

(4) *Children's Hospital Differential.* With respect to claims from children's hospitals, the appropriate adjusted standardized amount shall also be adjusted by a children's hospital differential.

(i) *Qualifying children's hospitals.* Hospitals qualifying for the children's hospital differential are hospitals that are exempt from the Medicare Prospective Payment System, or, in the case of hospitals that do not participate in Medicare, that meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(ii) *Calculation of differential.* The differential shall be equal to the difference between a specially calculated children's hospital adjusted standardized amount and the adjusted standardized amount for fiscal year 1988. The specially calculated children's hospital adjusted standardized amount shall be calculated in the same manner as set forth in § 199.14(a)(1)(iii)(D), except that:

(A) The base period shall be fiscal year 1988 and shall represent total estimated charges for discharges that occurred during fiscal year 1988.

(B) No cost to charge ratio shall be applied.

(C) Capital costs and direct medical education costs will be included in the calculation.

(D) The factor used to update the database for inflation to produce the fiscal year 1988 base period amount shall be the applicable Medicare inpatient hospital market base rate.

(iii) *Transition rule.* Until March 1, 1992, separate differentials shall be used for each higher volume children's hospital (individually) and for all other children's hospitals (in the aggregate). For this purpose, a higher volume hospital is a hospital that had 50 or more CHAMPUS discharges in fiscal year 1988.

(iv) *Hold harmless provision.* At such time as the weights initially assigned to neonatal DRGs are recalibrated based on a sufficient volume of CHAMPUS claims records, children's hospital differentials shall be recalculated and appropriate retrospective and prospective adjustments shall be made. To the extent practicable, the recalculation shall also include reestimated values of other factors (including but not limited to direct education and capital costs and indirect education factors) for which more accurate data became available.

(v) *No update for inflation.* The children's hospital differential, calculated (and later recalculated under the hold harmless provision) for the base period of fiscal year 1988, shall not be updated for subsequent fiscal years.

(vi) *Administrative corrections.* In connection with determinations pursuant to paragraph (a)(1)(iii)(E)(4) (iii) of this section, any children's hospital that believes OCHAMPUS erroneously failed to classify the hospital as a volume hospital or incorrectly calculated (in the case of a high volume hospital) the hospital's differential may obtain administrative corrections by submitting appropriate documentation to the Director, OCHAMPUS (or designee).

(G) * * *

(3) *Information necessary for payment of capital and direct medical education costs.* All hospitals subject to the CHAMPUS DRG-based payment system may be reimbursed for allowed capital and direct medical education costs by submitting a request to the CHAMPUS contractor. Such request shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. In the case of children's hospitals that request reimbursement under this clause for capital and/or direct medical education costs, the hospital must submit appropriate base period cost information, as determined by the Director, OCHAMPUS (or designee). (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change.) The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 12, 1988.

[FR Doc. 88-28659 Filed 12-15-88; 8:45 am]

BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Increase in Rates Payable in the Educational Assistance Test Program

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the 12-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6 percent. The regulations dealing with these rates are adjusted accordingly.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 233-2668.

SUPPLEMENTARY INFORMATION: On pages 16884 and 16885 of the Federal Register of May 12, 1988, there was published a proposal to amend 38 CFR Part 21 to increase by 6 percent the rates of educational assistance provided under the Educational Assistance Test Program. Interested people were given 29 days to submit comments, suggestions or objections.

The Veterans Administration (VA) received one letter from a university official. He was concerned about the possible impact that the retroactive effective date of these amended regulations would have on the veteran-students receiving benefits.

The VA appreciates the official's concern, but has decided to provide a retroactive effective date for these regulations. The VA has made this decision because of its previous experience with the rate increases in this program. Due to the nature of the Federal regulatory process all previous amendments to these regulations which provided an increase in rates payable under this program have had retroactive effective dates. No college or university where eligible veterans were attending has ever reported to the VA that this has had a negative impact on its students.

Similarly, no veterans have ever reported a negative impact. If such reports are received in the future, the VA will consider them in determining whether amended regulations implementing future rate increases should have a retroactive effective date.

