

International Catalog, Inc. After considering the comments, the Postal Service has decided to adopt the rule with modification.

J.C. Penney asserts that harmonization is a basic component of the GPL service and therefore is included in the GPL rate chart. The Postal Service does not agree that harmonization is included in the GPL rate chart. When GPL, then called IPCS, was first implemented in December 1994, Japan was the only destination country and did not require a harmonized datafile to be transmitted for customs clearance. All subsequent rates for GPL to other destinations were developed without inclusion of customs harmonization costs, with the knowledge that at a later date a specific harmonization fee would be implemented when the costs to perform this service were fully revealed. By late summer of 1996, the Postal Service had determined its customs harmonization costs and took action to publish a specific fee in the **Federal Register** (October 28, 1996). The Postal Service does not feel it is appropriate to include these costs in the rate charts for GPL because GPL mailers have very different levels of need for harmonization. For example, if the harmonization costs were in the rate charts, a high volume GPL mailer with a small number of catalog items would be paying for harmonization services not fully utilized, while a lower volume GPL mailer with a large catalog and many more harmonized items would be receiving more services and paying the same rate. Also, some customers may already have a fully harmonized database of their catalog items at the time of initiating GPL service, and as such should not be paying higher rates for a harmonization service that they will not use.

J.C. Penney also asserts that billing for this portion of the service causes an unnecessary accounting step (separate billing, invoicing, etc.), creating numerous invoices for small specialty catalogs (hundreds of dollars) and a disincentive for larger catalogers with thousands of items. The Postal Service disagrees that invoicing for small amounts will be an unnecessary accounting step. To our knowledge, most companies do not excuse payment from customers owing small amounts just because it is extra effort. The USPS has developed an accounts receivable infrastructure and as such is able to generate invoices in an automated manner.

In its last assertion, J.C. Penney claims that a number of private customs brokers in Canada are already set up to handle pre-customs advisory and

package processing for catalog shipments and do not charge separate small fees for harmonization but rather incorporate this feature in the overall rate per package. J.C. Penney asserts that if the USPS were to add this new fee, GPL service would no longer be competitive. The Postal Service will not dispute that some Canada customs brokers include this charge in the overall package delivery fee, but the USPS is also aware that other Canada customs brokers do charge separately for harmonization and do not include these charges as part of the per package fee. Harmonization fees alone are a relatively small investment for an international mailer to make and therefore is unlikely to make the GPL service noncompetitive in the marketplace.

After carefully reviewing J.C. Penney's comments and input received from other sources, the Postal Service has decided to modify the policy regarding harmonization fees to allow each GPL mailer to have 2,500 catalog items harmonized by the Postal Service at no cost during the first 12 months after signing a GPL agreement to a destination country that requires harmonization. This free service will be offered only once to each customer and only during the first 12 months after signing a GPL agreement. Any harmonization service performed in excess of 2,500 items and/or after 12 months will be assessed a per-item fee of \$1.25.

Accordingly, the Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1. All other interim changes in the rule for Global Package Link service which were published in the **Federal Register** as amendments of the interim rule remain in effect as interim rules.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 6 of the International Mail Manual is amended to read as follows:

626.4 Customs Clearance

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626.421 Catalog Harmonization Services

The Postal Service will provide free catalog harmonization services for the first 2,500 catalog items presented for harmonization during the first 12 months following the GPL customer signing an agreement for a GPL destination country that requires harmonization. Any harmonization work performed in excess of 2,500 for each customer and/or after the first 12 months of signing a GPL agreement will be charged a fee of \$1.25 per item. The mailer has the option of performing their own harmonization, provided it is done in a format compatible with the Postal Service's Customs Pre-Advisory System (CPAS) software.

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Stanley F. Mires,

Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ND8-1-7233a & ND-001-0001a; FRL-5812-3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves certain State implementation plan (SIP) revisions submitted by the State of North Dakota with letters dated August 15, 1995 and January 9, 1996. The revisions address air pollution control rules regarding general provisions; open burning; emissions of particulate matter, certain settleable acids and alkaline substances, and fugitives; air pollution emergency episodes; new source performance standards (NSPS); national emission standards for hazardous air pollutants (NESHAPs); and the minor source construction and operating permit programs. The State's January 9, 1996 submittal also revised SIP Chapter 6, Air Quality Surveillance, to identify current activities regarding visibility monitoring. In addition, these submittals included revisions involving the Title V Operating Permits Program, the Acid Rain Program, the restriction of sulfur compound emissions, and emission standards for hazardous air pollutants for source categories, which

will be handled separately. Finally, EPA is correcting an incorporation by reference error that was made by EPA in an October 20, 1993 rulemaking regarding the State's regulation for sulfur compounds.

