Amargosa Valley, Nevada and in Washington, DC. The hearings previously announced in the **Federal Register** will be held as described in the earlier notice; EPA is simply providing an additional hearing in Las Vegas.

The additional hearing will be held October 6, 2005, at the Cashman Center, 850 North Las Vegas Blvd, Las Vegas, Nevada, from 10 a.m. until 12 p.m. An information session will be held from 10 a.m.–11 a.m. and a public hearing from 11 a.m.–12 p.m.

*Meeting Purpose and Format*

The meetings will provide opportunities for both informal exchanges of information and formal comments. Meeting formats are as follows:

- *Information Sessions:* an informal opportunity to learn about the standards, meet EPA staff, and ask questions. Comments on the record can also be provided in writing or on tape.
- *Public Hearings:* a formal opportunity to make verbal statements that will be recorded for the public record. For the convenience of the public, individuals and organizations should schedule a specific time to make their comments (see Hearings Procedures below).

*Hearing Procedures*

Persons wishing to testify at any of the public hearings are requested to pre-register by calling EPA's toll-free Yucca Mountain Information Line at 1–800–331–9477 at any time. You will be asked to leave a message with the following information:

- Name/Organizational Affiliation (if any).
- Hearing time(s) available to testify.
- Daytime telephone number.

Your call will be returned within one business day to confirm a scheduled time for testimony. In order to obtain a scheduled speaking time, EPA must receive requests no later than September 30, 2005, for the hearings in Las Vegas, Nevada. Speakers not registered in advance may register at the door but are not guaranteed the opportunity to testify, depending on time constraints (all individuals will also be able to comment in writing or on tape). Individuals testifying on their own behalf will be allowed 5 minutes. Groups or organizations must designate one individual to testify as the official representative, and each group will be allocated ten minutes for an oral presentation. Individuals and organizations may submit written comments in addition to oral testimony. Time allowed is exclusive of any time consumed by questions from the government panel and answers to these questions. Testimony from individuals and representatives of organizations is limited to one hearing location. In order to ensure that all individuals and groups are given an opportunity to testify, substitutions will not be permitted for any pre-registered person. Registrants will not be permitted to yield their time to other individuals or groups, nor will hearing time be used to ''read into the record'' testimony from individuals not present at the hearings. In the event any person wishes to enter comments for the record, but either cannot or does not appear personally at the hearings, EPA will accept written comments during the hearings and other meetings. These written comments will be considered to the same extent as oral testimony and will be included as part of the official hearings transcripts. The hearing transcript will constitute the official record of the hearings. Written comments submitted outside of the public hearings must be received by EPA Docket OAR–2005–0083 in Washington, DC, by November 21, 2005. All comments received by EPA, whether written or oral, will be given equal consideration in development of the final rule.

## III. How and to Whom Do I Submit Comments?

EPA is providing numerous ways for the public to provide comments for us to consider in developing our final rule. First, the Agency has scheduled two public hearings in Nevada and one in Washington, DC. A **Federal Register** notice has been published with times, locations, and format of the meetings. In addition, you may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted by November 21, 2005. Comments received after that date will be marked ''late.'' EPA is not required to consider these late comments, but will do so at its discretion.

*To submit comments electronically:*

- Follow the instructions at the Federal e-Rulemaking Web site: *http://www.regulations.gov*, OR
- Go to EPA's *E-Docket for item OAR–2005–0083*, click on submit comment, OR,
- E-mail comments to: *a-and-r-docket@epa.gov* and specify ''to the attention of Docket ID No. OAR–2005–0083.''

Do not use e-mail or the E-Docket to submit confidential business information or other legally protected information.

Send comments by surface mail to:

EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2005–0083.

*Send comments by fax to:* 202–566–1741, Attention: Docket ID. No. OAR–2005–0083.

*Deliver comments by courier or in-person to:*

Air and Radiation Docket, EPA Docket Center, (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

Dated: September 20, 2005.

