

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,
Region 4, Air Planning Branch, 61
Forsyth Street, SW., Atlanta, Georgia
30303-8960.

Florida Department of Environmental
Protection, Twin Towers Office
Building, 2600 Blair Stone Road,
Tallahassee, Florida 32399-2400.

FOR FURTHER INFORMATION CONTACT:

Heidi LeSane at (404) 562-9035 (E-mail:
lesean.heidi@epa.gov).

SUPPLEMENTARY INFORMATION: For
additional information see the direct
final rule which is published in the
rules section of this **Federal Register**.

Dated: January 8, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Parts 52, 61 and 62

[SD-001-0013, SD-001-0014, SD-001-0015;
FRL-7443-7]

**Approval and Promulgation of Air
Quality Implementation Plans; South
Dakota**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of South Dakota on May 6, 1999 and June 30, 2000. The revisions modify the State's air quality rules so they are consistent with federal rules and clarify existing provisions. EPA is also proposing to remove from the SIP or not approve into the SIP, certain provisions of the State's air quality rules because they are not related to attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) and are not appropriate for inclusion in the SIP. This action is being taken under section 110 of the Clean Air Act.

DATES: Written comments must be received on or before February 26, 2003.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this

action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT:

Laurel Dygowski, EPA, Region VIII,
(303) 312-6144.

SUPPLEMENTARY INFORMATION: For the purpose of this document, we are giving meaning to certain words as follows: (a) The words "EPA," "we," "us" or "our" mean or refer to the United States Environmental Protection Agency; (b) The words State or South Dakota mean the State of South Dakota unless the context indicates otherwise.

In this document we are proposing to partially approve and partially disapprove SIP revisions submitted by the State of South Dakota on May 6, 1999 and June 30, 2000. These revisions modify the State's air quality rules so they are consistent with federal rules and clarify existing provisions. We have already acted on several portions of the State's May 6, 1999 submittal. Below is a discussion of the revisions to the State's air quality rules and whether or not they are being proposed for approval into the SIP. We also identify those provisions of the submittal that have already been acted on. The June 30, 2000 submittal also revised the State's New Source Performance Standards (NSPS) in Chapter 74:36:07. We have addressed the majority of the NSPS revisions in Chapter 74:36:07 in a separate document (67 FR 57520).

I. Summary of SIP Revision

A. Chapter 74:36:01, South Dakota Air Pollution Control Program (SDAPCP)

The State's May 6, 1999 submittal made the following revisions to the Chapter 74:36:01—Definitions:

1. Minor changes were made to the definitions of "allowable emissions," "final permit," "permit modification," and "reference method."

2. Two definitions were deleted, "FAA" and "organized disposal system," because earlier rule revisions had deleted the sections that contained these words.

3. Substantive changes were made to the following definitions: (a) "minor source" was revised to indicate that a minor source will be based on its potential emissions of a *criteria*

pollutant rather than *any regulated pollutant*; (b) "particulate matter" was revised to read "a broad class of chemically and physically diverse substances that exist as discrete particles, liquid droplets, or solids over a wide range of sizes"; (c) "PM10" was revised to indicate that an *equivalent method*, in addition to the applicable reference method, may be used to measure PM10; and (d) "VOC" was revised to exclude additional compounds of carbon from the definition.

4. A definition for "PM2.5" was added.

5. Minor changes were made in the sections "Administrative permit amendment defined" (section 74:36:01:03), "Applicable requirements of Clean Air Act defined" (74:36:01:05), and "Significant defined" (section 74:36:01:17).

6. Imbedded in the State's prior definition of "major modification defined" (section 74:36:01:07) was a definition for "physical change or change in the method of operation." The State has deleted the definition of "physical change or change in the method of operation" from the definition of "major modification defined" and added a separate definition for "physical change or change in the method of operation" at section 74:36:01:20.

7. The definition of "major source defined" (section 74:36:01:08) was revised to indicate that controls are considered when determining whether a source is major under section 112 of the Clean Air Act.

8. The definition of "modification defined" (section 74:36:01:10) was revised to delete the references to what is not considered a modification and the references to the permitting required upon modification.

We have reviewed all the revisions identified above in (1) through (8). We believe the revisions are acceptable and are proposing to approve them into the SIP, or are deleting provisions from the SIP as appropriate.