DATES: This final rule is effective on June 20, 1997 unless comments are received in writing by May 21, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405; North Dakota State Department of Health and Consolidated Laboratories, Environmental Health Section, 1200 Missouri Avenue, Bismarck, North Dakota 58502-5520; and The Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Governor of North Dakota submitted various revisions to the State's air pollution control rules with letters to EPA dated August 15, 1995 and January 9, 1996. These revisions were necessary, for the most part, to make the rules consistent with Federal requirements or for clarification purposes. The January 9, 1996 submittal also revised SIP Chapter 6, Air Quality Surveillance, in order to identify current activities regarding visibility monitoring and to withdraw an April 24, 1994 revision to the same chapter.

II. This Action

A. Analysis of State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore

warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment, the State of North Dakota, after providing adequate notice, held public hearings on December 1, 1994 and July 25, 1995 to address revisions to the SIP and Air Pollution Control Rules. Following the public hearings, public comment period, and completion of legal review by the North Dakota Attorney General's Office, the North Dakota State Health Council adopted the revisions, which became effective on August 1, 1995 and January 1, 1996, respectively.

The Governor of North Dakota submitted the revisions to the SIP with letters dated August 15, 1995 and January 9, 1996. The SIP revisions were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittals were found to be complete and letters dated September 28, 1995 and February 13, 1996 were forwarded to the Governor indicating the completeness of the respective submittals and the next steps to be taken in the review process.

2. August 15, 1995 Revisions

The August 15, 1995 submittal addresses North Dakota Air Pollution Control Rules involving general provisions, emissions of particulate matter, prevention of air pollution emergency episodes, NESHAPs (40 CFR Part 61), minor source permitting and fees, Title V Operating Permits Program, and the Acid Rain Program. The revisions regarding the Title V Operating Permits Program and the Acid Rain Program were handled separately. The August 15, 1995 submittal also included a request for Clean Air Act Section 112(l) delegation of the 40 CFR Part 63 NESHAPs. This request was addressed in an October 17, 1995 letter from William P. Yellowtail, EPA, to Francis J. Schwindt, North Dakota Department of Health.

The remaining portions of the August 15, 1995 submittal are being addressed in this document and involve the following sections of the North Dakota Air Pollution Control Rules: 33-15-01 General Provisions; 33-15-05 Emissions of Particulate Matter Restricted; 33-15-11 Prevention of Air Pollution

Emergency Episodes; 33-15-13 Emission Standards for Hazardous Air Pollutants; 33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (sections specific to minor sources); and 33-15-23 Fees.

a. Chapter 33-15-01 General Provisions

This chapter was revised to include several definitions for various types of waste material, including definitions for "infectious waste," "refuse," and "trash." The new definitions parallel definitions found in other North Dakota environmental regulations, including solid waste, hazardous waste, and radiological rules. These revisions are approvable.

b. Chapter 33-15-05 Emissions of Particulate Matter Restricted

Section 3, Incinerators, of this chapter was eliminated and replaced with three new sections regarding infectious waste incinerators, refuse incinerators, and other waste incinerators. Section 33-15-05-03.1., regarding infectious waste incinerators, requires owners of existing infectious waste incinerators to maintain records, provide training to the operators of the incinerators, and to correct malfunctions before resuming incineration. New infectious waste incinerators (burning less than 10,000 pounds of infectious waste per week) will be required to meet a 10% opacity limit and be designed to maintain a temperature of 1800 °F in the secondary chamber with a residence time of at least one second. A presumptive minimum stack height of 40 feet will also be required. Recordkeeping, monitoring, operator training, and reporting requirements are also included in the regulation.

New large infectious waste incinerators (burning 10,000 pounds or more of infectious waste per week) will be required to meet all the requirements for smaller infectious waste incinerators plus standards for particulate matter, hydrogen chloride, carbon monoxide, and dioxins/furans. Recordkeeping, reporting, operator training, and performance testing are also required.