**William L. Wehrum,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 05–19256 Filed 9–26–05; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 271 and 272

**[FRL–7974–9]**

## South Dakota: Final Authorization of State Hazardous Waste Management Program Revision and Incorporation by Reference of Approved State Hazardous Waste Management Program

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

**ACTION:** Proposed Rule.

**SUMMARY:** South Dakota has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization and is proposing to authorize the State's changes through this proposed final action. Title 40 of the Code of Federal Regulations (CFR) Part 272 is used by EPA to codify its decision to authorize individual State programs and incorporates by reference those provisions of the State statutes and regulations that are subject to EPA's inspection and enforcement authorities as authorized provisions of the State's program. This action also proposes to codify the authorized provisions of the South Dakota regulations. Finally, today's document corrects errors made in the State authorization citations published in the August 10, 1999 and November 3, 2003 **Federal Register**

authorization documents for South Dakota.

**DATES:** Written comments must be received by October 27, 2005.

**ADDRESSES:** Submit your comments by one of the following methods: 1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. 2. E-mail: *shurr.kris@epa.gov.* 3. Mail: Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th St., Ste 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139. 4. Hand Delivery or Courier: Deliver your comments to Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th St., Ste 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal 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 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. Copies of the South Dakota program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying at the following locations: EPA Region 8, from 7 a.m. to 4 p.m., 999 18th Street, Suite 300, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139, or SDDENR, from 9 a.m. to 5 p.m., Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501–3181, contact: Carrie Jacobson, phone number (605) 773–3153.

**FOR FURTHER INFORMATION CONTACT:** Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466, phone number: (303) 312–6139 or email: *shurr.kris@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Authorization of Revisions to South Dakota's Hazardous Waste Program

### *A. Why Are Revisions to State Programs Necessary?*

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### *B. What Decisions Have We Made in This Action?*

We conclude that South Dakota's applications to revise its authorized program meet all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant South Dakota final authorization to operate its hazardous waste program with the changes described in the authorization applications. South Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in South Dakota, including issuing permits, until South Dakota is authorized to do so.

### *C. What Is the Effect of Today's Authorization Decision?*

This decision means that facilities in South Dakota subject to RCRA will have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. South Dakota has enforcement responsibility under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to conduct inspections and require monitoring, tests, analyses, or reports; and enforce RCRA requirements; suspend or revoke permits.

This action does not impose additional requirements on the regulated community because the regulations for which South Dakota is being authorized by today's action are already effective and are not changed by today's action.

### *D. What Happens If EPA Receives Comments That Oppose This Action?*

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You will not have another opportunity to comment, therefore, if you want to comment on this action, you must do so at this time.

### *E. What Has South Dakota Previously Been Authorized For?*

South Dakota initially received Final authorization on October 19, 1984, effective November 2, 1984 (49 FR 41038) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on April 17, 1991, effective June 17, 1991 (56 FR 15503); September 8, 1993, effective November 8, 1993 (FR 47216); January 10, 1994, effective March 11, 1994 (59 FR 01275); July 24, 1996, effective September 23, 1996 (61 FR 38392); May 9, 2000, effective June 8, 2000 (65 FR 26755) and April 23, 2004, effective May 24, 2004 (69 FR 21962).

### *F. What Changes Are We Proposing To Authorize With Today's Action?*

South Dakota submitted a final complete program revision application on October 25, 2004, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose this action, that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant South Dakota final authorization for the following program changes:

1. Program Revision Changes for Federal Rules

South Dakota seeks authority to administer the Federal requirements that are listed below (the Federal Citation is followed by the analog from the Administrative Rules of South Dakota (ARSD 74:28), revised August 29, 2004): Reissuance of the ''Mixture'' and ''Derived-From'' Rules (57 FR

