 2013; 42 SDR 52, effective October 13, 2015; 44 SDR 43, effective September 13, 2017.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-6.

74:36:10:03. Net emissions increase defined. Repealed.

Source: 8 SDR 71, effective December 21, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:06.01, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; repealed, 30 SDR 26, effective September 1, 2003.

74:36:10:03.01. New source review preconstruction permit required. New major stationary sources or major modifications to existing major sources must obtain a preconstruction permit before beginning actual construction if they are located in the following areas:

(1) An attainment or unclassified area if the source would cause or contribute to a violation of any national ambient air quality standard; or

(2) An area designated nonattainment for any national ambient air quality standard if the source is major for the pollutant for which the area is designated nonattainment.

Except as provided by a plant-wide applicability limit, a proposed project is considered a major modification to an existing major source if the proposed project meets the criteria in 40 C.F.R. § 51.165(a)(2)(ii)(A) to (F), inclusive, (July 1, 2016).

Source: 30 SDR 26, effective September 1, 2003; 31 SDR 101, effective January 2, 2005; 36 SDR 207, effective June 28, 2010; 39 SDR 219, effective June 25, 2013; 42 SDR 52, effective October 13, 2015; 44 SDR 43, effective September 13, 2017.

General Authority: SDCL 34A-1-6, 34A-1-21.

Law Implemented: SDCL 34A-1-6, 34A-1-21.

Note: The procedural requirements for obtaining a preconstruction permit under the new source review program are similar to the procedural requirements for a Part 70 source, such as a timely and complete application, completeness review, statement of basis, public participation, and departmental recommendation, as outlined in §§ 74:36:05:08 to 74:36:05:20.01, inclusive.

74:36:10:04. Criteria for creditability of increase or decrease in actual emissions. Repealed.

Source: 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; repealed, 30 SDR 26, effective September 1, 2003.

74:36:10:05. New source review preconstruction permit. A new source review preconstruction permit must satisfy the following criteria before beginning actual construction:

- (1) All requirements for new source performance standards in chapter 74:36:07 that apply to the facility;
- (2) Compliance with the lowest achievable emission rate (LAER);
- (3) Certification of compliance that all other major sources, major modifications, or reconstructed facilities that are owned, operated, or controlled by the applicant either in whole or in part elsewhere in the state are in compliance with all applicable emission limitations and standards; and
- (4) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit. Emissions offsets are determined in accordance with § 74:36:10:07.

The owner or operator may apply for a plant-wide applicability limit. The procedures for a plant-wide allowable limit are those in 40 C.F.R. § 51.165(f)(1) to (f)(15), inclusive, (July 1, 2016).

Approval to construct does not relieve an owner or operator of the responsibility to comply fully with applicable provisions of this article or the Clean Air Act and any other requirements under local, state, or federal law.

Submission of preconstruction monitored or projected ambient air quality data, or both, from the proposed source must accompany the permit application. In addition, air quality dispersion modeling and meteorological data for the prescribed area may be required by the department. Costs of these requirements must be absorbed by the proposed source.

Source: 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:16, effective July 1, 1981; 8 SDR 71, effective December 21, 1981; 10 SDR 68, effective January 5, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 88, effective November 14, 1989; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:16, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 30 SDR 26, effective September 1, 2003; 31 SDR 101, effective January 2, 2005; 36 SDR 207, effective June 28, 2010; 39 SDR 219, effective June 25, 2013; 42 SDR 52, effective October 13, 2015; 44 SDR 43, effective September 13, 2017.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-6, 34A-1-22.

74:36:10:06. Causing or contributing to a violation of any national ambient air quality standard. This section applies to any major stationary source or major modification to an existing major source that is located in an attainment or unclassifiable area that may cause or contribute to violation of a national ambient air quality standard. A major stationary source or major modification to an existing major source is considered to cause or contribute to a violation of a national ambient air quality standard if the source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

POLLUTANT AND SIGNIFICANT LEVELS

			Averaging time (hours)
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	Annual	24	8	3	1
(1) SO ₂ :	1.0 ug/m ³	5 ug/m ³	-	25 ug/m ³	-
(2) PM ₁₀ :	1.0 ug/m ³	5 ug/m ³	-	-	-
(3) NO ₂ :	1.0 ug/m ³	-	-	-	-
(4) CO	-	-	0.5 mg/m ³	-	2 mg/m ³

The owner or operator of a new major stationary source or major modification to an existing major source may reduce the impact of its emissions on air quality by obtaining emission offsets to compensate for its adverse ambient impact where the new major source or major modification to an existing major source would otherwise cause or contribute to a violation of the national ambient air quality standard. The procedures for determining credit for emission offsets are those in § 74:36:10:07.

Source: 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:16:02, 19 SDR 157, effective April 22, 1993; 30 SDR 26, effective September 1, 2003; 39 SDR 219, effective June 25, 2013; 42 SDR 52, effective October 13, 2015.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-6.