The definitions of PM10 and PM2.5 may appear to contain director discretion provisions;¹ both definitions indicate that pollutants will be "measured by an applicable reference or equivalent method." However, because of other provisions in the State's rules and/or our action on those other provisions, we do not believe the

¹ A director discretion provision would allow the State to revise portions of a SIP without completing a formal SIP revision. Because we believe the SIP can only be revised through a formal SIP revision, we usually do not approve SIPs, or parts of SIPs, that contain director discretion provisions.

definition of PM_{2.5} or PM₁₀ will result in unacceptable director discretion provisions. Specifically, PM₁₀ or PM_{2.5} will either be measured by ambient monitors or through stack performance testing specified in the federal rules. Section 74:36:02:03, Methods of sampling and analysis, discusses the methods to sample ambient concentrations of the NAAQS. This section reads, “air pollutants of particulate matter, sulfur dioxide, carbon monoxide, ozone, nitrogen dioxide, and lead listed in 40 CFR Part 50 shall be measured by the reference method or methods stated in 40 CFR Part 50, Appendix A to N, inclusive (July 1, 1999) or an *equivalent method* designated in accordance with 40 CFR Part 53” (emphasis added). 40 CFR part 53 indicates that for a method to be an equivalent method, it must be designated under 40 CFR part 53; equivalent methods are approved by EPA, and the State department cannot approve an equivalent ambient monitoring method. Section 74:36:11:01 of the State regulations, Stack performance testing or other testing methods, reads “all stack performance tests or other test methods must be made in accordance with the applicable method specified in 40 CFR 60.17; Part 60, Appendix A; § 63.14; Part 63, Appendix A; and Part 51, Appendix M (all July 1, 1999). To the extent that 40 CFR 60.17; Part 60, Appendix A; § 63.14; Part 63, Appendix A; or Part 51, Appendix M (July 1, 1999), is not applicable, methods shown to be capable of providing valid test results for the source in question may be used with prior department approval. The department may not accept a performance test conducted by unapproved methods.” As discussed later, we are proposing to disapprove the second sentence of 74:36:11:01 because it contains a director discretion provision. We are proposing to approve the change in date for the reference to appendix M in the first sentence. Therefore, the approved SIP will not allow the State department to approve alternative stack performance test methods.

B. Chapter 74:36:02 SDAPCP—Ambient Air Quality

The State’s May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:02—Ambient Air Quality:

1. With the May 6, 1999 submittal, the State revised its Ambient Air Quality rule to incorporate a more recent version of the Code of Federal Regulations (CFR) and the revisions to the NAAQS promulgated by EPA in

1997. The changes to the NAAQS involve revisions to the 24-hour and annual standard for PM₁₀, revisions to the ozone standard, and the addition of 24-hour and annual standards for PM_{2.5}. The following sections of the State rules were revised: 74:36:02:02—Ambient air quality standards; 74:36:02:03—Method of sampling and analysis; 74:36:02:04—Air quality monitoring network; and 74:36:02:05—Ambient air monitoring requirements.

2. Because of the challenge to EPA’s revised NAAQS decision, with the June 30, 2000 submittal the State is revising part of what it submitted on May 6, 1999 and incorporating into the ambient air quality rule in section 74:36:02:02 the following EPA NAAQS: (a) Sulfur oxides referenced in 40 CFR 50.4 and 50.5, as in effect July 1, 1999; (b) PM₁₀ referenced in 40 CFR 50.6, as in effect July 1, 1997; (c) PM_{2.5} referenced in 40 CFR 50.7(a)(1), (b), and (c), as in effect July 1, 1999; (d) carbon monoxide referenced in 40 CFR 50.8, as in effect July 1, 1999; (e) ozone referenced in 50 CFR 50.10, as in effect July 1, 1999; (f) nitrogen oxides referenced in 40 CFR 50.11, as in effect July 1, 1999; and (g) lead referenced in 40 CFR 50.12, as in effect July 1, 1999.²

The overall result is that the State is reincorporating our old PM₁₀ NAAQS (originally promulgated on July 1, 1987 (52 FR 24663) and contained in the July 1, 1997 edition of the CFR) into the SIP, incorporating the new PM_{2.5} and 8-hour ozone NAAQS (promulgated on July 18, 1997, 62 FR 38711 and 62 FR 38894, respectively) into the SIP, and *not* incorporating the new PM₁₀ NAAQS (promulgated on July 18, 1997, 62 FR 38711) or the prior 1-hour ozone NAAQS (reinstated on July 20, 2000, 65 FR 45200) into the SIP. Even though the State’s rule does not include the 1-hour ozone NAAQS, which was reinstated on

