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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 60**

[SD-001-0010 & SD-001-0011; FRL-6603-1]

Clean Air Act Approval and Promulgation of State Implementation Plan; South Dakota; New Source Performance Standards**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The EPA approves revisions to the South Dakota State implementation plan (SIP) which update the State's incorporation by reference of the Federal New Source Performance Standards (NSPS). The SIP revisions were submitted by the designee of the Governor of South Dakota on May 2, 1997 and on May 6, 1999. The State adopts the Federal NSPS by reference in subchapter 74:36:07 of the Administrative Rules of South Dakota (ARSD). The State also repealed a rule that required stack tests for asphalt batch plants, aside from the initial stack test required by the NSPS, to be performed if certain conditions existed. EPA approves the revisions to the ARSD 74:36:07 because the revisions are consistent with Federal regulations. This approval action does not extend to sources in Indian country.

EFFECTIVE DATE: This rule is effective on June 21, 2000.

ADDRESSES: 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 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. Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

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

SUPPLEMENTARY INFORMATION:**I. What Action Is EPA Taking Today?**

We approve two revisions to the South Dakota's NSPS regulations in subchapter 74:36:07 of the ARSD, except for those sources located in Indian country. These revisions were submitted for approval as part of the SIP on May 2, 1997 and on May 6, 1999.

The State's May 2, 1997 and May 6, 1999 SIP submittals included revisions to other subchapters 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 74:36:07. We will act on the revisions to the other subchapters of the ARSD included in these submittals in separate rulemakings.

EPA proposed to approve these revisions to South Dakota's NSPS in subchapter 74:36:07 of the ARSD in the September 21, 1999 **Federal Register** (see 64 FR 51088-51091), except for those sources located in Indian country. In that document, EPA also proposed to clarify the interpretation of Indian country in South Dakota. No comments were submitted on our proposed approval of South Dakota's SIP revisions pertaining to the NSPS. EPA did receive comments on our proposed clarification of the interpretation of Indian country in South Dakota. See Section V. of this document for further discussion.

II. What Changes Were Made to South Dakota's NSPS Regulation?

In South Dakota's May 2, 1995 SIP submittal, the State adopted four new NSPS categories in subchapter 74:36:07 of the ARSD. Specifically, the State incorporated by reference the following subparts of the Federal NSPS in 40 CFR part 60 as in effect on July 1, 1995 unless otherwise stated: subpart Eb (pertaining to large municipal waste combustors) as promulgated by EPA on December 19, 1995 (59 FR 65419-65436); 40 CFR part 60, subpart RRR (pertaining to the synthetic organic chemical manufacturing industry reactor processes); 40 CFR part 60, subpart UUU (pertaining to calciners and dryers in mineral industries); and 40 CFR part 60, subpart WWW (pertaining to municipal solid waste (MSW) landfills) as promulgated by EPA on March 12, 1996 (61 FR 9918-29). The State also updated its existing NSPS subparts to incorporate by reference the July 1, 1995 version of the Federal NSPS.

In South Dakota's May 6, 1999 SIP submittal, the State adopted one new NSPS subpart in subchapter 74:36:07 of the ARSD: 40 CFR 60, subpart Ec

(pertaining to hospital/medical/infectious waste incinerators) as promulgated by EPA on September 15, 1997 (62 FR 48383-48390). The State also updated its incorporation by reference of 40 CFR part 60, subpart Eb (pertaining to municipal waste combustors) to reflect the version in effect as of July 1, 1997, and also updated its incorporation by reference of 40 CFR part 60, subpart WWW (pertaining to MSW landfills) to reflect the version as revised on June 16, 1998 (63 FR 32750-32753). Last, the State repealed its additional provisions for asphalt batch plants in Section 74:36:07:11 of the ARSD. This section previously required stack tests at asphalt batch plants, aside from the initial stack test required by the NSPS, if certain conditions existed. The State repealed this section because it was repetitive with recent changes to the ARSD. The State still has the ability to require stack performance tests at any time to determine compliance with emission limits.

III. Why Is EPA Approving the South Dakota Revisions to the NSPS?

EPA approves these revisions to South Dakota's NSPS in ARSD 74:36:07 because the revisions ensure that the State's NSPS are up to date with the Federal NSPS.

We also believe the State 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 74:36:07. Specifically, the State of South Dakota held a public hearing on November 20, 1996, after providing notice to the public, for the revisions to the ARSD submitted to EPA on May 2, 1997. For the SIP revisions submitted to EPA on May 6, 1999, the State held a public hearing on February 18, 1999, after providing notice to the public.

