

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 164 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the appropriate National Highway Traffic Safety Administration Regional office.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 164 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being transferred under § 1275.6 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: October 14, 1998.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

Anthony Kane,

Executive Director, Federal Highway Administration.

[FR Doc. 98-27969 Filed 10-14-98; 3:13 pm]

BILLING CODE 4910-59-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SD-001-0002a; FRL-6175-4]

Clean Air Act Approval and Promulgation of State Implementation Plan for South Dakota; Revisions to the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving certain State implementation plan (SIP) revisions submitted by the designee of the Governor of South Dakota on May 2, 1997. The May 2, 1997 submittal included revisions to the Administrative Rules of South Dakota (ARSD) pertaining to the State's regulatory definitions, minor source operating permit regulations, open burning rules, stack testing rules, and new source performance standards (NSPS). This document pertains to the entire State SIP submittal with the exception of the revisions to the NSPS regulations and the new State provision regarding pretesting of new fuels or raw materials: EPA will act on those two regulations separately. EPA has found the remaining rule revisions to be consistent with the Clean Air Act (Act) and

corresponding Federal regulations. Therefore, pursuant to section 110 of the Act, EPA is approving the SIP revisions discussed above.

DATES: This direct final rule is effective on December 18, 1998 without further notice, unless EPA receives adverse comment by November 18, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, 8P-AR, at the EPA Region VIII Office listed. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, Mailcode 8P-AR, 999 18th Street, Suite 500, Denver, Colorado 80202-2466; and the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Program, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312-6445.

SUPPLEMENTARY INFORMATION:

I. Background

On May 2, 1997, the designee of the Governor of South Dakota submitted, among other things, revisions to the SIP. Specifically, the State submitted revisions to the following chapters in the ARSD: 74:36:01 Definitions, 74:36:04 Operating Permits for Minor Sources, 74:36:06 Regulated Air Pollutant Emissions, 74:36:07 New Source Performance Standards, 74:36:11 Stack Performance Testing, and 74:36:15 Open Burning. This document evaluates the State's submittal for conformance with the Act and corresponding Federal regulations. However, EPA is not, at this time, acting on the revisions to the NSPS regulations in ARSD 74:36:07 or the new provision regarding pretesting of new fuels or raw materials in ARSD 74:36:11:04. EPA will be acting on these two regulations in a separate action.

The State's May 2, 1997 submittal also included the State's section 111(d) plan for existing municipal solid waste (MSW) landfills and minor revisions to its title V operating permit program, which will also be acted on separately.

II. This Action

A. Analysis of State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

The State of South Dakota held a public hearing on November 20, 1996 on the revisions to the ARSD, at which time the rule revisions were adopted by the State. The revised rules became effective on December 29, 1996. These rule revisions were formally submitted to EPA for approval on May 2, 1997. EPA did not issue a completeness or an incompleteness finding for this revision to the SIP. Thus, pursuant to section 110(k)(1)(B), the submittal was deemed complete by operation of law on November 12, 1997.

2. Evaluation of State's Submittal

The following summarizes the State's SIP revisions made to the ARSD and EPA's review of those revisions for approvability:

a. ARSD 74:36:01 Definitions. In ARSD 74:36:01:01(79), the State updated its definition of "VOCs" to reflect changes made to the Federal definition of VOCs in 40 CFR 51.100(s) on October 8, 1996 (61 FR 52850). However, EPA has revised its definition of VOCs twice since October 8, 1996. Specifically, on August 25, 1997, EPA added sixteen compounds to the list of negligibly reactive VOCs in 40 CFR 51.100(s)(1) (see 62 FR 44900). In addition, on April 9, 1998, EPA added an additional compound to the list of

negligibly reactive VOCs in 40 CFR 51.100(s)(1) (see 63 FR 17333). EPA has informed the State of these revisions and has requested that future SIP revisions reflect the most recent Federal VOC definition. The State's definition of VOCs, by not excluding the above listed compounds from the definition of VOC, is considered to be more stringent than EPA's definition, which is acceptable.

In ARSD 74:36:01:18 and 74:36:01:19, the State adopted definitions of "MSW landfill" and "existing MSW landfill," respectively. EPA has reviewed those definitions and found the State's definitions to be consistent with the corresponding Federal definitions in 40 CFR part 60, subpart Cc.