² The 1997 revised NAAQS for ozone and PM₁₀ and new NAAQS for PM_{2.5} were challenged by industry groups and several States. As a result, the United States Court of Appeals for the District of Columbia Circuit vacated the 1997 NAAQS and remanded them to EPA. *See, American Trucking Ass’ns, Inc. v. U.S. EPA*, 173 F.3d 1027 (D.C. Cir 1999). EPA petitioned for review in the United States Supreme Court, which reversed significant portions of the decision below, but affirmed on the issue of implementation of the revised NAAQS, holding EPA’s implementation policy unlawful and remanding the case to the Court of Appeals for further proceedings. *See, Whitman v. American Trucking Ass’n Inc.*, 531 U.S. 457, 121 S.Ct. 903, 149 L.Ed. 2d 1 (February 27, 2001). The revised ozone and PM-10 NAAQS are not being implemented at present. On May 18, 1999, the United States Court of Appeals for the D.C. Circuit; *American Trucking Association, Inc., et al. v. United States Environmental Protection Agency* vacated the 1997 PM₁₀ standard. Because of the Court ruling, we continue to implement the pre-existing PM₁₀ standard.

July 20, 2000 (65 FR 45200), the federal 1-hour ozone NAAQS still applies in South Dakota. In the future, the State should revise its SIP to include the 1-hour ozone NAAQS.

In addition, the State revised its ambient air quality rule to incorporate a more recent version of the CFR. The following sections of the rule were revised: 74:36:02:03—Method of sampling and analysis; 74:36:02:04—Air quality monitoring network; and 74:36:02:05—Ambient air monitoring requirements.

We have reviewed the revisions identified in (1) and (2). We believe the revisions are acceptable and are proposing to approve them into the SIP.

C. Chapter 74:36:04 SDAPCP—Operating Permits for Minor Sources

The State’s May 6, 1999 submittal made the following revisions to Chapter 74:36:04—Operating Permits for Minor Sources:

(1) Substantive changes were made to section 74:36:04:03, Operating permit exemptions. This section lists the types of facilities and units that are exempt from the requirement to obtain a minor air quality permit. An additional subsection is included that exempts units with the potential to emit two tons or less per year of any criteria pollutant before the application of control equipment. However, the criteria pollutant emissions from the unit must be included in determining if the source is a minor or major source. The State also revised some subsections of this rule to add the word “unit” in appropriate places. This will help clarify that this section also exempts certain units, not just facilities.

(2) Substantive changes were made to section 74:36:04:09, Permit application—Completeness review. This section identifies relevant deadlines for review of an application to determine if it is complete. This section is being revised to indicate that a facility has 20 working days (or longer if approved by the Department) to submit additional information if the application is determined to be incomplete or if additional information is necessary to evaluate the application.

(3) Substantive changes were made to sections 74:36:04:11 through 74:36:04:14—Permitting process. Sections 74:36:04:11 through 74:36:04:14 outline how the applicant and the public are involved in the permitting process. These revisions allow the applicant or public the choice of either commenting on or contesting the department’s draft permit during the 30-day public notice period. If the department receives comments, the

department will work with the applicant and the person who submitted comments, if other than the applicant, to resolve the concern. If the applicant or the other person who commented is not satisfied with the results of the negotiations, the commentor will be given 30 days from receiving the department's final permit decision to request a contested case hearing on the final permit decision.

(4) Substantive changes were made to section 74:36:04:18, Operating permit revision. This section allows a facility to revise an existing permit. The changes modify this section to clarify what is necessary to revise an existing facility permit.

(5) Substantive changes were made to section 74:36:04:19 and 74:36:04:20. These sections identify permit revisions that are eligible for an administrative permit amendment. The State has revised these sections: to clarify what the facility needs to submit to revise a permit through the administrative permit amendment process; delete repetition in the rules; allow facilities to implement a proposed revision that is considered an administrative permit amendment immediately upon notifying the department; and require the department to determine if an administrative permit amendment is applicable to the proposed revision within 15 days of receiving a request for a permit revision.

