

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The SIP provisions that we previously acted on: 74:36:07:06.2, 74:36:07:07.01, 74:36:07:11 (repealed), 74:36:07:43, and 74:36:11:04.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