

assist in removing the veteran from the community residential care facility.

(c) If the hearing official determines that a community residential care facility fails to comply with the standards set forth in § 17.51j of this part and determines that the community residential care facility shall have an additional time period to remedy the noncompliance, the hearing official shall review at the end of the time period the evidence of the community residential care facility's compliance with the standards which were to have been met by the end of that time period and determine if the community residential care facility complies with the standards. If the community residential care facility fails to comply with these or any other standards, the procedures set forth in §§ 17.51m-17.51r of this part shall be followed.

(Authority: 38 U.S.C. 630)

§ 17.51s Availability of information.

VA standards will be made available to other Federal, State and local agencies charged with the responsibility of licensing, or otherwise regulating or inspecting community residential care facilities.

(Authority: 38 U.S.C. 630)

[FR Doc. 89-11492 Filed 5-12-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3551-3]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Committal State Implementation Plan (SIP) for the Rapid City, South Dakota, Group II PM₁₀ area submitted by the State on July 12, 1988. The SIP commits the State to continue monitoring for PM₁₀ and to submit a full SIP if a violation of the PM₁₀ National Ambient Air Quality Standards (NAAQS) is detected. It also commits the State to make several revisions, related to PM₁₀, to the existing SIP.

DATES: This action will be effective on July 14, 1989, unless notice is received by June 14, 1989, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision 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:

Jeffrey A. Houk, Air Programs Branch,
Environmental Protection Agency, One
Denver Place, Suite 500, 999 18th Street,
Denver, Colorado 80202-2405, (303) 294-
7613, (FTS) 564-7613.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM₁₀) on July 1, 1987 (52 FR 24634). As a result, States must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM₁₀ NAAQS. Group I areas have violated the PM₁₀ NAAQS or have air quality data showing high (greater than 95%) probabilities of violating the NAAQS. These areas must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have a moderate (20%-95%) probability of violating the PM₁₀ NAAQS, and must commit to monitor for PM₁₀ and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20%) probability of violating the PM₁₀ NAAQS, and no new control strategy requirements apply.

The Rapid City, South Dakota area has been classified as a Group II area. On July 12, 1988, the State submitted a Committal SIP for this area. The requirements for Group II Committal SIPs, and the State's response to these requirements are described below.

EPA Requirements for Group II Committal SIPs

The following SIP requirements apply to all PM₁₀ areas, regardless of their grouping:

- (1) All SIPs should provide for the attainment and maintenance of the PM₁₀ standards, and PM₁₀ should be regulated as a criteria pollutant.
- (2) Since the SIP must protect both the PM₁₀ standard and the total suspended particulates (TSP) increment for

prevention of significant deterioration (PSD), it must trigger preconstruction review for a new or modified source which would emit significant (as defined at 40 CFR 51.166(b)(23)) amounts of either TSP or PM₁₀.

(3) The significant harm level for particulate matter was revised in 40 CFR 51.151 to 600 ug/M³ measured as PM₁₀, and the combined sulfur dioxide-particulate matter significant harm level was deleted. In addition, the example alert, warning, and emergency levels of particulate matter in Appendix L of Part 51 were also revised to reflect PM₁₀ concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

(4) Revisions to 40 CFR 58 set forth the requirements for design of national, State and local PM₁₀ air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping; Group I areas are required to monitor daily for at least one site in the area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data.

In addition, Committal SIPs for Group II areas must contain enforceable commitments to:

(5) Gather ambient PM₁₀ data, at least to an extent consistent with minimum EPA requirements and guidance.

(6) Analyze and verify the ambient PM₁₀ data and report 24-hour PM₁₀ NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(7) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM₁₀ NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(8) Within 30 days of the notification referred to in (7), above, or within 37 months of promulgation of the PM₁₀ NAAQS, whichever come first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM₁₀ standards, and immediately notify the appropriate Regional Office.