Consequently, these increases are effective October 1, 1987. Retroactive effect is warranted because these changes are liberalizing, and because they are interpretive rules which implement and construe the meaning of a law. Moreover, there is good cause for a retroactive effective date of October 1, 1987. Such a date facilitates implementation of 10 U.S.C. 2145 which requires annual adjustments in educational assistance.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations make adjustments required by law, and because they affect only rates payable to individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 4, 1988.

Thomas K. Turnage,
Administrator.

Approved: November 16, 1988.

A. Lukeman,
Lieutenant General, USMC, Deputy Assistant Secretary (Military Manpower and Personnel Policy).

38 CFR Part 21, *Vocational Rehabilitation and Education*, is amended as follows:

PART 21—[AMENDED]

1. In § 21.5820, the introductory text of paragraph (b), paragraph (b)(1)(ii) (A), (B), and (C), and paragraphs (b)(2)(i) (A), (B), and (C) are revised to read as follows:

§ 21.5820 Educational assistance.

(b) *Amount of education assistance.* The amount of educational assistance may not exceed \$1,654 per standard academic year, adjusted annually by regulation.

(Authority: 10 U.S.C. 2143)

(1) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by \$183.78 for a full-time student or by \$91.89 for a part-time student;

(B) Multiplying any additional days in the enrollment period by \$6.12 for a full-time student or by \$3.06 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by \$.02 for a full-time student and decreased by \$.01 for a part-time student; and

(Authority: 10 U.S.C. 2143)

(2) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by \$183.78 for a full-time student or by \$91.89 for a part-time student;

(B) Multiplying any additional days in the enrollment period by \$6.12 for a full-time student or by \$3.06 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by \$.02 for a full-time student and decreased by \$.01 for a part-time student; and

(Authority: 10 U.S.C. 2143)

2. In § 21.5822, paragraphs (b)(1) (i) and (ii) and (b)(2) (i) and (ii) are revised to read as follows:

§ 21.5822 Subsistence allowance.

* * *

(b) * * *

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is \$412 per month, adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is \$206 per month.

(Authority: 10 U.S.C. 2144)

* * *

(2) * * *

(i) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing \$412 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing \$206 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(Authority: 10 U.S.C. 2144)

* * *

[FR Doc. 88-28909 Filed 12-15-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3485-1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On August 3, 1988 (53 FR 29236 and 53 FR 29239), USEPA proposed to approve revisions to the Indiana State Implementation Plan (SIP) for sulfur dioxide (SO₂) under USEPA's "parallel processing" procedures. The revisions consist of Indiana's SO₂ emission limits and plans for Floyd, Morgan, and Warrick Counties. USEPA's actions were based upon revision requests which were submitted by the State to satisfy the requirements of section 110 of the Clean Air Act (Act). USEPA, today, is approving Indiana's

emission limits and plans for all of these counties.

DATE: This final rulemaking becomes effective January 17, 1989.

ADDRESSES: Copies of the SIP revisions, comments, and support documentation are available at the following addresses for review: (It is recommended that you telephone Kent Wiley, at (312) 886-6034, before visiting the Region V office.)

U.S. Environmental Protection Agency,
Region V, Air and Radiation Branch,
230 South Dearborn Street, Chicago,
Illinois 60604.

Office of Air Management, Indiana
Department of Environmental
Management, 105 South Meridian
Street, P.O. Box 6015, Indianapolis,
Indiana 46206-6015.

A copy of today's revisions is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kent Wiley, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6034.

SUPPLEMENTARY INFORMATION: On August 3, 1988, USEPA proposed to approve revisions to the Indiana SO₂ SIP, for Floyd, Morgan, and Warrick Counties. The SIP for these counties currently consists of the general provisions of Indiana's SO₂ rule, 325 IAC 7-1, which USEPA approved on January 19, 1988, 53 FR 1354. The revisions consist of (1) the site-specific SO₂ emission limits and other requirements in 326 IAC 7-1-16 (Floyd County, submitted March 23, 1988), 326 IAC 7-1-18 (Morgan County, submitted July 12, 1988), and 326 IAC 7-1-17 (Warrick County, submitted July 21, 1988);¹ and (2) the 6.0 lbs/MMBTU emission limit in 326 IAC 7-1-2, which is the emission limit applicable to all other sources not specifically listed in the county-specific rules (except for new sources subject to a federally enforceable new source review permits).