07628, 03/03/92; 57 FR 23062, 06/01/92; 57 FR 49278, 10/30/92) (Checklists 117A through 117A.2)/74:28:22:01; Universal Waste Rule—Specific Provisions for Pesticides (60 FR 25492, 05/11/95) (Checklist 142C)/74:28:21:02, 74:28:22:01, 74:28:25:01, 74:28:26:01, 74:28:28:01, 74:28:30:01, and 74:28:33:01; RCRA Expanded Public Participation (60 FR 63417, 12/11/95) (Checklist 148)/74:28:26:01; Organic Air Emission Standards for Tanks, Surface Impoundments, & Containers (59 FR 62896, 12/06/94; 60 FR 26828, 05/19/95; 60 FR 50426, 09/29/95; 60 FR 56952, 11/13/95; 61 FR 04903, 02/09/96; 61 FR 28508, 06/05/96; and 61 FR 59932, 11/25/96) (Checklists 154 through 154.6)/74:36:11:01, 74:28:21:02, 74:28:22:01, 74:28:23:01, 74:28:25:01, 74:28:26:01, and 74:28:28:01; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment (62 FR 64636, 12/08/97) (Checklist 163)/74:28:25:01, 74:28:26:01, and 74:28:28:01; Mineral Processing Secondary Materials Exclusion (63 FR 28556, 05/26/98)(Checklist 167D—revised)/ 74:28:22:01; HWIR-Media (63 FR 65874; 11/30/98) (Checklist 175)/74:28:21:01(17), 74:28:21:02, 74:28:22:01, 74:28:25:01, 74:28:26:01, 74:28:28:01, and 74:28:30:01; Test Procedures for the Analysis of Oil and Grease and Non-Polar Material (64 FR 26315, 05/14/99) (Checklist 180)/74:28:21:02; Petroleum Refining Process Wastes—Clarification (64 FR 36365, 06/08/00) (Checklist 187)/74:28:22:01 and 74:28:30:01; Hazardous Air Pollutant Standards; Technical Corrections (65 FR 42292, 07/10/00; 66 FR 24270, 05/14/01; 66 FR 35087, 07/03/01) (Checklists 188 through 188.2)/74:28:22:01, 74:28:25:01, and 74:28:26:01; Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes (65 FR 67068, 11/8/00) (Checklist 189)/74:28:22:01 and 74:28:30:01; Land Disposal Restrictions Phase IV Deferral for PCBs in Soil (65 FR 81373, 12/26/00) (Checklist 190)/74:28:30:01; Storage, Treatment, Transportation, and Disposal of Mixed Waste (66 FR 27218, 05/16/01) (Checklist 191)/74:28:27:01; Mixture and Derived-From Rules Revisions (66 FR 27266, 05/16/01) (Checklist 192A)/74:28:22:01; Land Disposal Restrictions Correction (66 FR 27266, 05/16/01) (Checklist 192B)/74:28:30:01; Change of Official EPA Mailing Address (66 FR 34374, 06/28/01) (Checklist 193)/74:28:21:02; Mixture and Derived-From Rules Revision II (66 FR 50332, 10/03/01) (Checklist 194)/74:28:22:01; Inorganic Chemical Manufacturing Wastes Identification and Listing (66 FR 58258, 11/20/01; 67 FR 17119, 04/09/02) (Checklists 195 & 195.1)/74:28:22:01 and 74:28:30:01; CAMU Amendments (67 FR 2962, 01/22/02) (Checklist 196)/74:28:21:02 and 74:28:25:01; Hazardous Air Pollutant Standards for Combustors: Interim Standards (67 FR 6792, 02/13/02) (Checklist 197)/74:28:25:01, 74:28:26:01, 74:28:27:01, and 74:28:28:01; Hazardous Air Pollutant Standards for Combustors: Corrections (67 FR 6968, 02/14/02) (Checklist 198)/74:28:26:01 and 74:28:27:01; Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes (67 FR 11251, 03/13/02) (Checklist 199)/74:28:22:01; Zinc Fertilizer Rule (67 FR 48393, 07/24/02) (Checklist 200)/74:28:22:01, 74:28:27:01, and 74:28:30:01; Treatment Variance for Radioactively Contaminated Batteries (67 FR 62618, 10/07/02) (Checklist 201)/74:28:30:01; Hazardous Air Pollutants for Combustors-Corrections 2 (67 FR 77687, 12/19/02) (Checklist 202)/74:28:26:01.

2. State-Initiated Changes

South Dakota has made amendments to its regulations that are not directly related to any of the Federal rules addressed in Item F.1 above. These State-initiated changes are either conforming changes made to existing authorized provisions, or the adoption of provisions that clarify and make the State's regulations internally consistent. The State's regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State initiated changes are submitted under the requirements of 40 CFR 271.21(a) and include the following provisions from the Administrative Rules of South Dakota (ARSD 74:28), revised August 29, 2004: 74:28:21:01 introductory paragraph, 74:28:21:01(2)–(16), 74:28:21:03, 74:28:24:01, 74:28:25:02 through 74:28:25:05, 74:28:28:02 through 74:28:28:05 and 74:28:33:01.