IV. How Do I Know What NSPS Subparts Have Been Approved as Part of the SIP or Delegated by EPA to the States?

We publish a table in 40 CFR 60.4 for Region VIII States that identify which NSPS subparts have been adopted by the States and delegated and approved by EPA. In this document, we update that table to reflect the NSPS subparts delegated to South Dakota. We are also updating the address listed for the State of South Dakota in 40 CFR 60.4.

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

South Dakota is not authorized to carry out its NSPS program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

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, and
- H. Yankton Indian Reservation.

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and extent of Indian country within the State of South Dakota. EPA also received written comments on the question of the location and extent of Indian country pursuant to our September 21, 1999 notice of proposed approval of South Dakota's NSPS revisions. In a forthcoming **Federal Register** notice, EPA will respond to the comments that have been received and more specifically identify Indian country areas in the State of South Dakota.

VI. What Final Action on the South Dakota SIP Submittals Is EPA Taking Today?

We approve these revisions to South Dakota's NSPS in ARSD 74:36:07 because the revisions ensure that the State's NSPS are up to date with the Federal NSPS. However, our approval of these South Dakota SIP revisions does not extend to sources located in Indian Country, as defined in 18 U.S.C. 1151 and as further discussed in Section V. of this document.

VII. 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 (Public Law 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. 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 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. section 804(2). This rule will be effective June 21, 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 July 21, 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 60

Air pollution control, Aluminum, ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Drycleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires,

Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

Dated: May 2, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

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)(18) to read as follows:

§ 52.2170 Identification of plan.

(c) * * * * *
 (18) On May 2, 1997 and on May 6, 1999, the designee of the Governor of South Dakota submitted revisions to the new source performance standards in subchapter 74:36:07 of the Administrative Rules of South Dakota (ARSD).

(i) Incorporation by reference.
 (A) Revisions to the Administrative Rules of South Dakota, Air Pollution Control Program, Chapter 74:36:07—New Source Performance Standards, subsections 74:36:07:01 through 74:36:07:10, 74:36:07:12 through 74:36:07:28, 74:36:07:31 through 74:36:07:33, and 74:36:07:43, effective December 29, 1996.
 (B) Revisions to the Administrative Rules of South Dakota, Air Pollution Control Program, Chapter 74:36:07—New Source Performance Standards, subsections 74:36:07:06.02, 74:36:07:07.01, 74:36:07:11, and 74:36:07:43, effective April 4, 1999.
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PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

Subpart A—General Provisions

2. Section 60.4 is amended by:
 a. Revising the address listed for the State of South Dakota in paragraph (b)(QQ); and

b. In the table in paragraph (c) entitled “Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]” by revising the entries for “Eb—Large Municipal Waste Combustors,” “Ec—Hospital/Medical/Infectious Waste Incinerators,” “UUU—Calciners and Dryers in Mineral Industries,” and “WWW—Municipal Solid Waste Landfills”; and removing the existing entry for “RRR—VOC Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Process” and adding a new entry for “RRR—VOC Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes” to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(QQ) State of South Dakota, Air Quality Program, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, SD 57501–3181.

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(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS
 [(NSPS) for Region VIII]

Subpart	CO	MT ¹	ND	SD ¹	UT ¹	WY
Eb—Large Municipal Waste Combustors	*	*		*		
Ec—Hospital/Medical/Infectious Waste Incinerators			(*)	(*)		(*)
RRR—VOC Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes	(*)		(*)	(*)	(*)	(*)
UUU—Calciners and Dryers in Mineral Industries	(*)		(*)	(*)	(*)	(*)
WWW—Municipal Solid Waste Landfills			(*)	(*)	(*)	(*)

(*) Indicates approval of State regulation.

¹ Indicates approval of New Source Performance Standards as part of the State Implementation Plan (SIP).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–6703–3]

RIN 2060–AJ12

Extension of Operating Permits Program, Interim Approval Expiration Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the operating permits regulations of EPA. Those regulations were originally promulgated on July 21, 1992. These amendments will extend up to December 1, 2001 all operating permits program interim approvals. This action will allow the time needed for permitting authorities to correct all remaining interim approval deficiencies and obtain full approval for their operating permits programs.

DATES: The regulatory amendments announced herein take effect on May 31, 2000. For those programs whose interim