Background information for USEPA's rulemaking action is contained in the August 3, 1988, Federal Register notices and will not be repeated here. The specific emission limitations and plan requirements for these counties are also discussed in the August 3, 1988, notices.

USEPA today approves the emission limits and other requirements for

sources in these counties and the overall SO₂ plans for these counties on the ground that they satisfy the requirements of section 110 of the Clean Air Act.

Response to Public Comments

Specific public comments and the corresponding responses of USEPA follow.

Floyd County

There were no comments submitted concerning Floyd County specifically.

Morgan County and Warrick County—Optional Limits

In the proposals for Morgan County and for Warrick County, USEPA specifically solicited comments concerning the need for additional advance notice, recordkeeping, and reporting requirements for certain sources to switch from one set of emission limits (Base Set) to another set of emission limits (Optional Set). Indianapolis Power and Light Company (IPL) questioned the need for advance notification for the Pritchard Station in Morgan County, given the current requirements in the State rule. The Indiana Department of Environmental Management (IDEM) commented that the time periods provided by its rules for both counties are sufficient for adequate enforcement. The State also pointed out that similar sets of variable emission limits in other counties of Indiana are in force and do not present enforcement problems.²

USEPA has reviewed the proposed revisions for Morgan and Warrick Counties, along with the existing SIP provisions, and has determined that they are sufficient for ascertaining the appropriate emission limits at a given time. USEPA is therefore approving the rules.³

² In Morgan County, the applicable emission limit is dependent upon whether Pritchard Unit 3 burns coal. 326 IAC 7-1-18(a) requires IPL to maintain a daily summary of the fuel type for Unit 3 in the quarterly reports required by federally approved 325 IAC 7-1-3(a). In addition the rule clarifies which set of limits applies for each day for both the stack test and 30-day average compliance methodologies. It will, therefore, enable State and Federal authorities to review available fuel records for Unit 3 on the day in which a stack test is to be conducted so that the applicable limit can be ascertained.

In Warrick County, the rule permits source discretion to vary emission limits, provided IDEM and USEPA are notified by certified mail at least 14 days in advance of any change. USEPA has concluded that this 14-day period provides sufficient time for notifying the two agencies, which can then determine which limits are in effect for enforcement purposes.

³ As a general matter, EPA prefers fixed emission limits, rather than optional limits which increase the burden of states and EPA in assuring compliance. EPA has determined that the rules for Morgan and

Warrick County—Other Comments

Additional comments were received from the Amax Coal Company (Amax), the Aluminum Company of America (ALCOA), the Peabody Coal Company (Peabody), Southern Indiana Gas and Electric Company (SIGECO), IPL, and IDEM.

Amax objected to the Optional Set of emission limits for SIGECO. Amax claimed that it can supply coal to meet the 2.79 lbs./MMBTU Base Set of limits, but not the 2.0 lbs./MMBTU Optional limit. Amax, therefore, urged USEPA to delete the Optional Set of limits from the final rulemaking. SIGECO also objected to the Optional Set of emission limits due to the lack of compliance coal from its current suppliers.

Peabody also stated that the proposed limits will adversely affect its ability to supply compliance coal to ALCOA and SIGECO, but nevertheless urged USEPA to approve the limits to minimize these impacts.

USEPA proposed to accept the Base Set and the Optional Set of emission limits based on Indiana's demonstration that both of these sets of limits will provide for attainment and maintenance of the SO₂ National Ambient Air Quality Standards (NAAQS). Any comments on the economic impacts of the emission limitations should be raised at the State level. USEPA does not have the authority in this action to alter the State's submittal as Amax suggested.*

Further, the Optional Set of limits is only invoked if SIGECO and ALCOA jointly agree to it. Therefore, SIGECO (not USEPA) determines if and how SIGECO must meet the Optional limits. If SIGECO and ALCOA decide that they wish to invoke the Optional limits, then SIGECO may have to change its source of coal, at least in part, and/or use technology which would lessen emissions from the coal which is locally available.

SIGECO and IPL objected to the provision in the rule which, because of changing emission scenarios, may base compliance with the 30-day averaging provisions on emission scenarios with

Warrick Counties are enforceable as required by the Act. This approval is based on the factual circumstances here, and should not be interpreted as obliging EPA to approve optional limits submitted by a state in other circumstances.

