

environmental documentation. This rule only deals with the operating schedule of an existing drawbridge and will have no impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.565 to read as follows:

§ 117.565 Miles River.

The draw of the Route S370 bridge, mile 10.0 at Easton, Maryland, shall open on signal; except that from November 1 through March 31, 24 hours a day, and from April 1 through October 31, from 6 p.m. to 6 a.m., a six-hour advance notice to the drawtender is required for bridge openings.

Dated: October 27, 1999.

Thomas E. Bernard,

Acting Captain, U. S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 99–29363 Filed 11–9–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 13–98–023]

RIN 2115–AE84

Regulated Navigation Area; Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard, after consultation with the Department of Justice, Department of Interior and the Department of Commerce, is revising the Interim Rule and adopting it as final. The Coast Guard is establishing a permanent Regulated Navigation Area (RNA) along the northwest Washington coast and in a portion of the entrance of

the Strait of Juan de Fuca. The final RNA covers a broader geographic area than the interim rule and also changes the amount of time of the SECURITE notice from one hour to one half hour prior to whale hunting operations. The RNA will reduce the danger to life and property in the vicinity of Makah whale hunt activities. Within the RNA, a moving exclusionary zone (MEZ) around a Makah whale hunt vessel may be in effect during actual whale hunt operations.

DATES: This final rule is effective November 10, 1999.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 13–98–023 and are available for inspection or copying at Thirteenth Coast Guard District (m), RM 3506, 915 Second Avenue, Seattle, WA 98174, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thirteenth District Marine Safety Division (m), United States Coast Guard (206) 220–7210.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 22, 1998, we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area, Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting" in the **Federal Register** (63 FR 39256). On October 1, 1998, we published an interim rule entitled "Regulated Navigation Area, Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting" in the **Federal Register** (63 FR 52603). No public hearing was held.

Migrating gray whales are expected in the RNA after November 1, 1999. An early effective date for this rule will help ensure safety of persons and property at sea should whale hunting operations commence during November in the expanded RNA. While the size of the RNA is expanded by the final rule, the size of the MEZ is unchanged. The Coast Guard did not receive the results of the environmental consultations in time to allow for a delayed effective date after publication. For these reasons, the Coast Guard finds good cause, under 5 U.S.C. 553(d)(3), that this rule should be made effective in less than 30 days after publication.

Background and Purpose

The Makah Tribe has a federally recognized treaty right to hunt whales in their usual and accustomed fishing area

off the northwest coast of Washington and in the entrance of the Strait of Juan de Fuca. Several hunts were initiated, but did not result in a whale being taken, in significant part to interference caused by boaters near the tribal hunt vessels. A whale hunt was completed on May 17, 1999 using a harpoon and a .50 caliber rifle, fired from a small boat. These experiences established that an MEZ reduces the dangers to persons and vessels in the vicinity of whale hunting activities. The uncertain reactions of a pursued or wounded whale and the inherent dangers in firing a hunting rifle from a pitching and rolling small boat are likely to be present in all future hunts, and present a significant danger to life and property if persons and vessels are not excluded from the immediate vicinity of a hunt.

Discussion of Comments and Changes

The Coast Guard received a total of 49 comments after publication of the interim rule. The comments included letters from 10 organizations, 1 federal agency, the Makah tribe, and 1 petition with multiple signatures. Responses to these comments and changes made in the interim rule are discussed in the following paragraphs.

Several comments objected to the taxpayer expense involved in implementing this rule. One suggested that the costs associated with enforcement of the RNA be borne by the Makah Tribe, not with federal funds. RNAs, safety zones and limited access areas are enforced nationwide using the Coast Guard's operating expense account. For example, a city fireworks display often requires a safety zone around it and federal funds are expended in implementing and enforcing such zones. Moreover, the creation of an RNA does not require that the Coast Guard be on scene for the rule to be in effect; the Coast Guard has the discretion to place units on scene with or without a rule.

A frequent comment was that the RNA violated first amendment rights. Generally, these comments raised the concern that the 500 yard MEZ distance prevents appropriate documentation and recording of an event that is of significant public interest. One comment suggested that the Coast Guard implement a system of observers pooled from the media and non-government agencies to witness the whale hunt from Coast Guard assets. The Coast Guard recognizes that there is a public interest in the media recording and documenting this event. The interim rule allowed a single press pool vessel within the MEZ subject to certain restrictions. Requiring other members of

the public, including potential protesters, to remain 500 yards away from the hunt is a reasonable, content neutral restriction in light of the serious safety concerns presented by a whale hunt. This carefully tailored final rule balances the allowance for a press pool vessel within the MEZ and the significant public safety concerns, tribal treaty rights, and first amendment rights. The creation of the RNA is intended to enhance safety at sea. The presence of a media pool vessel and helicopters during prior hunts indicate very good ability for the media to document and witness these events.