(6) Substantive changes were made to section 74:36:04:20.01, Minor permit amendment required. This section identifies permit revisions that are eligible for a minor permit amendment. The State is revising this section to clarify that a source may request a minor permit amendment, through the administrative permit amendment process discussed above, for a change that does not constitute a modification and is not prohibited under any applicable requirement under Title I of the Clean Air Act.

(7) Substantive changes were made to section 74:36:04:20.04, Department deadline to approve minor permit amendment. This section outlines the time line for reviewing a proposed permit revision to determine if it is a minor permit amendment. This section has been revised to explain that a minor permit amendment is issued by the secretary without the procedural requirements applicable to obtain an operating permit. Additionally, this section has been revised to allow a facility to make the proposed minor change seven days after notifying the Department.

(8) Minor changes were made to section 74:36:04:22, Source status

change—New permit required. The State has revised a reference in this section.

We have reviewed the revisions identified in (1) through (8) above. We believe the revisions are acceptable and are proposing to approve them into the SIP.

D. Chapter 74:36:05 SDAPCP—Operating Permits for Part 70 Sources

The State's May 6, 1999 submittal made revisions to Chapter 74:36:05—Operating Permits for Part 70 Sources. We believe we have no legal basis in the Act for approving any provisions of the operating permit program into the SIP. Therefore, we are not taking action to incorporate Chapter 74:36:05—Operating Permits for Part 70 Sources, or the revisions submitted on May 6, 1999, into the SIP. However, we fully approved South Dakota's Title V program on January 29, 1996 (61 FR 2720). We will take appropriate action on the revisions to South Dakota Title V program at a later date.

E. Chapter 74:36:06 SDAPCP—Regulated Air Pollutant Emissions

The State's May 6, 1999 submittal made the following revisions to Chapter 74:36:06—Regulated Air Pollutant Emissions:

1. Minor changes were made to the following sections: Allowable emissions for fuel burning units (section 74:36:06:02) and Allowable emissions for process industry units (section 74:36:06:03).

2. Substantive changes were made to Open burning practices prohibited (section 74:36:06:07). Specifically, the State added a sentence to section 74:36:06:07(1) that reads, "an exception for crude oil is allowed as a remediation alternative for soils contaminated with crude oil if a person submits the information requested in § 74:10:05:11.04 and the secretary approves the alternative remediation process; * * *" We believe that this is not a relaxation of the open burning rules. The State's open burning rules were revised in 1996. Prior to the 1996 revisions, the open burning rules were written broadly and listed what could be burned. In December 1996, the State revised and condensed the open burning rules. The rules were written to indicate what could not be burned. We approved the December 1996 rules on October 19, 1998 (63 FR 55804). The State believes it inadvertently failed to incorporate the exemption for soils contaminated with crude oil when it revised the rules in December 1996. Therefore, adding the exemption for soil contaminated with crude oil should not

be considered a relaxation.

Additionally, the State has indicated that the burning of spilled crude oil has occurred infrequently. They recall only one time when crude contaminated soil was burned in the oil fields in northwestern South Dakota.

We have reviewed the revisions identified in (1) and (2). We believe the revisions are acceptable and are proposing to approve them into the SIP.

F. Chapter 74:36:07 SDAPCP—New Source Performance Standards

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:07—New Source Performance Standards:

1. The May 6, 1999 submittal added provisions for hospital/medical/infectious waste incinerators constructed on or before June 20, 1996 (74:36:07:06.1) and for those on which construction commenced after June 20, 1996 (74:36:07:06.2); modified previously adopted provisions for municipal combustors constructed after September 20, 1994 (74:36:07:07.1); modified previously adopted provisions for existing municipal solid waste landfills (74:36:07:34–42) and for new municipal solid waste landfills (74:36:07:43); and deleted a permitting provision for asphalt plants (section 74:36:07:11). Except for the provisions for hospital/medical/infectious waste incinerators constructed on or before June 20, 1996 (section 74:36:07:06.01) and municipal solid waste landfills (section 74:36:07:34–42), which we discuss below, we already approved these as SIP revisions on May 22, 2000 (65 FR 32033).

2. The June 30, 2000 submittal requested that new source performance standards (NSPS) regulations currently in the SIP be removed from the SIP and delegated to the State. In addition, the June 30, 2000 submittal references more recent versions of the Code of Federal Regulations (CFR). Except for the revisions to sections 74:36:07:34–42 and 74:36:07:06.1, we already addressed the June 30, 2000 revisions in the **Federal Register** on September 11, 2002 (67 FR 57520). The revisions to sections 74:36:07:34–42 and 74:36:07:06.1 are discussed below.