As always, EPA has the authority, on a case-specific basis, to use section 114 to establish additional monitoring, recordkeeping, and reporting requirements as necessary to assure compliance with these rules for Morgan and Warrick Counties.

* See *Bethlehem Steel Corp. v. Gorsuch*, 742 F.2d 1028 (7th Cir. 1984).

¹ The Warrick County SO₂ rule was proposed under USEPA's "parallel processing" procedures. The rule was subsequently promulgated by the State as proposed on November 7, 1988, and was submitted as promulgated on November 17, 1988.

less than 30 days of data. See 326 IAC 7-1-17(a)(1)(D).⁵

USEPA recognizes that Indiana's averaging technique may result in less than 30 days worth of data in a given scenario. However, on January 19, 1988, USEPA (1) approved Indiana's compliance methodology on the basis that the stack test methodology protects the short-term SO₂ limits and (2) approved Indiana's 30-day averaging methodology as an additional compliance technique is over and above that which is required, i.e., a stack test, and thus is approvable under Section 116 of the Act.

Similarly, USEPA today is approving Indiana's methodology, as contained in its rule, for enforcing the 30-day averaging methodology for sources in Morgan and Warrick Counties when there is less than 30 days of data. USEPA believes that this approach is a reasonable way to enforce Indiana's fuel averaging provisions. USEPA also notes that the ability to switch between optional sets of emission limits also may be a temporary measure in Warrick County. This option will be eliminated under Indiana's rule if a single set of emission limits is ultimately decided upon by SIGECO (and ALCOA) prior to December 1, 1989.

IDEM also commented on various other issues. First, it pointed out certain typographical errors in the listed emission limits. The limits for ALCOA's Warrick plant should have read "6.0 lbs/Million British Thermal Units" (lbs/MMBTU) prior to December 31, 1989; 5.41 lbs/MMBTU beginning December 31, 1989, and until August 1, 1991; and 5.11 lbs/MMBTU beginning August 1, 1988, and afterward." Similar to the phased reduction required for the SIGECO Culley plant, ALCOA is to meet a 5.41 lbs/MMBTU interim limit in progress toward attainment and maintenance of the standards at 5.11 lbs./MMBTU. USEPA acknowledges these errors and is approving Indiana's rule as submitted.

Second, in the August 3, 1988, notices of proposed rulemaking (NPR), USEPA requested the State to provide formal notification, along with the supporting documentation, that ALCOA has erected fences around the property to restrict

public access. IDEM provided a copy of a letter from ALCOA certifying the erection of the necessary fences, along with a map showing the location of the fences. IDEM also committed to continue to comply with USEPA's ambient air policy⁶ in future actions for Warrick County, including the placement of receptors over bodies of water, such as the Ohio River. (ALCOA also stated in its comments that the fencing has been completed.)

Based on this information, USEPA considers this issue to be resolved (i.e., IDEM's exclusion of receptors from specific portions of ALCOA's property was proper) and accepts IDEM's commitment to comply with USEPA's ambient air policy in future actions for this county.

Third, USEPA in the NPR that the Optional Emission Limits may result in future changes in actual emissions which may affect the Prevention of Significant Deterioration (PSD) increments under Part C of the Act, and requested that IDEM identify how it will address increment consumption under these conditions. IDEM noted that because the SO₂ baseline date has not been triggered for Warrick County, an increment analysis within the county is not required at this time. An increment analysis in other counties (and if applicable, in the future, within Warrick County) would be performed as part of another interacting source's PSD application. In addition, IDEM claimed that the potential emission increases (based on the difference between the allowable emission levels) would not threaten the increments.

USEPA acknowledges that a definitive response is not possible at this time, given the unknown future status of the baseline date, the amount of available increment, and the change in ALCOA or SIGECO emissions. USEPA acknowledges IDEM's intent to address this issue when it is appropriate. At that time, calculations of increment consumption should be made on the difference between the (actual) source emissions included in the baseline concentration and the (actual) emissions after the source has switched to an Optional Emission Limit scenario. Prior to the switching, the calculations should be based on the actual baseline emissions and the emissions allowed under the Optional Emission Limit scenario. Thus, IDEM's increment

estimate based strictly on allowable emissions is not meaningful.⁷

Conclusion

USEPA is approving Indiana's emission limits, other requirements, and overall plans for Floyd, Morgan, and Warrick, Counties, because they meet the requirements of section 110 of the Clean Air Act.

