

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).

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 29, 2003. 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, Ozone, Reporting and recordkeeping requirements.

Dated: February 18, 2003.

**Wayne Nastri,**

*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 adding paragraph (c)(305) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(305) Amended regulations for the following APCD were submitted on May 20, 2002 by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(1) Rules 10, 26.1, 26.2, 26.3, 26.4, 26.6, and 26.11 adopted on May 14, 2002.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[ND-001-0007; FRL-7453-4]

### Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA approves revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. EPA will handle separately direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program. This action is being taken under section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This final rule is effective March 31, 2003.

**ADDRESSES:** Documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2405. Copies of the Incorporation by Reference material at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available at the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota, 58504-5264.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, Environmental Protection Agency, Region VIII, (303) 312-6449.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" are used, we mean EPA.

#### I. Background

On October 7, 2002 (67 FR 62432), EPA published a notice of proposed rulemaking (NPR) for the State of North Dakota. The NPR proposed approval of revisions to the State Implementation Plan (SIP) submitted by the Governor of

North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. As indicated in the NPR, the submittal also included direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program, which we will handle separately.

The revisions being addressed in this document involve the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33-15-01 General Provisions; 33-15-05 Emissions of Particulate Matter Restricted; 33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (subsection specific to exclusions from Title V permit to operate requirements only); 33-15-15 Prevention of Significant Deterioration; and 33-15-17 Restriction of Fugitive Emissions. For a detailed description of the revisions, please refer to our October 7, 2002 NPR (62 FR 62432).

A brief summary of the revisions is as follows. In the General Provisions chapter, the definition for "public nuisance" was removed and changes were made to clarify reporting requirements when stack testing for air contaminant emissions. In the Emissions of Particulate Matter Restricted chapter, the State incorporated reference information from the Federal rules. Also, the State repealed its requirements for existing infectious waste incinerators because these requirements are now addressed in the State's plan for the control of emissions from existing hospital/medical/infectious waste incinerators, which was approved by EPA in a May 13, 1999 **Federal Register** document (64 FR 25831). In the Restriction of Fugitive Emissions chapter, the State deleted a reference to nuisances and replaced it with a requirement that a source cannot cause air pollution as defined in the general provisions chapter (the State believes that its definition of "air pollution" covers nuisances). The above changes are consistent with Federal requirements and, therefore, are approvable.

In the Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate chapter, a new subsection entitled "Source Exclusions from Title V Permit to Operate Requirements" was added to provide an exemption from the

Title V permitting requirements for certain gasoline service stations, bulk gasoline plants, coating sources, printing, publishing and packaging operations, degreasers using volatile organic solvents, and hot mix asphalt plants. This exclusionary rule creates generic potential-to-emit (PTE) limits for specific source categories, and thereby clarifies which of the sources within the specific categories are minor with respect to the Title V operating permit requirements. The rule does not exclude these certain sources from North Dakota's construction or minor source operating permit programs. We are approving this new subsection, 33-15-14-07, under section 110 of the Clean Air Act, which allows us to approve preconstruction permit programs and rules and non-title V operating permit programs and rules.

In the Prevention of Significant Deterioration (PSD) chapter, the definition of "significant" was updated to match the Federal definition. In addition, a provision was removed that required the North Dakota Department of Health (NDDH) to consult with an impacted state prior to approving a PSD source permit application that will consume more than half of the available increment in the other state. These revisions are consistent with Federal requirements and, therefore, are approvable.

## II. Response to Comments

We received adverse comments from the Dakota Resource Council, submitted in a letter dated November 6, 2002, regarding our proposed approval of the revisions to the North Dakota PSD rule (NDAC 33-15-15). Specifically, the commenter disagrees with our approval of the repeal of the provision that required NDDH to consult with an impacted state prior to approving a PSD source permit application that will consume more than half of the available increment in the other state. It is the commenter's belief that removal of this provision relaxes the SIP and is in conflict with section 110(a)(2)(D)(i)(II) of the Clean Air Act, which requires SIPs to include provisions prohibiting any source within a state from emitting any air pollutant which will interfere with measures to prevent significant deterioration of air quality in any other state's applicable implementation plan. The commenter believes that we must not approve the removal of this provision without the State demonstrating that there are other provisions in the North Dakota SIP that ensure that sources in North Dakota will not interfere with other states' plans to

prevent significant deterioration of air quality.