Thus, EPA finds the State's revision to ARSD 74:36:01:01 to be consistent with the corresponding Federal regulations and, therefore, approvable.

b. ARSD 74:36:04 Operating Permits for Minor Sources. In ARSD 74:36:04:03, the State revised its list of exemptions from the minor source operating permit requirements to: (1) clarify that a source is not exempt from the minor source operating permit requirements if the source has requested Federally enforceable permit conditions to prevent that source from needing a title V operating permit or a prevention of significant deterioration (PSD) permit; (2) clarify that sources exempt from the minor source operating permit requirements are still required to meet the visible emissions requirements in ARSD 74:36:12:01; and (3) revise the exemption for emergency electrical generators to clarify that the exemption applies to emergency electrical generators fueled by all petroleum products (the State's rule previously only applied to diesel-fueled emergency electrical generators). EPA believes the first two clarifications mentioned above strengthen the existing regulation and are necessary clarifications. In addition, EPA sees no approvability issues with the revised exemption for emergency electrical generators in ARSD 74:36:04:03(7). If an emergency electrical generator is considered to be a major source based on its potential to emit, South Dakota's regulations would require the source either to obtain a construction/title V operating permit under the State's combined construction/title V operating permit regulations in ARSD 74:36:05 or to obtain permit conditions to prevent the source from needing a title V operating permit as discussed in ARSD 74:36:04:03. In addition, the State's new provision in ARSD 74:36:04:03 discussed above, which clarifies that exempted sources are still required to meet the visible emissions standard (i.e.,

20% opacity limit), ensures that the emergency electrical generators will be operated adequately to minimize emissions.

The State also repealed its provisions for general minor source operating permits in ARSD 74:36:04:25–26 because of changes in State legislation that provide the State with broad authority to issue general permits under the existing minor source operating permit requirements as well as the title V operating permit program. In addition, the State repealed ARSD 74:36:04:30 regarding the requirement to perform a stack performance test, as this was already required in ARSD 74:36:06:06. These revisions are considered minor in nature and are consistent with the corresponding Federal requirements.

Therefore, because the revisions to ARSD 74:36:04 are consistent with the Act and corresponding regulations and guidance, EPA finds the revisions to be approvable.

c. ARSD 74:36:06 Regulated Air Pollutant Emissions and Repeal of ARSD 74:36:15. The State repealed the open burning provisions of ARSD 74:36:15 and transferred ARSD 74:36:15:01, which contained the list of materials that cannot be open-burned because of the excessive and potentially dangerous pollutants that can be generated from these materials, to ARSD 74:36:06:07. The State also added a statement to ARSD 74:36:06:07 clarifying that all open burning needed to be conducted in accordance with local and State ordinances, laws, and rules. The intent of these revisions was to consolidate similar rules into ARSD 74:36:06, as well as to clarify that other State agencies (i.e., the waste management program) and local governments are the primary authority for approving open burning. Because the State retained the list of items which could not be disposed of by open burning, EPA believes the transfer of open burning approval authority from the State Air Quality Program to other State agencies and local governments is acceptable and will not result in any less stringent application of the open burning requirements. Consequently, EPA is approving the revisions to ARSD 74:36:06:07 and 74:36:06:15.

d. ARSD 74:36:11 Stack Performance Testing. The State revised the title of this chapter and revised ARSD 74:36:11:01 to incorporate Federal test methods for hazardous air pollutants. The State also made minor wording and clarifying changes to ARSD 74:36:11:01–03. EPA has reviewed the revisions to ARSD 74:36:11:01–03 and had found

they are consistent with the Act and corresponding Federal regulations.

III. Final Action

EPA is approving South Dakota's SIP revisions, as submitted by the designee of the Governor with a letter dated May 2, 1997, with the exception of the revisions to ARSD 74:36:07 (NSPS) and ARSD 74:36:11:04 (regarding pretesting of new fuels or raw materials). EPA will be acting on ARSD 74:36:07 and 74:36:11:04 separately from this action.