Numerous comments opposed any whaling. A petition with several signatures requested that the Coast Guard repeal the exclusionary zone. One comment stated that the Coast Guard failed to remain impartial and neutral. Another comment opined that the zone was being created solely to avoid controversy. Several comments addressed the morality of whale hunting and described the intended method of killing the whale as inhumane. The Coast Guard has been informed by the Department of Interior and Department of Justice that physical interference with the Makah whale hunt is inconsistent with federal law. The Coast Guard is very concerned about the public safety aspects of the Makah whale hunt and, through implementation of this rule, is taking carefully tailored precautions without unconstitutionally infringing on public activities.

Several comments disagreed with the U.S. Government's position that the Makah have International Whaling Commission permission to whale. Some comments also indicated that the hunt is inconsistent with international law and compromises the U.S. position on international whaling. Several comments expressed that the hunt would not promote the Makah's well being, that the hunt would lead to commercial whaling on a world-wide basis, and that whale hunting violates the Marine Mammal Protection Act. One comment stated that the RNA could result in killing "JJ the whale." These comments involve matters outside the scope of this rule and are primarily the concern of other federal and international bodies. The Coast Guard is working with other agencies to ensure its efforts are consistent with federal law.

Some comments raised concerns that the proposed SECURITE broadcasts

created an unreasonable restriction on boaters in the area and provided inadequate notice of the MEZ. The MEZ is activated when a Makah whaling vessel displays the international numeral pennant five (5) flag. The final rule has been modified with respect to the length of the SECURITE notice prior to whale hunting operations. The Makah whalers are required to provide a Channel 16 VHF-FM SECURITE notice one half hour prior to whale hunt operations and every half hour following that until completion of the hunt. In addition, all vessels transiting the RNA are urged to keep an operating marine radio tuned to Channel 16 VHF-FM. The Coast Guard has not observed unreasonable restrictions on boating when an MEZ has been activated and finds that one half-hour notice is adequate notice to boaters considering the small size of the MEZ and the low density of vessel traffic.

Several comments requested that the MEZ be applied to all Makah vessels engaged in the hunt. The zone is intended to enhance safety at sea in the vicinity of the hunting activity. The extension of the zone to include all Makah vessels would create multiple zones around vessels that are not necessarily directly involved in the hunt. The MEZ is established during daylight hours when a Makah vessel engaged in the hunt issues the one-half hour SECURITE notice and raises the international numeral five pennant. If the pennant is transferred from one vessel to another vessel involved in the hunt, then the zone is established around that vessel. The pennant is the signal to all mariners that the zone is in place around the vessel flying the pennant.