*G. Where Are the Revised State Rules Different From the Federal Rules?*

South Dakota did not make any changes that are more stringent or broader-in-scope than the Federal rules in this rulemaking. South Dakota did not change any previously more stringent or broader-in-scope provisions to be equivalent to the Federal rules.

*H. Who Handles Permits After the Authorization Takes Effect?*

South Dakota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which were issued prior to the effective date of this authorization until South Dakota has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in Item G after the effective date of this authorization. EPA previously suspended issuance of permits for other provisions on the effective date of South Dakota's Final Authorization for the RCRA base program and each of the revisions listed in Item F. EPA will continue to implement and issue permits for HSWA requirements for which South Dakota is not yet authorized.

*I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in South Dakota?*

This program revision does not extend to ''Indian country'' as defined in 18 U.S.C. 1151. Indian country includes:

1. Lands within the exterior boundaries of the following Indian reservations located within the State of South Dakota:

a. Cheyenne River Indian Reservation;

b. Crow Creek Indian Reservation;

c. Flandreau Indian Reservation;

d. Lower Brule Indian Reservation;

e. Pine Ridge Indian Reservation;

f. Rosebud Indian Reservation;

g. Standing Rock Indian Reservation;

h. Yankton Indian Reservation;

2. Any land held in trust by the United States for an Indian tribe; and,

3. Any other areas which are ''Indian country'' within the meaning of 18 U.S.C. 1151.

**II. Corrections**

*A. Corrections to August 10, 1999 (64 FR 43331) Proposed Authorization Document*

There were typographical errors and omissions in the table published as part of the August 10, 1999 (64 FR 43331) authorization notice for South Dakota. The corrections for the affected entries are as follows (the corrections have been italicized):

1. In the entry for Checklist 82, insert ''*74:28:25:05*'' after ''74:28:23:01'' and insert ''*74:28:28:05*'' after ''74:28:26:01'';

2. In the entry for Checklist 92, insert ''*74:28:25:05*'' after ''74:28:23:01'' and insert ''*74:28:28:05*'' after ''74:28:26:01'';

3. In the entry for Checklist 120, insert ''*74:28:25:05*; *74:28:28:05*'' after ''74:28:22:01''; and

4. In the entry for Checklist 142A, insert ''*74:28:23:01*'' after ''74:28:22:01''.

*B. Corrections to November 3, 2003 (68 FR 62264) Proposed Authorization Document*

There were typographical errors and omissions in the State citations published as part of the November 3, 2003 (68 FR 62264) authorization notice for South Dakota. The affected entries in Section F, ''What Changes Are We Proposing To Authorize With Today's Action?'' are shown below. The corrections have been italicized.

1. All references to ''78:28'' are corrected to read ''*74*:28''

2. The State citation ''74:28:21:01'' is removed from the entry for Hazardous Air Pollutant Standards for Combustors (Checklist 182).

3. The entry for ''Toxicity Characteristics Revision as of June 30, 2000'' is revised to read as follows: *Toxicity Characteristics Revision as of June 30, 2000* (Consolidated Checklist includes 55 FR 11798, 3/29/90 and 55 FR 26986, 6/29/90 (Checklist 74)/*74:28:22:01, 74:28:25:01, 74:28:28:01 and 74:28:30:01*; 55 FR 40834, 10/5/90, 56 FR 03978, 2/1/91, and 56 FR 13406, 4/2/91 (Checklist 80)/*74:28:22:01*; 56 FR 05910, 2/13/91 (Checklist 84)/*74:28:22:01*; 57 FR 30657, 7/10/92 (Checklist 108)/*74:28:22:01 and* 74:28:28:01; 57 FR 23062, 6/1/92 (Checklist 117B)/*74:28:22:01*; 57 FR 55114, 11/24/92 (Checklist 119)/*74:28:22:01*, as well as 58 FR 46040, 8/31/93 (Checklist 126 update)/*74:28:30:01* and 62 FR 25998, 5/12/97 (Checklist 157 update)/*74:28:22:01 and 74:28:30:01*.

