

action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 26, 2004.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart YY—Wisconsin**

■ 2. Section 52.2585 is amended by adding paragraph (t) to read as follows:

**§ 52.2585 Control strategy: Ozone.**

\* \* \* \* \*

(t) Approval—On January 28, 2003, Wisconsin submitted a request to update the ozone maintenance plan for Kewaunee County. Additional information was submitted on February 5, 2003 and February 27, 2003. As part of the request, the state submitted a maintenance plan as required by section 175A of the Clean Air Act, as amended in 1990. Elements of the section 175 maintenance plan include a contingency plan and Motor Vehicle Emissions Budgets (MVEB) for 2007 and 2012. The following table outlines the MVEB for transportation conformity purposes for the Kewaunee ozone maintenance area.

**KEWAUNEE MOBILE VEHICLE EMISSIONS BUDGETS**

[Tons/day]

Year	VOC	NO <sub>x</sub>
2007 .....	0.61	0.97
2012 .....	0.41	0.63

[FR Doc. 04–10341 Filed 5–7–04; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[SIP NO. SD–001–0017a; FRL–7652–3]

**Approval and Promulgation of Air Quality Implementation Plans; State of South Dakota; Revisions to the Administrative Rules of South Dakota and New Source Performance Standards Delegation**

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

**ACTION:** Direct final rule and NSPS delegation.

**SUMMARY:** EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of South Dakota on September 12, 2003. The September 12, 2003 submittal revises the Administrative Rules of South Dakota, Air Pollution Control Program, by modifying the chapters pertaining to definitions, operating permits for minor sources, new source review and performance testing. In addition, the State made revisions to the Prevention of Significant Deterioration program, which has been delegated to the State. The intended effect of this action is to make these revisions federally enforceable. We are also announcing that on October 31, 2003, we updated the delegation of authority for the implementation and enforcement of the New Source Performance Standards to the State of South Dakota. These actions are being taken under sections 110 and 111 of the Clean Air Act.

**DATES:** This rule is effective on July 9, 2004 without further notice, unless EPA receives adverse comment by June 9, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments may be submitted by mail to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, EPA Region 8, 999

18th Street, Suite 300, Mailcode 8P–AR, Denver, Colorado 80202, (303) 312–6144, e-mail [dygowski.laurel@epa.gov](mailto:dygowski.laurel@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. How Can I Get Copies of This Document and Other Related Information?*

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under [SD–001–0017]. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air and Radiation Program, EPA Region 8, 999 18th Street, Suite 300, Denver, CO. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You may view the public rulemaking file at the Regional Office Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. Copies of the Incorporation by Reference material are also available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Avenue, NW., Washington, DC 20460.

2. *Copies of the State submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Copies of the State documents relevant to this action are also 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.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the [Regulations.gov](http://www.regulations.gov) Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on, Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper,

will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

#### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking [SD-001-0017]" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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.

i. *E-mail.* Comments may be sent by electronic mail (e-mail). Please send any comments to [long.richard@epa.gov](mailto:long.richard@epa.gov) and [dygowski.laurel@epa.gov](mailto:dygowski.laurel@epa.gov) and include the text "Public comment on proposed rulemaking [SD-001-0017]" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly

without going through "Regulations.gov" (see below), EPA's e-mail system will automatically capture your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE," and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Please include the text "Public comment on proposed rulemaking [SD-001-0017]" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays.

#### *C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 CBI). Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any 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 official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the For Further Information Contact section.

## **II. Summary of SIP Revisions**

On September 12, 2003, the State of South Dakota submitted revisions to its SIP. The specific revisions to the SIP contained in the September 12, 2003 submittal are explained below.

### *A. Administrative Rules of South Dakota (ARSD) 74:36:01—Definitions*

ARSD 74:36:01 was revised to correct a typographical error in the definition for "volatile organic compound." ARSD 74:36:01 was also revised to include the definitions for two acronyms, SO<sub>2</sub> (sulfur dioxide) and NO<sub>2</sub> (nitrogen dioxide), that are used in other chapters and not defined.