(9) Within 6 months of the notification referred to in (8), above, adopt and

submit to EPA a PM₁₀ control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the Committal SIP.

(10) Committal SIPs must include an enforceable schedule with appropriate milestones or checkpoints.

South Dakota Submittal

The State submittal addresses EPA's requirements as follows:

(1) *PM₁₀ air quality standards.* The State has adopted ambient air quality standards for PM₁₀ at Administrative Rules of South Dakota (ARSD) 74:26:02:35. EPA approved this provision at 53 FR 34077, September 2, 1988.

(2) *Preconstruction review of major stationary sources of PM₁₀.* The State administers a new source review (NSR) program for non-PSD stationary sources and modifications. The State has not received delegation of the PSD program, and reviews of PSD sources are carried out by EPA. By adopting ambient air quality standards for PM₁₀, the State has triggered a requirement (under the State regulations) for preconstruction review of all non-PSD sources of PM₁₀.

The Rapid City area was designated nonattainment for TSP on March 3, 1978 (43 FR 8962). This designation required the State to implement a nonattainment area NSR program under Part D of the Clean Air Act. The State developed nonattainment area NSR regulations, which we approved by EPA on November 3, 1981 (46 FR 54541). These rules were based on the EPA requirements which were in effect prior to August 1980, and contained several minor deficiencies. EPA approved the State NSR rules with the understanding that the State would revise its rules to conform to new EPA requirements promulgated on August 7, 1980 (45 FR 52676) and would correct the other existing deficiencies.

The State submitted revised rules on December 21, 1981; however, these rules also contained deficiencies. As a result, EPA proposed to disapprove the State NSR program on February 25, 1986 (51 FR 6564). No final action was taken by EPA, due to uncertainty over how promulgation of the PM₁₀ NAAQS and repeal of the TSP NAAQS would affect the need for an NSR program in the existing TSP nonattainment area.

To protect the Rapid City area (and the rest of South Dakota) from violations of the PM₁₀ NAAQS, the State must revise its NSR regulations to address 40 CFR 51.165(b) (NSR for attainment and unclassifiable areas). 40 CFR 51.165(b) prohibits the permitting of a source which would exceed certain ambient impact levels, and which would cause or contribute to a violation of the NAAQS,

unless the source obtains offsets. In its Committal SIP, the State has committed to revise its NSR regulations by August 31, 1990.

Region VIII has provided extensive comments to the State on the existing NSR regulations. These comments were primarily focused toward assisting the State in revising its regulations to address 40 CFR 51.165(b) although EPA also identified several areas in the nonattainment area definitions (listed in 40 CFR 51.165(a) of the Federal NSR rules) where revisions were necessary.

EPA believes that the existing State NSR regulations contain language similar in intent to 40 CFR 51.165(b), and are acceptable in the interim until the State revises its regulations to address 40 CFR 51.165(b). For example, ARSD 74:26:01:12 allows the issuance of a construction permit "only when it has been shown that the operation of the new source will not prevent or interfere with the attainment or maintenance of an applicable ambient air quality standard." In addition, the State has retained ambient TSP standards, and the NSR program for TSP (which includes offset requirements) will remain in effect until a PM₁₀ attainment demonstration is approved and the Rapid City area is redesignated from nonattainment to unclassifiable for TSP. The existing TSP NSR program will provide an additional degree of protection for the PM₁₀ NAAQS by requiring permits for nearly all stationary sources of particulate matter in the Rapid City area.

(3) *Revised emergency episode plans.* In its Committal SIP, the State has committed to revise its emergency episode plans by December 1988, to reflect the changes in the federal regulations due to PM₁₀.

(4) *PM₁₀ monitoring networks.* There are three PM₁₀ monitoring sites operating in Rapid City. One of the sites is operated on an every-other-day schedule; the remaining sites monitor every sixth day. The monitoring network design and coverage have been reviewed, and were approved by the Region VIII Environmental Services Division on February 27, 1989.