4. One entry was inadvertently omitted from the list of State provisions being authorized by EPA. The entry should be added to the end of the list as follows:

Exceptions to Blending and Burning of Hazardous Waste (RCRA Section 3004(q)(2)(A), (r)(2) and (r)(3), as codified in 40 CFR 261.4(a)(12)(i)&(ii)) (Non-Checklist Item BB)/74:28:22:01.

## III. Incorporation By Reference

*A. What Is Codification?*

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program into the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations authorized by EPA supplant the federal regulations concerning the same matter with the result that after authorization EPA enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program which is Federally enforceable in accordance with Sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

*B. What Decisions Have We Proposed in This Action?*

Today's action proposes to codify EPA's authorization of South Dakota's base hazardous waste management program and its revisions to that program. The proposed codification reflects the State program that would be in effect at the time EPA's authorized revisions to the South Dakota hazardous waste management program addressed in this proposed rule become final. This proposed action does not reopen any decision EPA previously made concerning the authorization of the State's hazardous waste management program. EPA is not requesting comments on its decisions published in the **Federal Register** notices referenced in section I.E of this document concerning revisions to the authorized program in South Dakota.

EPA is proposing to incorporate by reference EPA's approval of South Dakota's hazardous waste management program by amending Subpart QQ to 40 CFR part 272. The proposed action amends § 272.2101 and incorporates by reference South Dakota's authorized hazardous waste regulations, as amended through August 29, 2004. Section 272.2101 also references the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, § 272.2101 references the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are evaluated as part of the approval process of the hazardous waste management program in accordance with Subtitle C of RCRA.

*C. What Is the Effect of South Dakota's Codification on Enforcement?*

EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogs to these provisions. Therefore, the EPA is not proposing to incorporate by reference South Dakota's inspection and enforcement authorities nor are those authorities part of South Dakota's approved State program which operates in lieu of the Federal program. 40 CFR 272.2101(c)(2) lists these authorities for informational purposes, and also because EPA considered them in determining the adequacy of South Dakota's procedural and enforcement authorities. South Dakota's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

*D. What State Provisions Are Not Proposed as Part of the Codification?*

The public is reminded that some provisions of South Dakota's hazardous waste management program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which South Dakota is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

(3) State procedural and enforcement authorities which are necessary to establish the ability of the State's program to enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities.

State provisions that are ''broader in scope'' than the Federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, EPA proposes to list in 40 CFR 272.2101(c)(3) the South Dakota statutory provisions which are ''broader in scope'' than the Federal program and which are not part of the authorized program being incorporated by reference. While ''broader in scope'' provisions are not part of the authorized program and cannot be enforced by EPA; the State may enforce such provisions under State law.

South Dakota has adopted but is not authorized for certain Federal final rules published between May 11, 1995 and March 17, 2000. Therefore, the Federal

amendments to 40 CFR parts 261, 262, 263, 264, 265, 266, 268, 270 and 273 addressed by these Federal rules and included in South Dakota's adoption by reference at ARSD, section 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01, 74:28:28:01, 74:28:27:01, 74:28:30:01, 74:28:26:01 and 74:28:33:01, respectively, are not part of the State's authorized program included in this proposed codification. EPA is proposing to identify in 40 CFR 272.2101(c)(4) those Federal regulations which, while adopted by South Dakota, are not authorized by EPA.

*E. What Will Be the Effect of the Proposed Codification on Federal HSWA Requirements?*

With respect to any requirement(s) pursuant to HSWA for which the State has not yet been authorized, and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

The proposed codification does not affect Federal HSWA requirements for which the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions, unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirements implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

## IV. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action proposes to authorize and codify State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action proposes to authorize and codify 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). For the same reason, this proposed action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will 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), because it merely proposes to authorize and codify State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This proposed action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed action, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the proposed action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed action 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 in 40 CFR Parts 271 and 272**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Dated: September 20, 2005.

**Robert E. Roberts,**

*Regional Administrator, Region VIII.*

For the reasons set forth in the preamble, 40 CFR parts 271 and 272 are proposed to be amended as follows:

## PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

EPA is proposing to grant final authorization under part 271 to the State of South Dakota for revisions to its hazardous waste program under the Resource Conservation and Recovery Act.

## PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

**Authority:** Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

### Subpart QQ—[Amended]

2. Subpart QQ is amended by adding § 272.2101 to read as follows:

**§ 272.2101 South Dakota State-administered program: final authorization.**

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), South Dakota has final authorization for the following elements as submitted to EPA in South Dakota's base program application for final authorization which was approved by EPA effective on November 2, 1984. Subsequent program revision applications were approved effective on June 17, 1991, November 8, 1993, March 11, 1994, September 23, 1996, June 8,

2000, May 24, 2004 and [effective date of final rule].

(b) The State of South Dakota has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.* (1) The South Dakota regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the South Dakota regulations that are incorporated by reference in this paragraph are available from South Dakota Legislative Research Council, 3rd Floor, State Capitol, 500 East Capitol Avenue, Pierre, SD 57501 (Phone: 605–773–3251).

(i) The Binder entitled ''EPA Approved South Dakota Regulatory Requirements Applicable to the Hazardous Waste Management Program'', dated [Month and Year of effective date of final rule].

(ii) [Reserved]

(2) EPA considered the following statutes and regulations in evaluating the State program, but they are not incorporated by reference for enforcement purposes:

(i) South Dakota Codified Laws (SDCL), as amended, effective July 1, 2004, Title 1, State Affairs and Government: Chapter 1–26, Administrative Procedures and Rules, sections 1–26–1(1), 1–26–1(4), 1–26–1(8) introductory paragraph, 1–26–1(8)(a), 1–26–2, 1–26–6.6, 1–26–16 through 1–26–19, 1–26–19.1, 1–26–19.2, 1–26–27, 1–26–29, 1–26–30, 1–26–30.1, 1–26–30.2, 1–26–30.4, 1–26–31, 1–26–31.1, 1–26–31.2, 1–26–31.4, 1–26–35 and 1–26–36; Chapter 1–27, Public Records and Files, sections 1–27–1, first sentence, 1–27–3, 1–27–9(2) and 1–27–28(2); Chapter 1–32, Executive Reorganization, section 1–32–1(1); Chapter 1–40, Department of Natural Resources, sections 1–40–4.1, 1–40–24, 1–40–31 and 1–40–34.

(ii) SDCL, as amended, effective July 1, 2004, Title 15, Civil Procedure: Chapter 15–6, Rules of Procedure in Circuit Courts, section 15–6–24(a)–(c).

(iii) SDCL, as amended, effective July 1, 2004, Title 19, Evidence: Chapter 19–13, Privileges, sections 19–13–2(1), 19–13–2(5), 19–13–3, 19–13–20 and 19–13–22.

(iv) SDCL, as amended, effective July 1, 2004, Title 21, Judicial Remedies: Chapter 21–8, Injunction, section 21–8–1.

(v) SDCL, as amended, effective July 1, 2004, Title 22, Crimes: Chapter 22–6, Authorized Punishments, sections 22–6–1 introductory paragraph and 22–6–1(6).

(vi) SDCL, as amended, effective July 1, 2004, Title 23, Law Enforcement: Chapter 23–5, Criminal Identification, sections 23–5–1, 23–5–10(1), 23–5–10(3), 23–5–10(4) and 23–5–11 first sentence; Chapter 23–6, Criminal Statistics, section 23–6–4.

(vii) SDCL, as amended, effective July 1, 2004, Title 34, Public Health and Safety: Chapter 34–21, Radiation and Uranium Resources Exposure Control, section 34–21–2(7).

(viii) SDCL, as amended, effective July 1, 2004, Title 34A, Environmental Protection: Chapter 34A–6, Solid Waste Disposal, section 34A–6–1.3(17); Chapter 34A–10, Remedies for Protection of Environment, sections 34A–10–1, 34A–10–2, 34A–10–5, 34A–10–11, 34A–10–14 and 34A–10–16, Chapter 34A–11, Hazardous Waste Management, sections 34A–11–1 through 34A–11–4, 34A–11–5, 34A–11–8 through 34A–11–12, 34A–11–13 through 34A–11–16, 34A–11–17 through 34A–11–19, 34A–11–21 and 34A–11–22.

(ix) SDCL, as amended, effective July 1, 2004, Title 37, Trade Regulation, Chapter 37–29, Uniform Trade Secrets Act, section 37–29–1(4).

