PROGRAM submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in South Dakota's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow South Dakota to issue permits that assure compliance with all section 112 requirements. EPA is interpreting the above legal authority to mean that South Dakota is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Implementation of 112(g) upon program approval. As a condition of approval of the part 70 PROGRAM, South Dakota is required to implement section 112(g) of the Act from the effective date of the part 70 PROGRAM. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing Federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve South Dakota's combined preconstruction/operating permit program found in section 74:36:05 of the State's regulations under the authority of title V and part 70 for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. South Dakota has combined their preconstruction permitting regulations and their part 70 permitting regulations for all new part 70 sources, except those sources subject to prevention of significant deterioration (PSD) or nonattainment new source review (NSR) permitting. South Dakota will require sources subject to section 112(g) to obtain a title V permit prior to construction, thereby creating a Federally enforceable limit. EPA believes this approval is necessary so that South Dakota has a mechanism in place to establish Federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(l) provides statutory authority for approval for the use of State air programs to implement section 112(g), and title V and section 112(g) provide authority for this limited approval because of the direct linkage

between implementation of section 112(g) and title V. If South Dakota does not wish to implement section 112(g) through these authorities and can demonstrate that an alternative means of implementing section 112(g) exists, EPA may, in the final action approving South Dakota's PROGRAM, approve the alternative instead. To the extent South Dakota does not have the authority to regulate HAPs through existing State law, the State may disallow modifications during the transition period.

This approval is for an interim period only, until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that South Dakota, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. EPA is proposing here to limit the duration of this approval to 12 months following promulgation by EPA of section 112(g) regulations. Comment is solicited on whether 12 months is an appropriate period considering South Dakota's procedures for adoption of Federal regulations.

c. Program for straight delegation of section 112 standards. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR Part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. South Dakota has informed EPA that it intends to accept delegation of section 112 standards through incorporation by reference. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

The radionuclide national emission standard for HAPs (NESHAP) is a section 112 regulation and an applicable requirement under the State PROGRAM. Currently the State of South Dakota has no part 70 sources which emit radionuclides. However, sources which are not currently part 70 sources may be

defined as major and become part 70 sources under forthcoming Federal radionuclide regulations. In that event, the State will be responsible for issuing part 70 permits to those sources.

d. Program for implementing title IV of the act. South Dakota's PROGRAM contains adequate authority to issue permits which reflect the requirements of Title IV of the Act, and commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the title V permit.

## B. Proposed Action

EPA is proposing to grant interim approval to the operating permits program submitted by the State of South Dakota on November 12, 1993. If promulgated, the State must make the following change, as discussed in detail above, to receive full PROGRAM approval: The State must adopt legislation consistent with § 70.11 prior to receiving full PROGRAM approval to allow for a maximum criminal fine of not less than \$10,000 per day per violation for knowing violation of operating permit requirements, including making a false statement and tampering with a monitoring device.

Evidence of this statutory change must be submitted to EPA within 18 months of EPA's interim approval of the South Dakota PROGRAM.

Today's proposal to give interim approval to the State's part 70 PROGRAM does not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State: 1. Cheyenne River; 2. Crow Creek; 3. Flandreau; 4. Lower Brule; 5. Pine Ridge; 6. Rosebud; 7. Sisseton; 8. Standing Rock; and 9. Yankton.

The State has asserted it has jurisdiction to enforce a part 70 PROGRAM within some or all of these "existing or former" Indian reservations and has provided an analysis of such jurisdiction. EPA is in the process of evaluating the State's analysis and will issue a supplemental notice regarding this issue in the future. Before EPA would approve the State's part 70 PROGRAM for any portion of "Indian Country," EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice. This is a complex and controversial issue, and