307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA 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 any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 182 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements are imposed by this approval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: July 2, 1996.

A. Stanley Meiburg,

*Acting Regional Administrator.*

Part 52 of chapter I, title 40, *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. 7401–7671q.

### Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(142) to read as follows:

**§ 52.2220 Identification of plan.**

* * * * *

(c) * * *

(142) Addition of two source specific nitrogen oxide (NOx) permits for certain engines at Tenneco Energy's Portland facility located in Sumner County, Tennessee, submitted by the Tennessee Department of Air Pollution Control (TDAPC) to EPA on May 31, 1996.

(i) Incorporation by reference.

(A) Operating Permit number 045022F, approved on May 31, 1996, except conditions 2, 3, 6, and 7.

(B) Operating Permit number 045025F, approved on May 31, 1996, except conditions 2, 4, and 5.

(ii) Other material. None.

[FR Doc. 96–18646 Filed 7–23–96; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 271

**[FRL–5534–2]**

## South Dakota: Final/Interim Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule on application of South Dakota for program revision.

**SUMMARY:** South Dakota has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed South Dakota's application and has reached a decision that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to South Dakota to operate its expanded program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

**EFFECTIVE DATE:** Final authorization for South Dakota shall be effective at 1:00 p.m. on September 23, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kris Shurr (8P2–SA), State Assistance Program, 999 18th Street, Ste 500, Denver, Colorado 80202–2466, Phone: 303/312–6139.

**SUPPLEMENTARY INFORMATION:**

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes

occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270.

B. South Dakota

South Dakota initially received final authorization on November 2, 1984. South Dakota received authorization for revisions to its program on June 17, 1991, November 8, 1993, and March 11, 1994. On October 2, 1995, South Dakota submitted a final program revision application for additional program approval.

EPA has reviewed South Dakota's application and has made a final decision that South Dakota's hazardous waste program revisions, which adopt Federal rules by reference, satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization for the additional program modifications listed in Table 1 to South Dakota.

Today, South Dakota is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3). Specific provisions which are included in the South Dakota program authorization revision sought today are listed in Table 1 below.

TABLE 1

| HSWA or FR reference | State equivalent [1] |
|---|---|
| Land Disposal Restrictions (Solvents and Dioxins), 51 *FR* 40572, 11/07/86; 52 *FR* 25760, 07/08/87; and 53 *FR* 31138, 08/17/88. | 74:28:01:02, 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01, 74:28:26:01, 74:28:28:01, and 74:28:30:01. |
| California List Waste Restrictions, 51 *FR* 40572, 11/07/86; 52 *FR* 25760, 07/08/87; and 53 *FR* 31138, 08/17/88. | 74:28:21:02, 74:28:23:01, 74:28:25:01, 74:28:26:01, 74:28:28:01, and 74:28:30:01. |
| Land Disposal Restrictions for First Third Scheduled Wastes, 51 *FR* 40572, 11/07/86; 52 *FR* 25760, 07/08/87; and 53 *FR* 31138, 08/17/88. | 74:28:25:01, 74:28:27:01, 74:28:28:01, and 74:28:30:01. |
| Changes to Interim Status Facilities for Hazardous Waste Management Permits; Modifications of Hazardous Waste Management Permits; Procedures for Post-Closure Permitting, 54 *FR* 9596, 03/07/89. | 74:28:26:01, and Memorandum of Agreement. |
| Land Disposal Restrictions Amendments to First Third Scheduled Wastes, 54 *FR* 18836, 05/02/89. | 74:28:30:01. |
| Delay of Closure Period for Hazardous Waste Management Facilities, 54 *FR* 33376, 08/14/89. | 74:28:25:01, 74:28:26:01, and 74:28:28:01. |
| Land Disposal Restrictions for Second Third Scheduled Wastes, 54 *FR* 26594, 6/23/89. | 74:28:30:01. |
| Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, 54 *FR* 36967, 09/06/89. | 74:28:27:01, and 74:28:30:01. |
| Land Disposal Restrictions for Third Third Scheduled Wastes, 55 *FR* 22520, 6/01/90. | 74:28:22:01, 74:28:23:01, 74:28:25:01, 74:28:26:01, 74:28:28:01, and 74:28:30:01. |
| Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 & F038), 55 *FR* 46354, 11/02/90 and 55 *FR* 51707, 12/17/90. | 74:28:22:01. |
| Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment, 56 *FR* 3864, 01/31/91. | 74:28:22:01, 74:28:23:01, 74:28:26:01, and 74:28:30:01. |
| Burning of Hazardous Waste in Boilers and Industrial Furnaces, 56 *FR* 7134, 02/21/91. | 74:28:21:01, 74:28:22:01, 74:28:25:01, 74:28:26:01, 74:28:27:01, and 74:28:28:01. |
| Removal of Strontium Sulfide from the List of Hazardous Waste; Technical Amendment, 56 *FR* 7567, 02/25/91. | 74:28:22:01. |
| Organic Air Emission Standards for Process Vents & Equipment Leaks; Technical Amendment, 56 *FR* 19290, 04/26/91. | 74:28:25:01, 74:28:26:01, and 74:28:28:01. |
| Administrative Stay for K069 Listing, 56 *FR* 19951, 05/01/91. | 74:28:22:01. |
| Revision to the Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038), 56 *FR* 21955, 05/13/91. | 74:28:22:01. |
| Mining Waste Exclusion III, 56 *FR* 27300, 06/13/91. | 74:28:22:01. |
| Wood Preserving Listings, 56 *FR* 27332, 06/13/91. | 74:28:22:01, 74:28:25:01, and 74:28:28:01. |
| Surface Impoundment Requirements—3005(j). | 74:28:29:01. |