(x) Administrative Rules of South Dakota (ARSD), Article 74:08, Administrative Fees, effective August 29, 2004: Chapter 74:08:01, Fees for Records Reproduction, sections 74:08:01:01 through 74:08:01:07.

(3) The following statutory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference and are not federally enforceable:

(i) SDCL, as amended, effective July 1, 2004, Title 34A, Environmental Protection, Chapter 34A–11, Hazardous Waste Management, sections 34A–11–12.1, 34A–11–16.1, 34A–11–25 and 34A–11–26.

(ii) [Reserved]

(4) *Unauthorized State Amendments.* (i) South Dakota has adopted but is not authorized for the following Federal final rules:

(A) Removal of Legally Obsolete Rules (HSWA/non-HSWA) (60 FR 33912, 06/29/95);

(B) Imports and Exports of Hazardous Waste: Implementation of OECD Council Division (HSWA—Not delegable to States) (61 FR 16290, 04/12/96);

(C) Clarification of Standards for Hazard Waste Land Disposal Restriction Treatment Variances (HSWA)(62 FR 64504, 12/05/97); and

(D) Vacatur of Organobromide Production Waste Listings (HSWA)(65 FR 14472, 03/17/00).

(ii) Those Federal rules written under RCRA provisions that predate HSWA (non-HSWA) which the State has adopted, but for which it is not authorized, are not Federally enforceable. In contrast, EPA will continue to enforce the Federal HSWA standards for which South Dakota is not authorized until the State receives specific authorization from EPA.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 8 and the State of South Dakota, signed by the State of South Dakota Department of Natural Resources on June 6, 1996, and by the EPA Regional Administrator on June 25, 1996, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of South Dakota on May 24, 1984, and revisions, supplements and addenda to that Statement dated January 14, 1991, September 11, 1992, September 25, 1992, April 1, 1993, September 24, 1993, August 23, 1994, December 29, 1994, September 5, 1995, October 23, 1997, October 27, 1997, October 28, 1997, November 5, 1999, June 26, 2000, June 18, 2002 and October 19, 2004, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 , State Requirements, is amended by adding in alphabetical order, ''South Dakota'' and its listing to read as follows:

## Appendix A to Part 272—State Requirements

* * * * *

**South Dakota**

The regulatory provisions include:

Administrative Rules of South Dakota, Article 74:28, Hazardous Waste, effective August 29, 2004, sections 74:28:21:01, 74:28:21:02, 74:28:21:03, 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01 through 74:28:25:05, 74:28:26:01, 74:28:27:01, 74:28:28:01 through 74:28:28:05, 74:28:29:01, 74:28:30:01 and 74:28:33:01; Article 74:36, Air Pollution Control Program, as of August 29, 2004, section 74:36:11:01.

Copies of the South Dakota regulations that are incorporated by reference are available from South Dakota Legislative Research Council, 3rd Floor, State Capitol, 500 East Capitol Avenue, Pierre, SD 57501 (Phone: 605–773–3251).

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[FR Doc. 05–19255 Filed 9–26–05; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

### Federal Motor Vehicle Safety Standards

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies a petition for rulemaking submitted by Mr. Albert Donnay requesting NHTSA to require manufacturers to offer carbon monoxide detectors in all new gasoline powered vehicles and to make available retrofit devices for older vehicles. These detectors would automatically shut off the engine when carbon monoxide levels inside the vehicle exceed a concentration of 200 parts per million, when the vehicle is stationary. The data show that a mandate for in-vehicle carbon monoxide detectors would fail to address more than 70% of vehicle-related carbon monoxide deaths, because the victims are outside the vehicle. NHTSA will use its resources to consider safety areas where more effective solutions are available.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Lee, Office of Crash Avoidance Standards, NVS–123, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–2720. Fax: (202) 366–7002.

