E. 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 create any new requirements, I certify that this action will not have a significant economic 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 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, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. 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 annual costs to State, local, or tribal governments in the aggregate; or to 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 annual 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

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 April 3, 2000. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 10, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

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 F—California

2. Section 52.220 is amended by revising paragraph (c)(41)(ii) introductory text, and by adding paragraph (c)(41)(ii)(E) and (c)(269) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(41) * * *

(ii) San Diego County Air Pollution Control District.

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(E) Previously approved on August 31, 1978 and now deleted without replacement Rule 3.

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(269) New and amended regulations for the following APCDs were submitted on September 7, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) Kern County Air Pollution Control District.

(*1*) Rule 102, adopted on April 18, 1972 and amended on July 1, 1999.

(B) San Diego County Air Pollution Control District.

(*1*) Rule 2, adopted on June 30, 1999.

(C) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 1020, adopted on June 18, 1992 and amended on June 17, 1999.

(D) South Coast Air Quality Management District.

(*1*) Rule 102, adopted on February 4, 1997 and amended on April 9, 1999.

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[FR Doc. 00–2169 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SD–001–0007a & SD–001–0008a; FRL–6527–2]

Clean Air Act Approval and Promulgation of State Implementation Plan; South Dakota; Revisions to Performance Testing Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA approves revisions to the South Dakota State implementation plan (SIP) submitted on May 2, 1997 and May 6, 1999 regarding the testing of new fuels or raw materials. Specifically, the State adopted a new provision in Chapter 74:36:11, Performance Testing, of the Administrative Rules of South Dakota (ARSD) that allows permitted sources to request permission to test a new fuel or raw material, to determine if it is compatible with existing equipment and to determine air emission rates, before

requesting a permit amendment or modification. The State will grant approval for such testing of a new fuel or raw material if certain conditions in the State's regulation are met. The State's regulation provides, among other things, that the State will not approve a test if the test would cause or contribute to a violation of a national ambient air quality standard (NAAQS). EPA approves these revisions regarding testing of new fuels or raw materials because the revisions are consistent with the requirements of the Clean Air Act (Act) and applicable Federal regulations.

DATES: This rule is effective on April 3, 2000 without further notice, unless EPA receives adverse comment by March 6, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. 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, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 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. What Action Is EPA Taking Today?

EPA approves a provision in Chapter 74:36:11 of the ARSD, Performance Testing, that allows permitted sources to request permission to test a new fuel or raw material, to determine if it is compatible with existing equipment and to determine air emission rates, before requesting a permit amendment or modification. The State originally submitted this provision in section 74:36:11:04 of the ARSD on May 2, 1997. The State submitted revisions to this provision on May 6, 1999. EPA approves this provision, as revised, because it is consistent with applicable Federal regulations and the Act.

The State's May 2, 1997 and May 6, 1999 SIP submittals included revisions to other chapters of the ARSD. We acted on most of those revisions submitted on May 2, 1997 in an October 19, 1998 rulemaking (see 63 FR 55804–55807). In this document, we only act on the revisions to ARSD 74:36:11:04. We will act on the revisions to the other chapters of the ARSD included in these two submittals in separate rulemakings.

II. How Did South Dakota Revise Its SIP Regarding Testing of New Fuels or Raw Materials?

In South Dakota's May 2, 1997 SIP submittal, the State submitted revisions to its Performance Testing requirements in Chapter 74:36:11. Specifically, ARSD 74:36:11:04 allows a source to request permission from the State to test a new fuel or raw material to determine if it is compatible with existing equipment, before requesting a permit modification or permit amendment to use the new fuel or raw material. The version of ARSD 74:36:11:04 submitted on May 2, 1997 requires the State's approval prior to a source beginning to test a new fuel or raw material; the State's approval will specify the schedule for the testing and will outline requirements which may include performance testing, visible emissions evaluation, fuel analysis, dispersion modeling, and monitoring of raw material or fuel rates. If the State determines that the use of the new fuel or raw material will increase emissions, the State will give public notice of the proposed testing and take public comment for thirty days. The State will consider any comments received prior to making a final decision on whether to allow the source to test a new fuel or raw material.