[1] References are to the South Dakota Department of Environment and Natural Resources Title 74, Article 74:28 Hazardous Waste.

During EPA review of South Dakota's program revision application, EPA had two (2) concerns, which South Dakota has subsequently addressed to EPA's satisfaction.

The first issue dealt with public access to information. In previous program revision applications and in its Memorandum of Agreement (MOA) with EPA, the state has agreed to make records available to the fullest extent possible, subject to state law and federal Freedom of Information Act exemptions. However, South Dakota Codified Law 1–26–2 states: ''An agency shall hold confidential materials derogatory to a person but such information shall be available to the person to whom it relates.'' EPA's concern was that there is no standard set forth in the statute explaining derogatory or who is to make such a determination. South Dakota has made a change in its MOA which states that South Dakota will notify EPA if SDCL 1–26–2 is used to deny access to information. Further, the Attorney General's office has agreed to address this issue in its next program revision application.

The second issue was contained in South Dakota's recently passed self-audit immunity law. One of the statements contained in the law states: ''If a state program is required in writing by a federal agency to assess penalties for a violation in order to maintain primacy over a federally-delegated program, or if violations caused damage to human health or the environment, the * * * Act does not apply.'' South Dakota confirmed on June 6, 1996, that the state considers Enforcement Agreements with EPA as meeting the

definition of ''in writing by a federal agency''. The Attorney General's Office has agreed to also address this issue in the next program revision application submitted by South Dakota.

Indian Reservations

The program revision does not extend to ''Indian Country'' as defined in 18 U.S.C. Section 1151, including lands within the exterior boundaries of the following Indian reservations located within or abutting the State of South Dakota:

1. Cheyenne River Indian Reservation.
2. Crow Creek Indian Reservation.
3. Flandreau Indian Reservation.
4. Lake Traverse Indian Reservation.
5. Lower Brule Indian Reservation.
6. Pine Ridge Indian Reservation.
7. Rosebud Indian Reservation.
8. Standing Rock Indian Reservation.
9. Yankton Indian Reservation.

In excluding Indian Country from the scope of this program revision, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian Country. Should the State of South Dakota choose to seek program authorization within Indian Country, it may do so without prejudice. Before EPA would approve the State's 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.

There are no EPA-issued RCRA permits in Indian Country at this time.