Section 33-15-05-03.2., regarding refuse incinerators, prohibits the burning of any recyclable material when a recycling option is reasonably available. This prohibition goes into effect one year after the promulgation of the rule. The regulations also require owners/operators of incinerators that burn trash to upgrade their units to standards established for new units within two years of promulgation of the

rule. New trash incinerators are required to meet a 10% opacity limit and be designed to have a minimum temperature of 1500 °F and ½ second retention time in the secondary chamber. A presumptive minimum stack height of 40 feet is included in the rule, as well as monitoring requirements and waste charging limitations.

Section 33-15-05-03.3., regarding other waste incinerators, requires new salvage incinerators to meet the same requirements as new infectious waste incinerators. This section also gives the State the authority to establish unit specific requirements for air curtain destructors, industrial waste and special waste incinerators, and crematoriums.

These revisions are approvable. Please note that EPA intends to promulgate a medical waste incinerator NSPS in the near future. Should the State's infectious waste incinerator rule be less stringent than the forthcoming medical waste incinerator NSPS, the State will need to revise its rule and the SIP accordingly.

c. Chapter 33-15-11 Prevention of Air Pollution Emergency Episodes

Changes to this chapter were made to make it consistent with the new definitions in Chapter 33-15-01 regarding industrial waste. These revisions are minor and approvable.

d. Chapter 33-15-13 Emission Standards for Hazardous Air Pollutants

The changes to this chapter include updating the date for Federal regulations in 40 CFR Part 61 to be incorporated by reference and to incorporate for the first time 40 CFR part 61, subpart I (to regulate radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission (NRC) and other Federal facilities not covered by subpart H of 40 CFR Part 61). The revision to update the incorporation by reference date is approvable.

However, on December 30, 1996, EPA rescinded subpart I as it applies to NRC or NRC Agreement State licensed facilities other than commercial nuclear power plants. EPA determined that the NRC regulatory program for licensed facilities other than commercial nuclear power plants protects public health with an ample margin of safety, the same level of protection that would be afforded by continued implementation of subpart I. Therefore, EPA rescinded subpart I to eliminate overlapping regulation of these emissions. See 61 FR 68972-68981. As a result, EPA cannot incorporate subpart I into the North Dakota SIP, as requested.

e. Chapter 33-15-14 Designated Air Contaminant Sources, Permit To Construct, Minor Source Permit To Operate, Title V Permit To Operate

Changes to this chapter were made to make it consistent with the new definitions in Chapter 33-15-01 regarding incinerators. Further changes to this chapter involve the removal of the sections which establish Permit to Construct and Minor Source Permit to Operate fees (33-15-14-02.12. and 33-15-14-03.10.). These sections were moved to a new chapter, 33-15-23, Fees. These revisions are approvable. The revisions regarding the Title V permit to operate (section 33-15-14-06) will be handled separately.

f. Chapter 33-15-23 Fees

A new chapter was developed to address fees that are charged to sources under the Air Pollution Control Program. These fees were originally included in Chapter 33-15-14. The provisions in Chapter 33-15-14 were relocated to this new chapter with a few minor revisions. These revisions are approvable since they are basically what was approved in the SIP previously in Chapter 33-15-14. The sections regarding major source permit to operate fees (33-14-23-04) and phase I substitution units (33-15-23-05) will be handled separately.

3. January 9, 1996 Revisions

The January 9, 1996 submittal addresses visibility monitoring requirements outlined in Chapter 6 of the SIP. With this submittal, the State formally withdraws an April 1994 submittal of Section 6.12 of the SIP and replaces it with a new Section 6.13, which identifies current activities regarding visibility monitoring.

In addition, the January 9, 1996 submittal included revisions to Chapter 33-15-06, Emissions of Sulfur Compounds Restricted, and requests for direct delegation of revisions to Chapter 33-15-14, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (section specific to Title V Permit to Operate) and Chapter 33-15-22, Emission Standards for Hazardous Air Pollutants for Source Categories, (40 CFR Part 63 NESHAPs). These revisions and requests will be handled separately.

Finally, the January 9, 1996 submittal addresses the following chapters of the North Dakota Air Pollution Control Rules, which will be addressed in this document: 33-15-01 General Provisions; 33-15-04 Open Burning Restrictions; 33-15-09 Emissions of Certain Settleable Acids and Alkaline

Substances Restricted; 33-15-12 Standards of Performance for New Stationary Sources; 33-15-13 Emission Standards for Hazardous Air Pollutants; 33-15-14-01.1 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (section specific to definitions); and 33-15-17 Restriction of Fugitive Emissions.

a. Chapter 6 Air Quality Surveillance

In April 1994, Section 6.12 of the SIP was submitted to EPA to indicate that visibility monitoring was not necessary due to a lack of visibility impairment and a database indicating stable conditions. In late 1994 and early 1995, there was a resurgence of activity in the oil fields in Western North Dakota. Therefore, the State requested that EPA take no action on Section 6.12 at that time. A new Section 6.13 was developed to identify current activities regarding visibility monitoring, and it was included in the January 1996 submittal. Section 6.12 was withdrawn.