EPA had some concerns with ARSD 74:36:11:04 as originally submitted. Specifically, we were concerned that this provision might allow a source testing a new fuel or raw material to violate the NAAQS. EPA cannot approve any provision in the SIP unless it will assure attainment and maintenance of the NAAQS. Further, we were concerned that there was no time limit specified in the rule to define how long a source could test a new fuel or raw material before obtaining a revision to its permit.

Consequently, the State revised ARSD 74:36:11:04 to address our concerns and submitted those revisions for approval as part of the SIP on May 6, 1999. Specifically, a provision was added that the State will not approve a test if the test would cause or contribute to a violation of a NAAQS. In addition, the State added a provision stating that, in most cases, the owner or operator will be allowed to test for a maximum of one week. Any request for a period longer than one week will require additional justification. In any case, the revised rule provides that a test period shall not exceed 180 days. The revised rule also clarifies that the purpose of the testing of the new fuel or raw material is to determine air emission rates, as well as to determine compatibility with existing equipment.

III. Why Is EPA Approving These SIP Revisions?

EPA finds that ARSD 74:36:11:04, as revised, is consistent with the applicable requirements of the Act and Federal regulations. The State's rule, as revised, will not allow testing of a new fuel or raw material if the test would cause or contribute to a violation of the NAAQS. The duration of time that a source is allowed to test a new fuel or material is generally limited to one week but, in any case, cannot exceed 180 days. EPA believes that these provisions ensure that this rule is consistent with section 110 of the Act and with the applicable permitting requirements at 40 CFR part 51, subpart I. Further, the public will have the chance to submit comments prior to the State determining whether to approve the test, if the use of the fuel or raw material will result in an increase of emissions of any pollutant.

We also believe that the State has met EPA's completeness criteria, including the public participation requirements of sections 110(a)(2) and 110(l) of the Clean Air Act, for the adoption of these revisions to ARSD 74:36:11:04. Specifically, the State of South Dakota held a public hearing on November 20, 1996, after providing notice to the public, for the revisions to ARSD 74:36:11:04 submitted to EPA on May 2, 1997. For the SIP revision submitted on May 6, 1999, the State held a public hearing on February 18, 1999 after providing notice to the public.

EPA would like to provide our interpretation of how ARSD 74:36:11:04 relates to the prevention of significant deterioration (PSD) permitting regulations (which South Dakota adopted by reference in ARSD 74:36:09). Specifically, in defining what constitutes a major modification subject to review under the PSD permitting regulations, EPA's regulations provide that the use of an alternative fuel or raw material that the source was capable of accommodating before January 6, 1975 is not considered to be a physical change or a change of method in operation, unless the use of such

alternative fuel would be prohibited under any Federally enforceable permit condition. See 40 CFR 52.21(b)(2)(iii)(e)(1). In order for such a change in fuel or material usage to be exempt from permitting, the source must have been designed and constructed to accommodate the alternative fuel or raw material prior to January 6, 1975, and the source must have been continuously capable of accommodating the alternative fuel or raw material since before January 6, 1975. Sources requesting to test a new fuel or raw material under ARSD 74:36:11:04 to determine compatibility with existing equipment would appear not to know whether the facility is capable of accommodating the new fuel or material. Thus, the testing of a new fuel or raw material pursuant to ARSD 74:36:11:04 would not likely qualify as exempt from consideration as a physical change or change in the method of operation under 40 CFR 52.21(b)(2)(iii)(e)(1). EPA has provided this clarification to ensure there is no confusion with respect to the relationship between ARSD 74:36:11:04 and this PSD provision.

IV. What Are the Administrative Requirements Associated With This Action?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule 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 approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, 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 rule 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective April 3, 2000.

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 April 3, 2000. 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.

Dated: January 6, 2000.

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)(19) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(19) On May 2, 1997 and on May 6, 1999, the designee of the Governor of South Dakota submitted provisions in Section 74:36:11:04 of the Administrative Rules of South Dakota. The provisions allow permitted sources to request permission to test a new fuel or raw material, to determine if it is compatible with existing equipment and to determine air emission rates, before requesting a permit amendment or modification if certain conditions are met.

(i) Incorporation by reference.

(A) Revisions to the Administrative Rules of South Dakota, Air Pollution Control Program, Chapter 74:36:11, Performance Testing, section 74:36:11:04, effective April 4, 1999.

[FR Doc. 00–2167 Filed 2–2–00; 8:45 am]

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