### *B. ARSD 74:36:04—Operating Permits for Minor Sources*

ARSD 74:36:04:06 was revised to clarify the number of days it takes to receive a new minor source air quality permit. Under 74:36:04:10, the State has up to 90 days to decide on a recommendation for a permit once a complete application has been submitted. After the State decides on its recommendation, the recommendation has to be published in the local newspaper to allow the public 30 days to comment on it. The State has revised ARSD 74:36:04:06 to clarify that it could take up to 120 days for a new source to get a permit once a complete application has been submitted, but the State has not added additional time in the review process.

The State has also revised ARSD 74:36:04 to provide clarification on general permits. Under South Dakota Law 34A-1-56, the State may issue a general permit for categories of air pollution sources that are similar in operation, have similar air pollution limits, and have similar reporting and record keeping requirements. The State has added two sections to ARSD

74:36:04 to specify who may obtain a general permit and also clarify that the Secretary has the authority to require a business that is eligible for a general permit to apply for and obtain a general permit.

*C. ARSD 74:36:10—New Source Review (NSR)*

In order to maintain their NSR program, the State has made revisions to this chapter to make it equivalent to EPA's regulations. On December 31, 2002, EPA finalized revisions to the NSR program, which became effective on March 3, 2003 (*see* 67 FR 80186), including revisions to baseline emissions determinations, actual-to-future-actual methodology, plantwide applicability limitations, clean units, and pollution control projects. The State has revised ARSD 74:36:10 to incorporate these changes and make their NSR program equivalent to EPA regulations.

*D. ARSD 74:36:11—Performance Testing*

On June 30, 2000, the State submitted revisions to ARSD 74:36:11:01. On January 27, 2003, we proposed to approve the revisions to ARSD 74:36:11:01, except for the second sentence of this section, which we determined contained a director's discretion provision (*see* 68 FR 3848). On April 7, 2003, we issued a final rule concerning the January 27, 2003 proposed rule (68 FR 16728) and inadvertently did not include the disapproval of the second sentence of ARSD 74:36:11:01, as was stated in the proposed rule. In its subsequent September 12, 2003 submittal, the State has removed the director's discretion provision from ARSD 74:36:11:01 and we are approving this revision into their SIP.

### III. Revisions to Delegated Programs

*A. ARSD 74:36:07—New Source Performance Standards (NSPS)*

The September 12, 2003 submittal by the State updated the effective date of the incorporated by reference NSPS to July 1, 2002. EPA is announcing that on October 31, 2003, we updated the delegation of authority for the implementation and enforcement of the NSPS to the State. The October 31, 2003 letter of delegation to the State follows:

Steven M. Pirner, Secretary, South Dakota  
Department of Environment and Natural  
Resources, 523 East Capitol, Pierre, SD  
57501-3182.

Dear Mr. Pirner: On September 12, 2003, the State submitted a revision to the Air Pollution Control Program for South Dakota. Specifically, the State revised its rules to

incorporate the July 1, 2002 Code of Federal Regulations. This revision, in effect, updates the citation of the incorporated Federal New Source Performance Standards (NSPS) to July 1, 2002.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the State's regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of Montana and determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of South Dakota. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of South Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of South Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60. The categories of new stationary sources covered by this delegation are NSPS subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, I, K, Ka, Kb, O, Y, DD, GG, HH, LL, QQ, RR, VV, XX, AAA, JJJ, NNN, OOO, RRR, SSS, UUU and WWW in 40 CFR Part 60 as in effect on July 1, 2002.

(B) Not all authorities of NSPS can be delegated to States under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. Therefore, of the NSPS of 40 CFR Part 60 being delegated in this letter, the enclosure lists examples of sections in 40 CFR Part 60 that cannot be delegated to the State of South Dakota.