An increase in oil drilling activities in 1995 prompted the National Park Service to revisit the idea of establishing visibility monitoring sites at the Class I areas in North Dakota. The State plans to enter into a memorandum of understanding with the National Park Service to proceed with establishing visibility monitoring at Theodore Roosevelt National Park. This arrangement is acceptable to EPA.

b. Chapter 33-15-01 General Provisions

Under Subsection 33-15-01-04, the definition of volatile organic compounds (VOC) was revised to match the Federal definition. At the date of this submittal, the State's revision was consistent with Federal requirements, and therefore, is being approved as submitted on January 9, 1996.

However, on October 8, 1996, EPA published a revised definition of VOC (61 FR 52850), which became effective on November 7, 1996. EPA's definition excludes perchloroethylene (perc) from the definition of VOC on the basis that it is of negligible reactivity and does not contribute to tropospheric ozone formation. The definition submitted to EPA in January 1996 does not exclude this compound. Therefore, this State definition of VOC provides for the regulation of a compound (perc) which is not considered a VOC by EPA. In light of EPA's most recent definition of VOC, EPA will not enforce against sources for failure to control the emission of compounds exempt from the Federal VOC definition. North Dakota is advised of EPA's most recent VOC definition

and future SIP revisions should reflect it accordingly.

c. Chapter 33-15-04 Open Burning Restrictions

The revisions to this chapter involve applying several new and, in some cases, more restrictive conditions to all permissible open burning and revising the applicability for open burning of household refuse. The revisions allow open burning of household refuse only when no collection and disposal service is required by a municipality or other government entity. The revisions also limit material to be burned to that of one family instead of three households (as previously allowed). These revisions are approvable.

d. Chapter 33-15-09 Emission of Certain Settleable Acids and Alkaline Substances Restricted

This chapter was deleted in its entirety. These rules had been in North Dakota's Air Pollution Control Rules for over 20 years without ever being utilized. The method of sampling was considered archaic and no longer used by the State. Further, many Federal regulations, such as NSPS and the Acid Rain Rules, were developed after the adoption of Chapter 33-15-09 and address sources that emit acidic or alkaline substances. In addition, the State's Air Toxics Program has been used to address emissions of such substances. Chapter 33-15-09 was obsolete and, therefore, the deletion of it is approvable.

e. Chapter 33-15-12 Standards of Performance for New Stationary Sources
Chapter 33-15-13 Emission Standards for Hazardous Air Pollutants

The revisions to 33-15-12 and 33-15-13 incorporate by reference the Federal NSPS in 40 CFR part 60 and the Federal NESHAPs in 40 CFR part 61, as in effect on May 1, 1995, with the exception of 40 CFR part 61, subparts B, H, K, Q, R, T, and W (*i.e.*, radionuclides). Again, as discussed above in section II.A.2.d., EPA cannot act on the State's request to incorporate by reference subpart I since it has been rescinded.

Major revisions were made in Chapter 33-15-13, Section 02, Emission Standard for Asbestos. Substantive changes were made to the sections dealing with definitions and asbestos abatement licensing and certification.

Revisions to the asbestos rules were necessary due to EPA's promulgation of changes to 40 CFR Part 763, Appendix C to Subpart E, the Asbestos Model Accreditation Plan (MAP). On February 3, 1994, EPA issued the interim final

rule to revise the MAP in response to requirements detailed in the Asbestos School Hazard Abatement Reauthorization Act of 1990 (ASHARA). Among other things, the revised MAP includes the following: (1) requires that individuals must be accredited to work with asbestos in schools and public and commercial buildings and clarifies the types of work activities which are applicable; (2) increases the minimum number of hours of training for asbestos abatement workers and contractor/supervisors; (3) distinguishes between the training requirements for each of the five disciplines; (4) expands the project designer curriculum; (5) alters requirements for training certificates; (6) establishes new enforcement criteria and procedures for withdrawing licenses and certificates; (7) adds new definitions; and (8) adds recordkeeping requirements for training providers. By far the most significant change to the MAP was the requirement for certification of all persons performing asbestos abatement in public and commercial buildings. The interim rule was finalized and became effective on October 4, 1994.