We agree with the need for such a demonstration from the State and specifically requested it during our review of these revisions in draft form. In a November 28, 2000, letter from Jeffrey L. Burgess, NDDH, to Dick Long, EPA Region VIII, the State provided such assurances. Specifically, the State indicated that its PSD rules contain all of the notification requirements in the Federal rules (*see* 40 CFR 51.166 and 40 CFR 52.21), including notification during the public comment period to an affected state (*see* North Dakota Administrative Code (NDAC) 33-15-15-01.5.b.). Although there is no longer a consultation requirement, there are still requirements under North Dakota's PSD program for the NDDH to provide notice to any state, Federal Land Manager, or Indian governing body whose lands may be significantly affected by emissions from a proposed source or modification (*see* NDAC 33-15-15-01.5.b(4)). This notification usually takes the form of a copy of the public notice, a copy of the related analyses, and a copy of the draft permit. The affected parties then have the opportunity during the public comment period to provide comments to the NDDH. The deletion of the language regarding consultation with an affected state was made to make the State rules more consistent with Federal requirements (40 CFR 51.166 and 40 CFR 52.21 do not include this requirement).

Since the revisions to this chapter are consistent with Federal requirements, and the State has demonstrated that there are other provisions in the SIP to ensure that sources in North Dakota will not interfere with other states' plans to prevent significant deterioration of air quality, we believe the revisions are approvable.

## III. Section 110(l)

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. The North Dakota SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act. The SIP revision amends the State's General Provisions and Methods of Measurement and these changes are consistent with Federal requirements and rules. The repeal of requirements

for existing infectious waste incinerators does not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act because these requirements are addressed in the State's plan for the control of emissions from existing hospital/medical/infectious waste incinerators, which was approved by EPA in a May 13, 1999 **Federal Register** document (64 FR 25831). The new rules that provide for source exclusions from the title V permit to operate requirements are consistent with EPA's authority to approve exclusionary rules under section 110 of the Clean Air Act and the rules do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act because they are consistent with the April 14, 1998, EPA guidance from John Seitz, Director of the Office of Air Quality Planning and Standards, entitled "Potential to Emit (PTE) Guidance for Specific Source Categories." The update to the State's PSD rules mirror the Federal rules. Finally, the State's removal of the term "nuisance" does not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act since nuisances can still be addressed under the State's definition of "air pollution."

## IV. Final Action

EPA is approving North Dakota's SIP revision, as submitted by the Governor with a letter dated June 21, 2001. The revisions in the June 21, 2001 submittal which are being approved in this document involve sections of the following chapters of the North Dakota Administrative Code: 33-15-01 General Provisions; 33-15-05 Emissions of Particulate Matter Restricted; 33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (specifically, subsection 33-15-14-07, Source Exclusions from Title V Permit to Operate Requirements); 33-15-15 Prevention of Significant Deterioration; and 33-15-17 Restriction of Fugitive Emissions. The June 21, 2001 submittal also included requests for direct delegation of Chapter 33-15-21, Acid Rain Program and Chapter 33-15-22, Emission Standards for Hazardous Air Pollutants for Source Categories, which are being handled separately.

## V. Statutory and Executive Order Reviews

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. For

this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action 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 "Protection of Children from Environmental Health Risks and Safety Risks" (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. 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).

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 29, 2003. 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.

Dated: February 11, 2003.

**Max H. Dodson,**

*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 JJ—North Dakota

2. Section 52.1820 is amended by adding paragraph (c)(32) to read as follows:

#### § 52.1820 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(32) The Governor of North Dakota submitted revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules with a letter dated June 21, 2001. The revisions address air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration.

(i) Incorporation by reference.

(A) Revisions to the Air Pollution Control Rules as follows: General Provisions 33-15-01-04, 33-15-01-12, and 33-15-01-15; Emissions of Particulate Matter Restricted 33-15-05-04.1; Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate 33-15-14-02.13.b.1, 33-15-14-03.1.c, and 33-15-14-07; Prevention of Significant Deterioration of Air Quality 33-15-15-01.1.hh and 33-15-15-01.2; and Restriction of Fugitive Emissions 33-15-17-01, effective June 1, 2001.

(B) Revisions to the Air Pollution Control Rules as follows: Emissions of Particulate Matter Restricted 33-15-05-03.1, repealed effective July 12, 2000.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 410, 414, and 485

[CMS-1204-F2]

RIN 0938-AL21

#### Medicare Program; Physician Fee Schedule Update for Calendar Year 2003

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the estimates used to establish the sustainable growth rates (SGRs) for fiscal years 1998 and 1999 for the purposes of determining future updates to the physician fee schedule and announces a 1.6 percent increase in the calendar year (CY) 2003 physician fee schedule conversion factor (CF) for March 1 to December 31, 2003. The physician fee schedule CF from March 1 to December 31, 2003, will be