(5) *Collection of ambient PM₁₀ data.* The State began monitoring for PM₁₀ in January 1985, and has committed to continue monitoring in the Committal SIP.

(6) *Reporting exceedances to EPA within 45 days.* This commitment is contained in the Committal SIP.

(7) *Immediate notification of EPA if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

(8) *Determination of adequacy of the existing SIP.* This commitment is contained in the Committal SIP.

(9) *Submittal of a revised control strategy for PM₁₀ if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

The Committal SIP also contains commitments to submit actual emissions of major sources of PM₁₀ and TSP, and to notify EPA if a TSP monitor being used as a surrogate PM₁₀ monitor records an exceedance of the PM₁₀ NAAQS.

EPA requirements for administrative procedures, adequate legal authority to implement the SIP, and intergovernmental consultation have been satisfied by the State. These procedures have been approved as part of the SIP in previous Federal Register notices (44 FR 44494, July 30, 1979; 46 FR 54541, July 7, 1983; 53 FR 34077, September 2, 1988).

The State held a public hearing on the Committal SIP on June 14, 1988. A draft Committal SIP was submitted to EPA for review prior to this hearing. EPA reviewed the draft SIP and found it to meet the necessary requirements with some minor exceptions, which were corrected in the final submittal. EPA's comments on the draft SIP were the only comments received by the State.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective (60 days from publication).

Final Action

EPA hereby approves the Committal SIP for the Rapid City area as part of the South Dakota SIP. The Committal SIP provides for adequate ambient air quality monitoring, and should provide for protection of the Rapid City area from violations of the PM₁₀ NAAQS.

EPA finds that good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are

already in effect under State law or regulation. EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

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 (60 days from publication). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2))

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

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Sulfur oxides.

Date: March 27, 1989.

James J. Scherer,
Regional Administrator.

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

PART 52—[AMENDED]

Subpart QQ—South Dakota

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

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

2. Add a new § 52.2181:

§ 52.2181 PM₁₀ committal SIP.

On July 12, 1988, the State submitted a Committal SIP for the Rapid City Group II PM₁₀ area, as required by the PM₁₀ implementation policy (52 FR 24681). The SIP commits the State to continue to monitor for PM₁₀ and to submit a full SIP if a violation of the PM₁₀ National Ambient Air Quality Standards is detected. It also commits the State to make several revisions related to PM₁₀ to the existing SIP.

[FR Doc. 89-11582 Filed 5-12-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3570-9]

Colorado; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Colorado has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the Colorado application and has made a decision, subject to public review and comment, that the Colorado hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve the Colorado hazardous waste program revisions. The Colorado application for program revision is available for public review and comment.

DATES: Final authorization for Colorado shall be effective July 14, 1989 unless EPA publishes a prior *Federal Register* action withdrawing this immediate final rule. All comments on the Colorado program revision application must be received by the close of business June 14, 1989.

ADDRESSES: Copies of the Colorado program revision application are available from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses for inspection and copying: Hazardous Materials and Waste Management Division, Colorado Department of Health, 4210 East 11th Avenue, Denver, Colorado 80220, Phone: 303/331-4830; U.S. EPA Headquarters Library, PM211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; U.S. EPA Region VIII, Library, 999 18th Street, Denver, CO 80202-2405, Phone: 303/293-1444. Written comments should be sent to Diana Shannon at the address below.

FOR FURTHER INFORMATION CONTACT: Diana Shannon, Chief, RCRA Management Branch, 999 18th Street, Denver, CO 80202-2405, Phone: 303/294-7540.

SUPPLEMENTARY INFORMATION:

A. Background

The States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 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") allow 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. Colorado

Colorado initially received final authorization on November 2, 1984. Colorado received authorization for revisions to its program on November 7, 1986. On September 30, 1988, Colorado submitted a program revision application for additional program approvals. Today, Colorado is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3). Specific provisions which are included in the Colorado program authorization revision made today are listed in Table 1 below.