74:36:10:07. Determining credit for emission offsets. The baseline for determining credit for emission offsets is the emission limit in effect at the time the application to construct is filed, except that the offset baseline is the actual emission of the unit from which offset credit is obtained if the demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emission of sources located within a designated nonattainment area; or if there is no applicable emission limit.

In determining credit for emission offsets the following criteria shall be met:

(1) All offsets must be for the same regulated NSR pollutant, result in a net positive air quality benefit in the affected area, and be approved by the department before issuance of the permit, even though they need not be in effect until the source commences operation. The offset ratio of total actual emissions reductions to the emissions increase shall be at least 1 to 1 unless an alternative ratio is provided in accordance with the offset requirements in 40 C.F.R. § 51.165(a)(9)(ii) through 51.165(a)(9)(iv) (July 1, 2016);

(2) External offsets or those emission limitations from sources not owned, operated, or controlled by an applicant for a permit shall be made through a revision of the permit conditions of the participating source or sources. At no time may the baseline be exceeded;

(3) The permissible location of offsetting emissions shall be conducted in accordance with 40 C.F.R., Part 51, Appendix S, section IV.D (July 1, 2016);

(4) For an existing fuel combustion unit, credit shall be based on the emission limit for the type of fuel being burned at the time the application to construct is filed. If the existing source agrees to switch to a cleaner fuel at some future date, emission offset credits based on the allowable or actual emissions for the fuels involved may be allowed only if permit conditions specify an alternative control measure that would achieve the same degree of emission reduction if the source switched back to the dirtier fuel at some later date;

(5) Emission reductions achieved by shutting down an existing unit or curtailing production or operating hours below baseline levels may be credited if the reductions are permanent, quantifiable, federally enforceable, and the area has a federally-approved attainment plan. In addition, the shutdown or curtailed production must occur after August 7, 1977, or less than one year before the date of submitting the permit application, whichever is earlier. Emission reductions may be credited in the absence of a federally-approved attainment plan if the shutdown or curtailment occurred on or after the date the application is filed for a new unit or if the applicant can establish that the proposed new unit is a replacement for the shutdown or curtailed unit, and the shutdown or curtailment occurred after August 7, 1977, or less than one year before the date of submitting the permit application, whichever is earlier;

(6) Except as set forth in 40 C.F.R. § 51.165(a)(3)(ii)(D) (July 1, 2016), emission offset credit may not be allowed for replacing one hydrocarbon compound with another of lesser reactivity;

(7) Credit for emissions reduction may be claimed to the extent that the department has not relied on it in issuing a permit or in its demonstration of attainment or reasonable further progress;

(8) If the emissions limit allows greater emissions than the potential to emit of the unit, the emission offset credit is allowed only for the control below the potential to emit of the unit; and

(9) All emission reductions claimed as offset credit must be federally enforceable.

Source: 7 SDR 4, effective July 27, 1980; transferred from §§ 44:10:01:15 and 44:10:01:17, effective July 1, 1981; 8 SDR 71, effective December 21, 1981; 12 SDR 183, effective May 21, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 17 SDR 170, effective May 13, 1991; transferred from §§ 74:26:01:15, 74:26:01:16.01, and 74:26:01:17, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 30 SDR 26, effective September 1, 2003; 31 SDR 101, effective January 2, 2005; 36 SDR 207, effective June 28, 2010; 39 SDR 219, effective June 25, 2013; 42 SDR 52, effective October 13, 2015; 44 SDR 43, effective September 13, 2017.

General Authority: SDCL 34A-1-6, 34A-1-21.

Law Implemented: SDCL 34A-1-21, 34A-1-22.

74:36:10:08. Projected actual emissions. Any owner or operator who proposes a project for existing emissions units at a major stationary source that is not considered a major modification based on projected actual emissions but may result in a significant emission increase shall comply with the requirements in 40 C.F.R. § 51.165(a)(6)(i) to (vi), inclusive, (July 1, 2016). This section does not apply to a source with a plant-wide applicability limit.

The owner or operator shall make the information required to be documented in 40 C.F.R. § 51.165(a)(6)(i) to (vi), inclusive, (July 1, 2016) available for review upon a request for inspection by the secretary or the general public pursuant to the requirements contained in 40 C.F.R. § 70.4(b)(3)(viii) (July 1, 2016).

Source: 30 SDR 26, effective September 1, 2003; 31 SDR 101, effective January 2, 2005; 36 SDR 207, effective June 28, 2010; 39 SDR 219, effective June 25, 2013; 42 SDR 52, effective October 13, 2015; 44 SDR 43, effective September 13, 2017.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-6.

74:36:10:09. Clean unit test for emission units subject to lowest achievable emission rate. Repealed.

Source: 30 SDR 26, effective September 1, 2003; 31 SDR 101, effective January 2, 2005; 36 SDR 207, effective June 28, 2010; repealed, 39 SDR 219, effective June 25, 2013.

74:36:10:10. Clean unit test for emission units comparable to lowest achievable emission rate. Repealed.

Source: 30 SDR 26, effective September 1, 2003; 31 SDR 101, effective January 2, 2005; 36 SDR 207, effective June 28, 2010; repealed, 39 SDR 219, effective June 25, 2013.