The State's SIP submittal requested that EPA replace the previous version of the ARSD approved into the SIP with the following chapters of the ARSD as in effect on December 29, 1996: 74:36:01 through 74:36:03, 74:36:04 (with the exception of section 74:36:04:03.01), 74:36:06, 74:36:07, 74:36:10–13, and 74:36:17. In this approval, EPA is specifically replacing all of the existing State regulations previously approved into the SIP (except for the NSPS rules in ARSD 74:36:07) with the following State regulations as in effect on December 29, 1996: ARSD 74:36:01–03, 74:36:04 (with the exception of section 74:36:04:03.01), 74:36:06, 74:36:10, 74:36:11 (with the exception of ARSD 74:36:11:04), 74:36:12, and 74:36:13. ARSD 74:36:07 (NSPS rules), as in effect on January 5, 1995 and as approved by EPA at 40 CFR 52.2170(c)(16)(i)(A), will remain part of the SIP until EPA acts on the revised ARSD 74:36:07 which will be done in a separate action. [Note that EPA is not incorporating ARSD 74:36:17, which includes the Rapid City street sanding and deicing provisions, into the approved SIP at this time because EPA has not yet acted on the original January 22, 1996 submittal of ARSD 74:36:17. That chapter will be acted on separately in the near future.]

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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 this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 18, 1998 without further notice unless the Agency receives adverse comments by November 18, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal of the final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 18, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review," review.

The final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not

required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 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 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 House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

G. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding South Dakota's audit privilege and penalty immunity law (sections 1-40-33 through 1-40-37 of Chapter 1-40 of the South Dakota Codified Laws, effective July 1, 1996) or its impact upon any approved provision in the SIP,

including the revisions at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of South Dakota's audit privilege and immunity law. A State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 114, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the SIP, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a State audit privilege or immunity law.

H. Petitions for Judicial Review

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 December 18, 1998. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 29, 1998.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

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 QQ—South Dakota

2. Section 52.2170 is amended by adding paragraph (c)(17) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(17) On May 2, 1997, the designee of the Governor of South Dakota submitted revisions to the plan. The revisions pertain to revised regulations for definitions, minor source operating permits, open burning, and performance testing. The State's SIP submittal requested that EPA replace the previous version of the ARSD approved into the SIP with the following chapters of the ARSD as in effect on December 29, 1996: 74:36:01 through 74:36:03, 74:36:04 (with the exception of section 74:36:04:03.01), 74:36:06, 74:36:07, 74:36:10–13, and 74:36:17. EPA is replacing all of the previously approved State regulations, except the NSPS rules in ARSD 74:36:07, with those regulations listed in paragraph (c)(17)(i)(A). ARSD 74:36:07, as in effect on January 5, 1995 and as approved by EPA at 40 CFR 52.2170(c)(16)(i)(A), will remain part of the SIP. [Note that EPA is not incorporating the revised ARSD 74:36:07, new ARSD 74:36:11:04, or new ARSD 74:36:17 in this action, as these chapters will be acted on separately by EPA.]

(i) Incorporation by reference.

(A) Revisions to the Administrative Rules of South Dakota, Air Pollution Control Program, Chapters 74:36:01–03; 74:36:04 (except section 74:36:04:03.1); 74:36:06; 74:36:10, 74:36:11 (with the exception of ARSD 74:36:11:04), 74:36:12, and 74:36:13, effective December 29, 1996.

[FR Doc. 98–27838 Filed 10–16–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–49; RM–9248]

Radio Broadcasting Services; Las Vegas, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of BK Radio, allots Channels 268A and 275A to Las Vegas, NM, as the community's fourth and fifth local commercial FM channels and permits BK Radio and Meadows Media, LLC to amend their pending applications (BPH–960829MH and BPH–960829MG) to specify Channels 268A and 275A respectively, without loss of cut-off protection. See 63 FR 19700, April 21, 1998. Channels 268A and 275A can be allotted to Las Vegas in compliance with

the Commission's minimum distance separation requirements and utilized at the transmitter site specified by both BK Radio and Meadows Media, with a site restriction of 3.9 kilometers (2.4 miles) west, at coordinates 35–36–16 North Latitude; 105–15–35 West Longitude. With this action, this proceeding is terminated.

DATES: Effective November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–49, adopted September 30, 1998, and released October 9, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 268A and Channel 275A at Las Vegas.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–27942 Filed 10–16–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–107; RM–9288]

Radio Broadcasting Services; Gaylord, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.