EPA has reviewed the Colorado application, and has made an immediate final decision that the Colorado hazardous waste program revision satisfies all requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional modifications to the Colorado hazardous waste program. The public may submit written comments on EPA's immediate final decision up until June 14, 1989. Copies of the Colorado application for program revision are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

Approval of the Colorado hazardous waste program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The State of Colorado submitted an initial draft application for the revision of its authorized hazardous waste program on October 1, 1987. A second draft application for additional revision was received on January 15, 1988. The second draft application contained all information and revision requests that were a part of the October 1, 1987, application. The EPA comments, and the

response by the State to the EPA comments, address both draft applications.

EPA review of the draft application raised several areas of concern. Further explanation and detail were requested on the intended program for administration of the expansion of Colorado's hazardous waste program and on the organization and utilization of the State's staff.

On September 30, 1988, Colorado submitted a final application which further explained how Colorado will expand the program to provide for the increased responsibilities. Several additional concerns on the details of the final application were discussed between EPA and Colorado. A Letter of Intent which further clarifies the final application was agreed upon and made a part of the application.

Colorado's application for authority to revise the Colorado hazardous waste program has been found to be consistent and equivalent to the Federal hazardous waste program. No significant aspect of this application provides for the Colorado program to be broader in scope than is the Federal program.

Facilities possessing permits issued under the Federal program for treatment, storage, or disposal are deemed by the Colorado Department of Health to have a permit under Colorado Revised Statute 25-15-303(3). EPA issued under that part of the RCRA program for which Colorado is being authorized today, become State permits upon Authorization. When the State either incorporates the terms of the Federal permit in State RCRA permits or issues State RCRA permits to those facilities, EPA will terminate those permits pursuant to 40 CFR Part 270 and rely on the State to enforce those terms and conditions subject to the terms of an acceptable State/EPA Enforcement Agreement.

Colorado has not requested hazardous waste program authority on Indian lands. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to Indian lands in Colorado.

TABLE 1—PROVISIONS COVERED BY THIS PROGRAM AUTHORIZATION REVISION

HSWA or FR Reference	State Equivalent*
1. Immediate Response to Spills and Discharges, 48 FR 2508, 1/19/83.	264.1, 265.1
2. Biennial Reports, 48 FR 3977, 1/28/83.	262.40, 262.41, 264.75-77, 264.94, 265.76, 265.77

TABLE 1—PROVISIONS COVERED BY THIS PROGRAM AUTHORIZATION REVISION—Continued

HSWA or FR Reference	State Equivalent*
3. Chlorinated Aliphatic Hydrocarbon Listing, 49 FR 5313, 2/10/84.	261.31
4. Warfarin and Zinc Phosphide Listing, 49 FR 19922, 5/10/84.	261.33
5. Lime Stabilized Pickle Liquor Sludge, 49 FR 23284, 6/5/84.	261.3
6. State Availability of Information, HSWA Section 3006(f), 11/8/84.	2.100, 2.104, 2.109, 2.112, 2.113, Section 24-72-201 CRS, Section 24-72-204(5) CRS
7. Exclusion of Household Waste 49 FR 44980, 11/13/84.	261.4
8. Interim Status Standards—Application, 49 FR 46095, 11/21/84.	265.1
9. Corrections to Test Methods Manual, 49 FR 47391, 12/4/84.	100.47, 260.11, 260.21
10. Satellite Accumulation, 49 FR 49571, 12/20/84.	262.34
11. Redefinition of Solid Waste, 50 FR 614, 1/4/85.	260.10, 260.30, 260.31, 260.33, 260.40, 260.41, 261.1-261.6, 261.30, 261.33, 264.1, 264.340, 265.1, 265.340, 265.370, 267.20-267.23, 267.30, 267.32-35, 267.70, 267.80
12. Interim Status Standards, for Landfills, 50 FR 16044, 4/23/85.	265.22, 265.229, 265.272, 265.310, 265.315
13. Paint Filter Test, 50 FR 18370, 4/30/85.	264.13, 264.73, 264.314, 265.13, 265.73, 265.314
14. Closure, Post-Closure and Financial Responsibility Requirements 51 FR 16422, 5/2/86.	100.41, 100.61, 100.62, 260.10, 264.110-170, 265.110-120, 266.10-14, 266.16, 266.18
15. Listing of Spent Pickle Liquor, 51 FR 19320, 5/28/86.	261.32
16. Dioxin Listing and Management Standards, 50 FR 1978, 1/14/85.	100.41, 261.4, 261.5, 261.7, 261.30, 261.33, 264.175, 264.194, 264.200, 264.231, 264.259, 264.283, 264.317, 264.343, 265.1, 265.352, 265.383
17. Codification Rule, 50 FR 28702, 7/15/85.	100.11, 100.12, 100.20, 100.21, 100.25, 100.41, 100.42, 100.43, 100.45, 100.61, 260.22, 261.4, 261.6, 261.33, 264.18, 262.41, 262.50, 264.70, 264.73, 264.90, 264.101, 264.221, 264.221, 264.222, 264.226, 224.228, 264.252-254, 264.301, 264.302, 264.303, 264.310, 264.314, 265.221, 265.254, 265.301, 267.23, 267.31, 267.34