The State revised its asbestos rules to be consistent with the new MAP and all references to the MAP were amended to cite the revised plan date (*i.e.*, February 3, 1994). In addition, several minor corrections and clarifications were made to the rule.

EPA has reviewed the State's revised NSPS and NESHAPs regulations (including the asbestos rules) and determined that they are approvable, with the exception of the incorporation of 40 CFR part 61, subpart I, as in effect on May 1, 1995. EPA cannot act on subpart I because it was rescinded on December 30, 1996 (see II.A.2.d. above and 61 FR 68972-68981).

f. 33-15-14 Designated Air Contaminant Sources, Permit To Construct, Minor Source Permit to Operate, Title V Permit To Operate

Minor modifications were made to Section 33-15-14-01.1, Definitions, in order to be consistent with Federal regulations. These revisions, therefore, are approvable.

As mentioned above, this submittal also included revisions to North Dakota's Title V Permit to Operate Program, which will be handled separately.

g. 33-15-17 Restriction of Fugitive Emissions

Section 33-15-17-02.1 was deleted. This section had established a standard and monitoring methodology for the difference between upwind and

downwind concentrations of total suspended particulate (TSP). The State believed the standard to be outdated since neither the State nor industry monitors for it anymore. Further, a source could have actually exceeded the PM₁₀ National Ambient Air Quality Standard (NAAQS) but still have been in compliance with this fugitive dust provision (*i.e.*, the TSP standard was meaningless for protecting the PM₁₀ NAAQS). In addition, the State and industry operate a network of PM₁₀ samplers in North Dakota, and the results of sampling indicate compliance with the PM₁₀ NAAQS. As a result, the State believes the deletion of this provision does not negatively impact the NAAQS, and EPA believes, therefore, that the deletion of this fugitive dust provision is approvable.

III. Correction of Incorporation by Reference Error

In an October 20, 1993 rulemaking, EPA approved revisions to the North Dakota Administrative Code, Chapter 33-15-06, Emissions of Sulfur Compounds Restricted, which became effective on June 1, 1992. (See 58 FR 54043, 40 CFR 52.1820(c)(24)(i)(A).) However, in the material that EPA sent to The Air and Radiation Docket and Information Center for incorporation by reference into the SIP, EPA only incorporated those provisions of Chapter 33-15-06 that were different from the previous version of Chapter 33-15-06 approved by EPA. However, the entire chapter should have been incorporated into the SIP because it had been recodified by the State since the previous SIP approval of that chapter by EPA. Consequently, EPA is correcting its error by resubmitting Chapter 33-15-06, as effective on June 1, 1992, to The Air and Radiation Docket and Information Center for incorporation into the SIP in its entirety.

IV. Final Action

EPA is taking the following actions on North Dakota's SIP revisions, as submitted by the Governor with letters dated August 15, 1995 and January 9, 1996. EPA approves the revisions in the August 15, 1995 submittal concerning the following North Dakota Air Pollution Control Rules: 33-15-01 General Provisions; 33-15-05 Emissions of Particulate Matter Restricted; 33-15-11 Prevention of Air Pollution Emergency Episodes; 33-15-13 Emission Standards for Hazardous Air Pollutants; 33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (sections specific to minor sources); and

33-15-23 Fees. Revisions regarding the Title V Operating Permits Program and the Acid Rain Program were handled separately. The August 15, 1995 submittal also included a request for Clean Air Act Section 112(l) delegation of the 40 CFR Part 63 NESHAPs. This request was addressed in an October 17, 1995 letter from William P. Yellowtail, EPA, to Francis J. Schwindt, North Dakota Department of Health.

EPA approves revisions in the January 9, 1996 submittal which address revisions to the following North Dakota Air Pollution Control Rules: 33-15-01 General Provisions; 33-15-04 Open Burning Restrictions; 33-15-09 Emissions of Certain Settleable Acids and Alkaline Substances Restricted; 33-15-12 Standards of Performance for New Stationary Sources; 33-15-13 Emission Standards for Hazardous Air Pollutants; 33-15-14-01.1 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (section specific to definitions); and 33-15-17 Restriction of Fugitive Emissions. EPA also approves visibility monitoring requirements outlined in Chapter 6 of the SIP. With this submittal, the State formally withdraws an April 1994 submittal of Section 6.12 of the SIP and replaces it with a new Section 6.13, which identifies current activities regarding visibility monitoring.