For legal issues: Mr. George Feygin, Office of Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

**SUPPLEMENTARY INFORMATION:** On January 12, 2001, Mr. Albert Donnay submitted a petition for rulemaking requesting that NHTSA: (1) Issue annual press releases on the dangers of vehicle carbon monoxide [1] (CO) poisoning and recommend the use of CO detectors, (2) report CO vehicle-related fatalities (suicide, unintentional, in moving and stationary vehicles), (3) fund research on CO poisoning in vehicles, (4) require information on the dangers of carbon monoxide poisoning be included in owners' manuals and (5) require manufacturers to install CO detectors in all new gasoline powered vehicles and offer equivalent devices for older vehicles. These detectors would have the capability to cut-off the engine when carbon monoxide levels inside the vehicle exceed a concentration of 200 parts per million (ppm) for a stationary vehicle. In moving vehicles the occupants would be directed to open a window immediately when an audio and visual warning is given off by the detector when CO level reached 10 ppm. In support of his petition, Mr. Donnay cited two NHTSA Research Notes, ''Fatalities Associated With Carbon Monoxide Poisoning From Motor Vehicles in 1993'' December 1996,[2] and ''Fatalities Associated With Carbon Monoxide Poisoning From Motor Vehicles, 1995–1997'' April 2000.[3]

The agency is denying the petition for the reasons explained below. We began our consideration of the petition by reviewing the data. In May 2004, the agency published a more comprehensive study of injuries and fatalities resulting from, among other things, CO poisoning.[4] This study was based on a review of 1998 death certificates from 35 states. The results of the study found that CO deaths most often do not involve moving vehicles, but rather vehicles left running in enclosed spaces. There were 140 deaths associated with vehicle generated carbon monoxide poisoning found in the death certificates reviewed. Of the 140 deaths, 41 deaths (29%) occurred while the individual was sitting in the vehicle. The other 71% of deaths involved people outside the vehicle. One hundred twenty-nine of the fatalities (92%) occurred in a garage, home, or residence. Most of the scenarios involved someone working on a vehicle with the vehicle running in a closed garage, or a death in a residence when someone left a vehicle running in a garage attached to the home. A review of scientific literature cited in the report found, ''Unintentional poisonings from vehicle-generated carbon monoxide diminished toward the close of the 20th century, with a particular decline in these types of incidents noted in the years following 1975 when catalytic converters were introduced into automobiles. The steady decline from 4.0 to 0.9 deaths per 1 million person-years since 1975 represents a 76.3 percent decrease. The total number of 1998 unintentional motor vehicle related deaths from carbon monoxide has been reported at 238.'' Thus, there is a decline in vehicle-related CO deaths absent any regulation. In addition, the data about vehicle-related CO deaths indicate a home CO detector would be substantially more effective than a vehicle CO detector at preventing these deaths because 92% of the fatalities occurred at the home.

Further, we note that NHTSA has previously denied a petition for rulemaking that is substantially similar to Mr. Donnay's petition,[5] because the costs far exceeded the expected benefits. Specifically, the agency denied a petition for rulemaking submitted by Mr. Herb Denenberg, which requested that: (1) The agency require carbon monoxide detectors in all new motor vehicles; (2) the agency require manufacturers to offer optional carbon monoxide detectors in all new motor vehicles, (3) the agency require that the owners' manuals indicate the

[1] Carbon monoxide is a colorless, odorless gas that is contained in the exhaust of gasoline powered motor vehicles. When inhaled in sufficient quantities, carbon monoxide can cause illness or death.

[2] The December 1996 Research Note reported data collected by the National Center for Health Statistics (NCHS) on the estimated number of people killed as a result of CO poisoning by exhaust gases from motor vehicles in 1993. The study examined factors such as stationary and moving vehicles, unintentional and suicidal CO deaths, season of the year, and vehicle location. NCHS reported that in 1993, 1,978 deaths occurred while the vehicle was in the stationary position. Eighty-four percent of the deaths were the result of suicide, 12 percent were accidental and 3 percent were of unknown intent. The annual average of accidental fatalities in stationary vehicles for 1993 was 245.

[3] The April 2000 Research Note reported an annual average of 222 accidental fatalities associated with CO poisoning for stationary vehicles for a period between 1995 and 1997. The data from the April 2000 Research Note indicated a decline in accidental fatalities in stationary vehicles from 234 CO fatalities in 1995 to 208 CO fatalities in 1997.

[4] ''Non-Traffic Death and Injury Data Collection Study,'' see *http://www.nhtsa.dot.gov/cars/problems/studies/NonTraffic-NonCrash/Images/noncrash.pdf.*

[5] See 62 FR 49190, September 19, 1997.