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 14, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, and Sulfur oxides.

Dated: November 28, 1988.

Lee M. Thomas,
Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS, INDIANA

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

§ 52.770 [Amended]

2. Section 52.770 is amended by removing and reserving paragraph (c)(67)(i)(H).

3. Section 52.770 is amended by adding new paragraph (c)(71) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(71) On March 23, 1988, Indiana submitted its SO₂ plan for Morgan County; on July 12, 1988, it submitted its SO₂ plan for Floyd County, and on November 17, 1988, it submitted its SO₂ plan for Warrick County. These plans consist of the provisions and requirements in 325 IAC 7-1 approved or reinstated for these counties at

⁵ IPL does not own or operate any sources in Warrick County, but does own and operate plants in Marion County which also have alternate emission limit scenarios. IPL contends in its comments that it is thus affected by the compliance determination method in the Warrick County rule. USEPA disagrees, noting that IPL's Marion County sources are regulated by the requirements in 325 IAC 7-1-9, and by the State's applicable enforcement policy, as expressed in IDEM letters of February 1, 1988, and June 24, 1988. (See 53 FR 33810, September 1, 1988.)

⁶ USEPA's ambient air policy is based on the definition of ambient air found at 40 CFR 50.1(e) and described in a December 19, 1978, letter from Douglas Costle, then USEPA Administrator, to Senator Jennings Randolph.

⁷ IDEM also noted in its comments that two additional minor revisions to the Warrick County rule were under consideration. However, IDEM has subsequently informed USEPA that these modifications were not adopted by the Indiana Air Pollution Control Board.

Paragraph (c)(66), any SO₂ emission limits in 325 IAC 7-1-2 applicable in these counties (as incorporated by reference at (c)(66)(i)(A), and the site-specific SO₂ emission limits and other requirements in 326 IAC 7-1-16, (Floyd County), 326 IAC 7-1-18, (Morgan County), and 326 IAC 7-1-17 (Warrick County).

(i) *Incorporation by reference.* (A) 326 IAC 7-1-16, Floyd County Sulfur Dioxide Emission Limitations, as published in the March 1, 1988, *Indiana Register* (IR) at 11 IR 1737.

(B) 326 IAC 7-1-18, Morgan County Sulfur Dioxide Emission Limitations, as published on June 1, 1988, at 11 IR 3018.

(C) 326 IAC 7-1-17, Warrick County Sulfur Dioxide Emission Limitations, as promulgated by filing with the Secretary of State on November 7, 1988.

(D) 326 IAC 7-1-1, Applicability, as promulgated by filing with the Secretary of State on November 7, 1988.

[FR Doc. 88-27892 Filed 12-15-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[FRL-3492-6]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Montana, North Dakota and Wyoming; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: EPA is today providing notice that it granted delegation of authority to Montana on June 17, 1988, to enforce and implement the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) promulgated in 40 CFR Parts 60 and 61, respectively, as of July 1, 1987 (excluding 40 CFR Part 61, Subparts B, H, I, K, which pertain to radionuclides). This is a result of a request for delegation from the State of Montana on March 9, 1988.

EPA is today also providing notice that it granted delegation of authority to North Dakota on June 30, 1988, to implement and enforce (1) the NSPS for 40 CFR Part 60, Subparts Ka, LLL, KKK, VV, GGG, XX, OOO, and JJJ, and (2) the NESHAPs for 40 CFR Part 61, Subparts J and V. This is a result of a request for delegation from the State of North Dakota on January 26, 1988.

EPA is also today providing notice that it granted delegation of authority to Wyoming on September 30, 1988, to implement and enforce (1) the NSPS for 40 CFR Part 60, Subparts Na, AAa, LL,

RR, VV, WW, XX, FFF, GCG, HHH, JJJ, KKK, LLL, OOO, and PPP, and (2) part of the NESHAP for asbestos (40 CFR Part 61, Subpart M), i.e., asbestos demolition, renovation and spraying operations, and waste disposal for demolition, renovation and spraying operations. This is a result of a request for delegation from the State of Wyoming on September 6, 1988.

EFFECTIVE DATES: June 17, 1988, for Montana.