C. Decision

I conclude that South Dakota's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, South Dakota is granted final authorization to operate its hazardous waste program as revised. South Dakota now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. South Dakota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether EPA or the state administers the RCRA Subtitle C program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves the South Dakota program to operate in lieu of the federal program, thereby eliminating duplicative requirements for handlers of hazardous waste in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UNRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain cases where a ''federal intergovernmental mandate'' affects an annual federal entitlement program of $500 million or more that are not applicable here. South

Dakota's request for approval of RCRA program revisions to its authorized hazardous waste program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its hazardous waste program revision approved, the State will gain the authority to implement the program within its jurisdiction, in lieu of EPA thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to EPA.

In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures $100 million or more for State, local, and tribal governments in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of South Dakota 's hazardous waste program revison referenced in today's notice will result in annual costs of $100 million or more. EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs or that will become subject to the requirements of an approved State hazardous waste program revision. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 25, 1996.

Jack W. McGraw,

*Acting Regional Administrator*

[FR Doc. 96–18659 Filed 7–23–96; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 417

**[OMC-009-FC]**

**RIN 0938-AG92**

## Medicare Program; Qualified Health Maintenance Organizations

*CFR Correction*

In title 42 of the Code of Federal Regulations, parts 400 to 429, revised as of October 1, 1995, on pages 587 through 599, §§ 417.912 through 417.919, 417.921 through 417.926, 417.932, 417.933, 417.935, and 417.936 were inadvertently published and should be removed.

BILLING CODE 1505-01-D

### 42 CFR Parts 431, 433, 440, 441, 447, and 456

**[MB–099–F]**

**RIN 0938–AH31**

## Medicaid Program; Medicaid Eligibility Quality Control, Progressive Reductions in Federal Financial Participation for FYs 1982–1984, Payment for Physician Billing for Clinical Laboratory Services, and Utilization Control of Skilled Nursing Facility Services: Removal of Obsolete Requirements

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes several obsolete sections of the Medicaid regulations that specify rules and procedures for disallowing Federal financial participation for erroneous medical assistance payments due to eligibility and beneficiary liability errors as detected through the Medicaid eligibility quality control program for assessment periods from 1980 through June 1990. The Medicaid regulations that contain the rules and procedures for the progressive reductions in Federal financial participation in medical assistance expenditures made to the States for fiscal years 1982 through 1984 are removed to reflect the repeal of the statutory bases for the reductions. The Medicaid regulations that provide for physician billing for clinical laboratory services that a physician bills or pays for but did not personally perform or supervise are removed to reflect the statutory repeal of this provision. In addition, the rule removes obsolete regulations that prescribe requirements concerning utilization control of Medicaid services furnished in skilled nursing facilities.

This rule is part of the Department's initiative to reinvent health care regulations and eliminate obsolete requirements.

**EFFECTIVE DATE:** These regulations are effective on August 23, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Mary Linda Morgan (410) 786–2011, Medicaid Eligibility Quality Control and Reductions in FFP for FYs 1982–1984 Issues

Linda Peltz (410) 786–3399, Utilization Control of Skilled Nursing Facilities Issues

Robert Weaver (410) 786–5914, Laboratory Services Issues.

**SUPPLEMENTARY INFORMATION:**

I. Reinventing Regulations Effort

Last year, the Department began an initiative to assist in meeting the Administration's commitment to reinventing government regulations. As part of this effort, we began to examine the requirements contained in regulations issued by HCFA governing the Medicare and Medicaid programs to determine which requirements could be reduced or eliminated while assuring that we continually improve the quality of services to Medicaid and Medicare beneficiaries. This rule is a result of part of our efforts in this regard to eliminate obsolete and burdensome requirements.

II. Medicaid Eligibility Quality Control Program

Under the Medicaid program, States are required to operate a Medicaid eligibility quality control (MEQC) program. The program is designed to reduce erroneous expenditures in medical assistance payments by monitoring eligibility determinations. Under the MEQC program, States are required to select a sample of cases every month and review them for eligibility errors. HCFA annually calculates each States' error rate on the basis of State review findings. Federal financial participation (FFP) in State medical assistance expenditures is