TABLE 1—PROVISIONS COVERED BY THIS PROGRAM AUTHORIZATION REVISION—Continued

HSWA or FR Reference	State Equivalent*
18. Listing of TDI, DNT and TDA Wastes, 50 FR 42936, 10/23/85.	261.32, 261.33
19. Spent Solvents Listing, 50 FR 53315, 12/31/85.	261.31
20. EDB Waste Listing, 51 FR 5330, 2/13/85.	261.32
21. Four Spent Solvents Listing, 51 FR 6541, 3/24/86.	261.31, 261.33
22. Small Quantity Generators, 51 FR 10174, 3/24/86.	100.10, 100.11, 261.5, 261.33, 262.20, 262.34, 262.44, 263.20
23. Paint Filter Test Correction, 51 FR 19176, 5/28/86.	265.314

* Unless indicated as otherwise, all references are sections of 6 CFR 1007-3.

C. Decision

I conclude that the Colorado application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Colorado is granted final authorization to operate its hazardous waste program as revised in the September 30, 1988, application in lieu of the federal hazardous waste program. Colorado now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out other aspects of the RCRA program, subject to the limitation of its September 30, 1988 revised program application and previously approved authorities. Colorado 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 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 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 suspends the applicability of certain Federal regulations in favor of Colorado's 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.

List of Subjects in 40 Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

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: April 6, 1989.

James J. Scherer,

Regional Administrator.

[FR Doc. 89-11583 Filed 5-12-89; 8:45 am]

BILLING CODE 5560-50-M

40 CFR Part 271

[FRL-3571-4]

Kentucky; Authorization of State Hazardous Waste Program

AGENCY: Environment Protection Agency.

ACTION: Affirmation of Immediate Final Rule.

SUMMARY: This notice responds to comments received on the immediate final rule published March 16, 1989 (54 FR 10986), and affirms the agency's decision to authorize Kentucky's revised program pursuant to 40 CFR 271.21(b)(3).

EFFECTIVE DATE: This decision is effective on May 15, 1989, at 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., at U.S.E.P.A. Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, telephone (404) 347-3016.

SUPPLEMENTARY INFORMATION: On March 16, 1989, EPA published an immediate final rule pursuant to 40 CFR 271.21(b)(3) at 54 FR 10986 which announced the agency's decision to authorize Kentucky's revisions to its hazardous waste program for non-HSWA Cluster I, the requirements prior to non-HSWA Cluster I, non-HSWA Cluster III and Availability of Information. Adverse public comment was received during the public comment period provided by this rulemaking. After considering the comments received, the Regional Administrator has decided to affirm his decision to authorize the Commonwealth of Kentucky for the aforementioned program revisions. The following is a summary of the substantive adverse

comments and the Regional Administrator's response to them.