June 30, 1988, for North Dakota.

September 30, 1988, for Wyoming.

ADDRESS: Copies of the revisions are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Environmental Protection Agency, Region VIII, Air Programs Branch, Suite 500, Denver, Colorado 80202-2405, (303) 293-1814, (FTS) 564-1814.

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the states the authority to implement and enforce standards set forth in 40 CFR Part 60, NSPS, and 40 CFR Part 61, NESHAP.

Montana

On March 9, 1988, the State of Montana requested the authority to implement and enforce those NSPS and NESHAPs promulgated in 40 CFR Parts 60 and 61, respectively, effective through July 1, 1987. Pursuant to that request, on June 17, 1988, delegation was given with the following letter:

Honorable Ted Schwinden,
Governor of Montana, State Capitol, Helena,
Montana 59620

Dear Governor Schwinden: This is in response to your submittal dated March 9, 1988. The submittal was a request for modifications to the Montana State Implementation Plan (SIP). The modifications consisted of revisions to the following Montana rules: Standards of Performance for New Stationary Sources (NSPS); National Emissions Standards for Hazardous Air Pollutants (NESHAPs); Air Quality Models, and Particulate Matter. This letter addresses only those revisions that pertain to the NSPS and NESHAPs. The air quality models and particulate matter regulations will be addressed through separate Federal Register actions.

On May 18, 1977, EPA delegated to the State of Montana the authority to implement and enforce those NSPS that had been promulgated by EPA as of January 26, 1976, and those NESHAPs that had been promulgated by EPA as of October 14, 1975. (See 42 FR 44573, September 6, 1977.)

Additionally, on September 17, 1984 (49 FR 36368), EPA published in the *Federal Register* two tables updating the delegation status of NSPS and NESHAPs for states in Region VIII. The NSPS table indicated that the State of Montana had delegation for the following: 40 CFR Part 60, Subparts A, D, Da, E, F, G, H, I, J, K, Ka, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, GG, HH, MM, and PP. The NESHAPs table incorrectly showed that the State of Montana did not have delegation for any NESHAPs. (We will be correcting the NESHAPs table that currently appears in the Code of Federal Regulations in the near future.)

With regard to the March 9, 1988, submittal, EPA has reviewed the pertinent laws of the State of Montana and the rules and regulations thereof, and has determined that they provide an adequate and effective procedure for implementing and enforcing the NSPS and NESHAPs in the State of Montana. Therefore, pursuant to Sections 111(c) and 112(d) of the Clean Air Act (CAA), as amended, and 40 CFR Parts 60 and 61, I hereby delegate our authority for the implementation and enforcement of the NSPS and NESHAPs to the State of Montana as follows:

1. Authority for all sources located in or to be located in the State of Montana which are subject to the NSPS and NESHAPs (except 40 CFR Part 61, Subparts B, H, I, K, which pertain to radionuclides) promulgated in 40 CFR Parts 60 and 61, respectively, as of July 1, 1987.

2. Not all authorities of NSPS and NESHAPs can be delegated to states under Sections 111(c) and 112(d) of the CAA. The EPA Administrator retains the authority to implement those sections of NSPS and NESHAPs that require: (1) Approving equivalency determinations and alternative test methods; (2) decision making to ensure national consistency; (3) rulemaking to implement. To the best of our knowledge, the following are the authorities in 40 CFR Parts 60 and 61 that EPA cannot delegate to the State:

NSPS

40 CFR Part 60 Subpart	Section(s)
A.....	60.8 (b)(2) and (b)(3) and those sections throughout the standards that reference 60.8 (b)(2) and (b)(3), 60.11 (b) and (e).
Da.....	60.45a.
Ka.....	60.114a.
Kb.....	60.111b(f)(4), 60.114b, 60.116b (e)(3)(iii) and (e)(3)(iv), 60.116b(f)(2)(iii).
S.....	60.195(b).
DD.....	60.302(d)(3).
GG.....	60.332(a)(3), 60.335(a)(ii).
VV.....	60.482-1(c)(2), 60.484.
WW.....	60.493(b)(2)(i)(A), 60.496(a)(1).
XX.....	60.502(e)(6).
GGG.....	60.592(c).
JJJ.....	60.623.
KKK.....	60.634.