With respect to the rules added and modified for hospital/medical/infectious waste incinerators constructed on or before June 20, 1996 (section 74:36:07:06.01), we believe we have no legal basis in the Act for approving these rules into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS. Therefore, we are not taking action to incorporate section

74:36:07:06.01 into the SIP. However, on June 22, 2000 (65 FR 38732), we did approve this section as meeting section 111(d) of the Act. See 40 CFR 62.10360–10362. Also, the June 30, 2000 revision to section 74:36:07:06.1 updates the incorporation by reference to 40 CFR part 60 as of July 1, 1998. We are proposing to approve the update to the incorporation by reference and identify this change in 40 CFR 62.10360.

With respect to the rules added and modified for existing municipal solid waste landfills (sections 74:36:07:39–42), we believe we have no legal basis in the Act for approving these rules into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS. Therefore, we are not taking action to incorporate sections 74:36:07:39–42 into the SIP. However, on June 3, 1999 (64 FR 29796), we did approve these rules as meeting section 111(d) of the Act. See 40 CFR 62.10350–10352. Also, the June 30, 2000 revision to sections 74:36:07:34–42.01 updates the incorporation by reference to 40 CFR 60, as of July 1, 1999. We are proposing to approve the update to the incorporation by reference and identify this change in 40 CFR 62.10350.

G. Chapter 74:36:08 SDAPCP—National Emission Standards for Hazardous Air Pollutants

The State's May 6, 1999 and June 30, 2000 submittals made revisions to Chapter 74:36:08, National Emission Standards for Hazardous Air Pollutants, by adding new standards as well as revising existing provisions. We believe we have no legal basis in the Act for approving these rules into the SIP. In addition, on May 16, 2000, we issued a letter indicating that we were delegating the authority of 40 CFR parts 61 and 63 to the State. Given that the State now has delegation of authority for the NESHAPs in 40 CFR part 61 and for the Maximum Achievable Control Technology (MACT) standards, in 40 CFR part 63, pursuant to 110(k)(6) of the Act, we are proposing to remove Chapter 74:36:08—National Emission Standards for Hazardous Air Pollutants from the SIP and not proposing to approve into the SIP any new or revised provisions adopted by the State to meet 40 CFR parts 61 and 63. We are proposing to update the table in 40 CFR 61.04(c)(8) to indicate that the 40 CFR part 61 NESHAPs are now delegated to the State.

H. Chapter 74:36:11 SDAPCP—Performance Testing

The State's May 6, 1999 and June 30, 2000 submittals made the following

revisions to Chapter 74:36:11—Performance Testing:

1. The State's May 6, 1999 SIP revision modified the requirements in section 74:36:11:04, Testing new fuels or raw materials. We already approved the May 6, 1999 revisions to the rule on February 3, 2000 (65 FR 5264).

2. The State's June 30, 2000 submittal incorporates a more recent version of the CFR referenced in section 74:36:11:01, Testing new fuels or raw materials. We believe this revision makes the State's rule consistent with ours and are proposing to approve it into the SIP.

However, section 74:36:11:01 of the State regulations, Stack performance testing or other testing methods, reads "all stack performance tests or other test methods must be made in accordance with the applicable method specified in 40 CFR 60.17; part 60, Appendix A; § 63.14; part 63, appendix A; and part 51, appendix M (all July 1, 1999). To the extent that 40 CFR 60.17; part 60, appendix A; § 63.14; part 63, appendix A; or part 51, appendix M (July 1, 1999), is not applicable, methods shown to be capable of providing valid test results for the source in question may be used with prior department approval. The department may not accept a performance test conducted by unapproved methods."

The above rule is problematic because the second sentence contains a director discretion provision (see footnote 1). Specifically, this rule allows the State to determine acceptable performance tests when Federal guidelines do not apply, without EPA approval and without the opportunity for public notice and comment. Our concern is that the State may determine that a required test method is not applicable when it really should be. Additionally, the State may determine a test method is applicable, when under federal law it would not be applicable. Under section 110(i) of the CAA, we interpret that director discretion provisions are prohibited. Therefore, we are proposing to disapprove the second sentence of section 74:36:11:01. To make the second sentence of section 74:36:11:01 an approvable SIP revision, it should be revised to read "to the extent that 40 CFR 60.17; part 60, appendix A; § 63.14; part 63, appendix A; or part 51, appendix M (July 1, 1999), is not applicable, methods shown to be capable of providing valid test results for the source in question may be used with prior department and EPA approval."