Comment 1: The commenter objected to the use of an immediate final rule to inform the public of the agency's authorization decision, claiming that this procedure violated 5 U.S.C. 553.

Response: In publishing the immediate final rulemaking decision the agency followed procedures authorized under 40 CFR 271.21 which the commenter recognized. Not only is this regulation no longer subject to challenge (see 42 U.S.C. 6976(a)(1)); the agency disagrees that it violates the letter or spirit of 5 U.S.C. 553. This regulation specifically provides the opportunity for the Regional Administrator to receive, consider and respond to significant comments before any decision becomes effective. This notice itself demonstrates compliance with U.S.C. 553. The opportunity for commenting under the immediate final rulemaking (IFR) process is no less than under the standard rulemaking process, and provides the same 30-day comment period. The immediate final rule process doesn't abridge public participation or public comment, but rather it permits the Agency to accelerate the authorization process for state modifications.

Comment 2: The commenter disagreed that the Kentucky Division of Waste Management (herein: DWM or Division) provides for public availability of information in substantially the same manner as would EPA, as is required by RCRA section 3006(f)(2) and 40 CFR Part 271. The commenter further stated that in several significant respects, the state procedures for release of information do not provide access to information in as open a manner as do EPA's procedures.

Specifically, the commenter asserted that the DWM does not provide for disclosure of records in response to written mail requests for information from individuals, but rather, requires that the individual travel to the office in which the records are maintained in order to gain access to them. The commenter also pointed out that in Kentucky the right to copies of information is adjunct to "the right to inspect records and as such limits availability of information for those who cannot travel to the situs of the records." The commenter also asserted that "the state should be required to implement a policy of providing disclosure of records based on written (and mailed) requests, consistent with 40 CFR 2.108."

Response: Kentucky's Memorandum of Agreement (MOA) with EPA dated December 4, 1988, signed by the Secretary of the Kentucky Natural Resources and Environmental Protection

Cabinet and the Regional Administrator of the Environmental Protection Agency, and Kentucky's Commissioner of Law's Statement (dated November 14, 1988) both require that the Division provide for public availability of information in "substantially the same manner" as EPA, which includes consideration of waiver of fees for information considered to be in the public interest or contributing to the public's understanding of the operations or activities of government.

Regarding the commenter's assertion that the Division does not respond to written and mailed requests: the Division's administrative procedures (Departmental Policy Memorandum #8711-05) provide that written, mailed requests are responded to when the request is specific regardless of whether Kentucky form B-010-1 (Request to Inspect Public Records) is used by the requester. If the request is not specific enough to identify the requested material, a letter is sent to the requester within 10 days (as specified in Kentucky's MOA with EPA) asking that the specific information be identified. If the request includes a request for waiver of fee, form B-010-1 is forwarded to the Director of the Division who either approves or disapproves the request for waiver of fee and informs the requester within 10 days. When the specific information has been identified by the requester, within 10 days the Division sends a cost billing to the requester and a statement that advance payment is required. When payment is received the information is sent to the requester and a receipt is made.

The commenter is correct in asserting that under Kentucky law the right to copies of records is adjunct to the right to inspect records (KRS 61.874(2)). However, KRS 61.874(2) also states in part that "Public agencies should accommodate requesters whenever they can within the bounds of the efficient operation of their office. Whenever only one item is requested, or a few precisely described items which are readily available within the office, and no special search is required, it will be more convenient both to the agency and to the requester to answer the request through the mail; to require the requester to appear in person at the office of the agency in such a case would not be more convenient to either party and would only inhibit the intended purpose of the Open Records Law."

Lastly, the State was not required by EPA to demonstrate equivalence to 40 CFR 2.108 regarding the form, written or