In addition, the January 9, 1996 submittal included revisions to Chapter 33-15-06, Emissions of Sulfur Compounds Restricted, and requests for direct delegation of revisions to Chapter 33-15-14, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (section specific to Title V Permit to Operate) and Chapter 33-15-22, Emission Standards for Hazardous Air Pollutants for Source Categories, (40 CFR Part 63 NESHAPs). These revisions and requests will be handled separately.

This approval provides the State with the authority for implementation and enforcement of all Federal NSPS and NESHAPs (except 40 CFR part 61, subparts B, H, K, Q, R, T, and W, pertaining to radionuclides) promulgated as of May 1, 1995. However, the State's NSPS and NESHAPs authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR parts 60 and 61.

In addition, EPA cannot act on the State's request to incorporate by reference 40 CFR part 61, subpart I (regarding radionuclide emissions from facilities licensed by the NRC and other Federal facilities not covered by subpart H) because EPA rescinded subpart I (see

61 FR 68972-68981, December 30, 1996) subsequent to the State's adoption of these revisions.

Finally, EPA is correcting an incorporation by reference error by resubmitting Chapter 33-15-06, Emissions of Sulfur Compounds Restricted, to The Air and Radiation Docket and Information Center for incorporation into the SIP in its entirety.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 20, 1997 unless, by May 21, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 20, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603

and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 1997. 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).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

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

Dated: April 7, 1997.

Jack W. McGraw,

Acting Regional Administrator.

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. 7401-7671q.

Subpart JJ—North Dakota

2. Section 52.1820 is amended by adding paragraph (c)(29) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(29) The Governor of North Dakota submitted revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules with letters dated August 15, 1995 and January 9, 1996. The revisions address air pollution control rules regarding general provisions; open burning; emissions of particulate matter, certain settleable acids and alkaline substances, and fugitives; air pollution emergency episodes; new source performance standards (NSPS); national emission standards for hazardous air pollutants (NESHAPs); and the minor source construction and operating permit programs. The State's January 9, 1996 submittal also revised SIP Chapter 6, Air Quality Surveillance, to identify current activities regarding visibility monitoring.

(i) Incorporation by reference.

(A) Revisions to the Air Pollution Control Rules as follows: Emissions of Particulate Matter Restricted 33-15-05-03., 33-15-05-03.1., 33-15-05-03.2., and 33-15-05-03.3.; Prevention of Air Pollution Emergency Episodes 33-15-11 Tables 6 and 7; and Fees 33-15-23-01, 33-15-23-02, and 33-15-23-03, effective August 1, 1995.

(B) Revisions to the Air Pollution Control Rules as follows: General Provisions 33-15-01-04; Emission Standards for Hazardous Air Pollutants 33-15-13, except 33-15-13-01-2., Subpart I; Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate 33-15-14-01, 33-15-14-01.1., 33-15-14-02.12., and 33-15-14-03.10.; effective August 1, 1995 and January 1, 1996.

(C) Revisions to the Air Pollution Control Rules as follows: Open Burning Restrictions 33-15-04; Emissions of Certain Settleable Acids and Alkaline Substances Restricted 33-15-09; Standards of Performance for New Stationary Sources 33-15-12; and Restriction of Fugitive Emissions 33-15-17-01 and 33-15-17-02, effective January 1, 1996.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 2

[CGD 96-067]

RIN 2115-AF40

Vessel Inspection User Fees

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: This rule reduces annual vessel inspection user fees for small passenger vessels and exempts publicly owned ferries from payment of vessel inspection user fees. These changes are required by the Coast Guard Authorization Act of 1996. The rule also revises the existing discretionary exemption criteria to allow additional vessels to qualify for exemption from payment of the annual vessel inspection fee. The Coast Guard requests comments on this interim rule.

DATES: This rule is effective April 21, 1997. Comments must be received on or before August 19, 1997.

ADDRESSES: Comments should be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) [CGD 96-067], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. For inquiries and user fee payment information call, toll free, 1-800-941-3337.

FOR FURTHER INFORMATION CONTACT: Denise Mursch, Budget and Resources Division, Office of Planning and Resources, (G-MRP-2) Marine Safety and Environmental Protection (202) 267-0785.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 96-067] and the specific section of