I. Chapter 74:36:12 SDAPCP—Control of Visible Emissions

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:12—Control of Visible Emissions:

1. Section 74:36:12:01, Restrictions on visible emissions, limits visible emissions from permitted units to less than 20 percent opacity. This section lists an exception to the 20 percent limits as specified in chapter 74:36:15. However, chapter 74:36:15 was previously repealed. Therefore the State is deleting the exception and reference to chapter 74:36:15 with the May 6, 1999 submittal.

2. The June 30, 2000 submittal incorporates a more recent version of the CFR referenced in section 74:36:12:01, Restrictions on visible emissions.

We have reviewed the revisions identified in (1) and (2). We believe the revisions are acceptable and are proposing to approve them into the SIP.

J. Chapter 74:36:13 SDAPCP—Continuous Emission Monitoring Systems

The State's May 6, 1999 and June 30, 2000 submittals made the following revisions to Chapter 74:36:13—Continuous Emission Monitoring Systems:

1. With the May 6, 1999 submittal, the State added section 74:36:13:08, Compliance assurance monitoring. This section requires that the owner or operator of a unit that is subject to 50 CFR 64.2 must comply with 40 CFR 64.1 and 64.3 to 64.10, inclusive, as published in 62 FR 54940–54946 (October 22, 1997).

2. With the June 30, 2000 submittal, the State incorporates a more recent version of the CFR referenced in the following sections: 74:36:13:02, Minimum performance specifications for all continuous emission monitoring; 74:36:13:03, Reporting requirements; 74:36:13:04, Notice to department of exceedance; and 74:36:13:07, credible evidence. In addition, the State has deleted the reference to the **Federal Register** in section 74:36:13:08, Compliance assurance monitoring, and instead references the July 1, 1999 CFR.

We have reviewed the revisions identified in (1) and (2). We believe we have no legal basis in the Act for approving the Compliance Assurance Monitoring rule in section 74:36:13:08 into the SIP. Therefore, we are not proposing to approve the revision identified in (1) above into the SIP. We believe the revisions identified in (2) above are acceptable and are proposing

to approve them into the SIP, except for the revisions to section 74:36:13:08, which we indicated cannot be approved into the SIP.

K. Chapter 74:36:16 SDAPCP—Acid Rain Program

The State's May 6, 1999 and June 30, 2000 submittals revise provisions of the State's acid rain rules. We have not previously included the State's acid rain provisions in the SIP. We believe we have no legal basis in the Act for approving these rules into the SIP. Therefore, we are not proposing to incorporate the May 6, 1999 or June 30, 2000 revisions to the acid rain rules into the SIP.

II. Final Action

We are proposing to partially approve and partially disapprove portions of the revisions to South Dakota's Air Pollution Control Regulations submitted by the Governor's designee on May 6, 1999 and June 30, 2000, except for the following provisions that we are not acting on, or have acted on previously. The sections of the rules that we are proposing to approve will replace the same numbered sections that have been previously approved into the SIP. We are not acting on the following as SIP revisions because they are not appropriate to be included in the SIP: sections 74:36:07:06.01; 74:36:07:34–42.01; and 74:36:13:08; and chapters 74:36:05, 74:36:08, and 74:36:16.

The SIP provisions that we previously acted on: 74:36:07:06.2, 74:36:07:07.01, 74:36:07:11 (repealed), 74:36:07:43, and 74:36:11:04.

Also, the State made revisions to previously approved 111(d) plans. Specifically, section 74:36:07:06.01 was updated to incorporate by reference 40 CFR part 60, as of July 1, 1998 and sections 74:36:07:34–42:01 were updated to incorporate by reference 40 CFR part 60, as of July 1, 1999. We are proposing to approve these revisions to the 111(d) plans.

We are proposing to approve the removal of chapter 74:36:08 from the SIP and updating the table in 40 CFR 61.04(c)(8) to indicate that the 40 CFR part 61 NESHAPS are now delegated to the State.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. We believe the South Dakota SIP revisions that are the subject of this document will not interfere with any applicable

requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act because the State's revisions are as no less stringent than requirements currently contained in their SIP. Additionally, currently there are no nonattainment areas in South Dakota.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: January 13, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

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