(C) The Department of Environment and Natural Resources (DENR) and EPA will continue a system of communication sufficient to guarantee that each office is always fully informed and current regarding compliance status of the subject sources and interpretation of the regulations.

(D) Enforcement of the NSPS in the State will be the primary responsibility of the DENR. If the DENR determines that such enforcement is not feasible and so notifies EPA, or where the DENR acts in a manner inconsistent with the terms of this delegation, EPA may exercise its concurrent enforcement authority pursuant to section 113 of the Act, as amended, with respect to sources within the State of South Dakota subject to NSPS.

(E) The State of South Dakota will at no time grant a variance or waiver from compliance with NSPS regulations. Should DENR grant such a variance or waiver, EPA will consider the source receiving such relief to be in violation of the applicable Federal regulation and initiate enforcement action against the source pursuant to section 113 of the Act. The granting of such relief by the DENR shall also constitute grounds for revocation of delegation by EPA.

(F) If at anytime there is a conflict between a State regulation and a Federal regulation

(40 CFR Part 60), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

(G) If the Regional Administrator determines that a State procedure for enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the DENR.

(H) Acceptance of this delegation of presently promulgated NSPS does not commit the State of South Dakota to accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's request of September 12, 2003.

(I) Upon approval of the Regional Administrator of EPA Region VIII, the Secretary of DENR may subdelegate his authority to implement and enforce the NSPS to local air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

(J) The State of South Dakota must require reporting of all excess emissions from any NSPS source in accordance with 40 CFR 60.7(c).

(K) Performance tests shall be scheduled and conducted in accordance with the procedures set forth in 40 CFR Part 60 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternate test methods as specified in 40 CFR 60.8(b)(2) and (3), the State may approve minor changes in methodology provided these changes are reported to EPA Region VIII. The Administrator also retains the right to change the opacity standard as specified in 40 CFR 60.11(e).

(L) Determinations of applicability such as those specified in 40 CFR 60.5 and 60.6 shall be consistent with those which have already been made by the EPA.

(M) Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR 60.13(i), may be approved by the State with the prior concurrence of the Regional Administrator.

(N) If a source proposes to modify its operation or facility which may cause the source to be subject to NSPS requirements, the State shall notify EPA Region VIII and obtain a determination on the applicability of the NSPS regulations.

(O) Information shall be made available to the public in accordance with 40 CFR 60.9. Any records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of these regulations shall be made available to the designated representatives of EPA upon request.

(P) All reports required pursuant to the delegated NSPS should not be submitted to the EPA Region VIII office, but rather to the DENR.

(Q) As 40 CFR Part 60 is updated, South Dakota should revise its regulations

accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

EPA is approving South Dakota's request for NSPS delegation for all areas within the State except for land within formal Indian reservations located within or abutting the State of South Dakota, including the: Cheyenne River Indian Reservation, Crow Creek Indian Reservation, Flandreau Indian Reservation, Lower Brule Indian Reservation, Pine Ridge Indian Reservation, Rosebud Indian Reservation, Standing Rock Indian Reservation, Yankton Indian Reservation, any land held in trust by the United States for an

Indian tribe; and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of South Dakota will be deemed to accept all the terms of this delegation. EPA will publish an information notice in the **Federal Register** in the near future to inform the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me or have your staff contact Richard Long, Director of our Air and Radiation Program, at (303) 312-6005.

Sincerely yours,  
Robert E. Roberts,  
Regional Administrator.  
Enclosures  
cc: Brian Gustafson, Administrator, South Dakota Air Quality Program.  
Enclosure to Letter Delegating NSPS in 40 CFR Part 60, Effective Through July 1, 2002, to the State of South Dakota.

EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED

40 CFR subparts	Section(s)
A .....	60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e).
Da .....	60.45a.
Db .....	60.44b(f), 60.44b(g) and 60.49b(a)(4).
Dc .....	60.48c(a)(4).
Ec .....	60.56c(i), 60.8.
J .....	60.105(a)(13)(iii) and 60.106(i)(12).
Ka .....	60.114a.
Kb .....	60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).
O .....	60.153(e).
S .....	60.195(b).
DD .....	60.302(d)(3).
GG .....	60.332(a)(3) and 60.335(a).
VV .....	60.482-1(c)(2) and 60.484.
WW .....	60.493(b)(2)(i)(A) and 60.496(a)(1).
XX .....	60.502(e)(6).
AAA .....	60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e) and 60.539.
BBB .....	60.543(c)(2)(ii)(B).
DDD .....	60.562-2(c).
GGG .....	60.592(c).
III .....	60.613(e).
JJJ .....	60.623.
KKK .....	60.634.
NNN .....	60.663(f).
QQQ .....	60.694.
RRR .....	60.703(e).
SSS .....	60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a) and 60.716.
TTT .....	60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e) and 60.725(b).
VVV .....	60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746.
WWW .....	60.754(a)(5).

*B. ARSD 74:36:09—Prevention of Significant Deterioration (PSD)*

On July 6, 1994, EPA delegated the authority to South Dakota to implement and enforce the Federal PSD permitting regulations (see 59 FR 47260). In order to maintain their delegation for the implementation and enforcement of the PSD program, the State has made revisions to ARSD 74:36:09 to make it equivalent to EPA's regulations. On December 31, 2002, EPA finalized revisions to the PSD portion of the NSR program, which became effective on March 3, 2003 (see 67 FR 80186), including revisions to baseline emissions determinations, actual-to-future-actual methodology, plantwide applicability limitations, clean units, and pollution control projects. The State made revisions to 74:36:09 to

incorporate these changes and make it equivalent to EPA regulations. The delegation of the PSD program to the State still carries the same terms of delegation as outlined in the 1994 **Federal Register** notice (59 FR 47260). In delegating the PSD program to the State, the State agrees to follow EPA's interpretations of the regulations, as articulated in regulatory preambles, guidance, and other Agency statements.

**IV. Final Action**

EPA is approving revisions to the South Dakota SIP submitted by the State on September 12, 2003. The revisions we are approving are revisions to ARSD 74:36:01, 74:36:04, 74:36:10, and 74:36:11. We are also announcing that on October 31, 2003, we updated the delegation of authority for the

implementation and enforcement of the NSPS to the State of South Dakota.

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. The South Dakota SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act because of the following: (1) The revisions to the SIP meet Federal requirements and allow the State to include the most recent version of Federal regulations; and (2) the NSPS delegation meets the requirements of section 111(c) of the CAA and 40 CFR

part 60. Therefore, section 110(l) requirements are satisfied.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective July 9, 2004 without further notice unless the Agency receives adverse comments by June 9, 2004. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this 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 approves 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 (Pub. L. 104-4).

This 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 approves 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 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 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

#### List of Subjects in 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.

Dated: April 7, 2004.

**Robert E. Roberts,**  
*Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended to read as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart QQ—South Dakota

■ 2. Section 52.2170 is amended by adding paragraph (c)(23) to read as follows:

#### § 52.2170 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(23) On September 12, 2003, the designee of the Governor of South Dakota submitted revisions to the State Implementation Plan. The September 12, 2003 submittal revises the following chapters of the Administrative Rules of South Dakota: 74:36:01, 74:36:04, 74:36:10 and 74:36:11.

(i) Incorporation by reference.

(A) Administrative Rules of South Dakota, Chapter 74:36:01, sections 74:36:01:01(77), 74:36:01:01(80), and 74:36:01:01(81); Chapter 74:36:04, sections 74:36:04:06, 74:36:04:32 and 74:36:04:33; Chapter 74:36:10, except section 74:36:10:01; and Chapter 74:36:11, section 74:36:11:01, effective September 1, 2003.

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