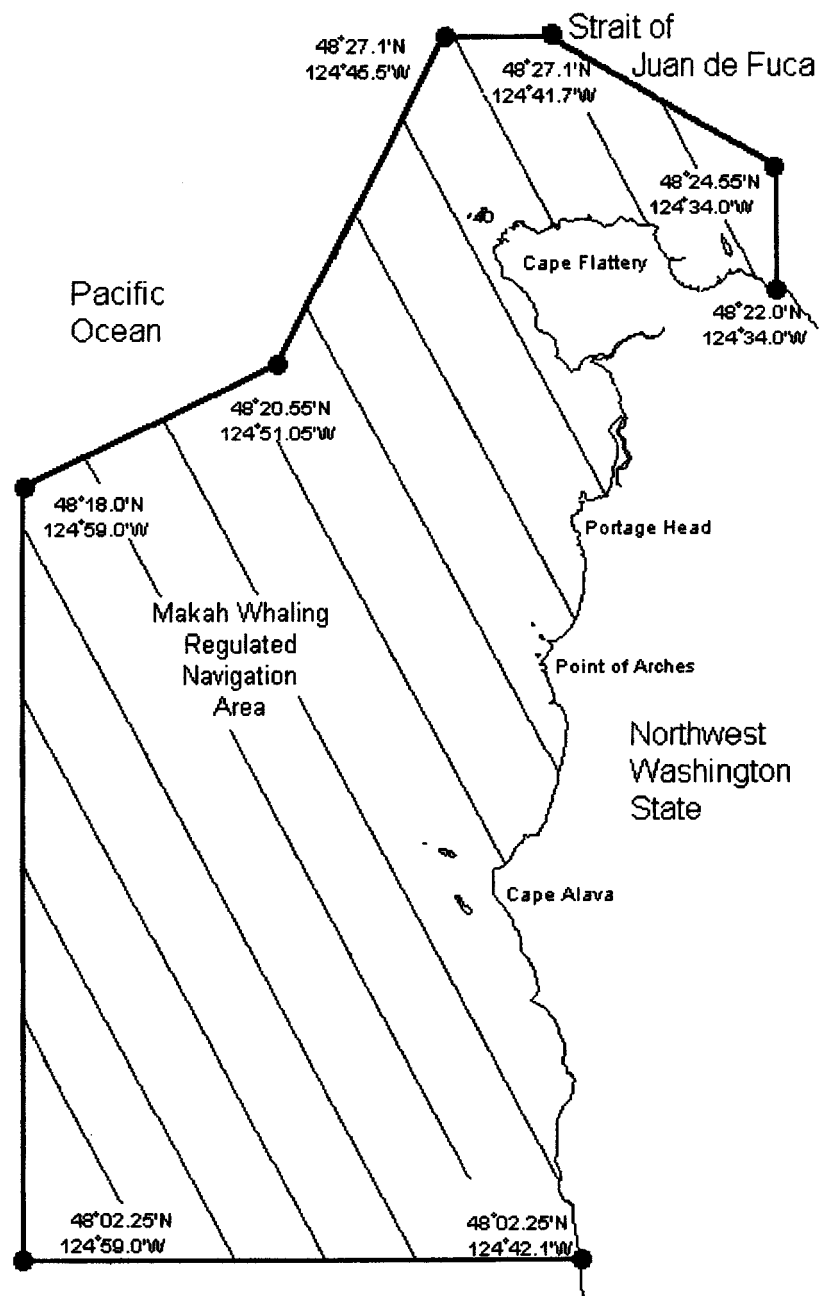
Although numerous comments requested a public hearing, no comments provided convincing reasons why a hearing would be helpful in this rulemaking. Based on all the comments received to date, there has been an adequate forum and sufficient time for the public to express its concerns on all issues related to this rulemaking.

One comment stated that there was no evidence supporting the finding that physical interference with the hunt is inconsistent with federal law. The Department of the Interior (DOI) is the agency tasked with determination of tribal treaty rights. In DOI's view, the Makah Tribe's right to engage in the harvest of whales is protected by federal law, and the federal government has

legal authority to protect the exercise of that right. The central purpose of this regulation, however, is to enhance safety at sea.

Some comments asked that the RNA be extended southward to the full breadth of the Makah Tribe's usual and accustomed fishing area at 48°02'25" N. The whale hunts that took place in early 1999 generally involved operations south of the RNA boundary as established in the interim rule. These hunts were nevertheless within the Makah's usual and accustomed whaling area. The Makah have indicated they will continue to hunt in this area. Further the Coast Guard has determined that it is capable of monitoring activity in this area. The final rule is extending the RNA to include a greater portion of the Makah Tribe's usual and accustomed fishing area. The Coast Guard Authorization Act of 1998 added a definition of navigable waters of the United States at 33 U.S.C. 1222(5) to include the territorial sea out to 12 nautical miles from the baseline of the United States. (Pub. L. 105-383, Title III, § 301(a), Nov 13, 1998, 112 Stat. 3417). This authorizes the Coast Guard to extend the protections of the RNA under the Ports and Waterways Safety Act from three to twelve nautical miles from the baseline of the United States. For the purposes of this rule, the definition at 33 U.S.C. 1222(5) supercedes the definitions found at 33 CFR §§ 2.05-5 and 2.05-25. The RNA will extend out to a north-south line approximately 10 nautical miles off the western coast of Washington State so as to avoid the Navy firing range and the Traffic Separation Scheme (TSS). The RNA will also extend southward to fully encompass the Tribe's usual and accustomed fishing areas. The purpose of the RNA is to promote safety. The Makah have clearly established that they will hunt within their entire usual and accustomed fishing area. The Notice of Proposed Rule Making and the Interim Rule relied heavily upon the concern within the Coast Guard of the ability to patrol effectively in this remote area. Now that we have experienced an actual hunt we believe we can effectively patrol the expanded area. NOAA has also indicated that they would like the RNA to similarly be expanded. This is an illustration of the expanded RNA:

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Regulatory Evaluation

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). Although some public comments stated that this action constitutes a significant regulatory action, the Coast Guard disagrees based on the minor portion of the navigable waters affected, and the brief time that actual whale hunt operations involve. Because of the limited number of whales that can be taken annually and the small size of the MEZ, the Coast Guard expects the economic impact of this interim rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this final rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Small entities that might be affected could include whale-watching ventures, tugboats and their tows, small passenger vessels, and commercial fishermen. Several comments stated that the impact on small entities had not been quantified. Some of these comments indicated that both the media as an economic entity and recreational fishing vessels would be harmed by this rule. The media will be allowed to document the hunt using a media pool vessel. Small entities and recreational vessels such as fishing vessels and whale watching boats need to maintain prudent distances from whale hunts as a safety precaution whether this rule exists or not. As discussed above, the Coast Guard recommends that all mariners, including small entities, maintain a distance well in excess of 500 yards during whale hunt activities. The very small size and duration of the MEZ minimizes the effects, if any, from this rule on small entities.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this final rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government, or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the potential environmental impacts of this

rule and concluded that there were no potential effects that preclude application of the categorical exclusion found under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C. Paragraph (34)(g) authorizes a categorical exclusion for rulemakings changing a Regulated Navigation Area. In assessing the potential environmental impacts of this rule, the Coast Guard consulted with the U.S. Fish and Wildlife Service, the Nisqually National Wildlife Refuge Complex, the Washington Maritime National Wildlife Refuge Complex, and the National Marine Fisheries Service. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

Accordingly, the interim rule amending 33 CFR part 165 which was published at 63 FR 52609 on October 1, 1998, is adopted as a final rule with the following change:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Amend § 165.1310 by revising paragraphs (a) and (e) to read as follows:

§ 165.1310 Strait of Juan de Fuca and Adjacent Coastal Waters of Northwest Washington; Makah Whale Hunting—Regulated Navigation Area.

(a) The following area is a Regulated Navigation Area (RNA): From 48°02.25'N, 124°42.1'W northward along the mainland shoreline of Washington State to Cape Flattery and thence eastward along the mainland shoreline of Washington State to 48°22'N, 124°34'W; thence due north to 48°24.55'N, 124°34'W; thence northwesterly to 48°27.1'N, 124°41.7'W; thence due west to 48°27.1'N, 124°45.5'W; thence southwesterly to 48°20.55'N, 124°51.05'W, thence west south west to 48°18.0'N 124°59.0'W, thence due south to 48°02.25'N, 124°59.0'W) thence due east back to the shoreline of Washington at 48°02.25'N, 124°42.1'W. Datum: NAD 1983.

* * * * *

(e) The Makah Tribe shall make SECURITE broadcasts beginning one half hour before the commencement of

a hunt and every half hour thereafter until hunting activities are concluded. This broadcast shall be made on channel 16 VHF-FM and state:

A whale hunt is proceeding today within the Regulated Navigation Area established for Makah whaling activities. The (name of vessel) is a (color and description of vessel) and will be flying international numeral pennant five (5) while engaged in whaling operations. This pennant is yellow and blue in color. Mariners are required by federal regulation to stay 500 yards away from (name of vessel), and are strongly urged to remain even further away from whale hunt activities as an additional safety measure.

* * * * *
Dated: November 1, 1999.

James C. Olson,

*Captain, U.S. Coast Guard, Acting
Commander, 13th Coast Guard District.*

[FR Doc. 99-29365 Filed 11-9-99; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC-087-1-9939a; FRL-6463-6]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On July 29, 1998, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR) submitted miscellaneous revisions to the North Carolina State Implementation Plan (SIP). These revisions include but are not limited to, clarifying rules for the control of particulate emissions, adding requirements for expedited permit processing, revising the Division name and address, and amending case-by-case MACT language. EPA is approving these revisions because they are consistent with the requirements set forth in the Clean Air Act (CAA) amendments of 1990.

DATES: This direct final rule is effective January 10, 2000, without further notice, unless EPA receives adverse comment by December 10, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Gregory Crawford at the

U.S. Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

North Carolina Department of Environment and Natural Resources, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699.

FOR FURTHER INFORMATION CONTACT:

Gregory Crawford, Regulatory Planning Section, Air Planning Branch, Air Pesticides and Toxics Management Division at 404/562-9046.

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1998, the State of North Carolina Department of Environment and Natural Resources submitted revisions to amend, adopt, and repeal multiple sections in the North Carolina Administrative Code. These amendments address Subchapters 2D—Air Pollution Control Requirements and 2Q—Air Quality Permits Requirements. Detailed descriptions of the amendments are listed under “Analysis of the State’s Submittal.”

II. Analysis of State’s Submittal

15 A NCAC 2D .0101—Definitions, .0104—Incorporation by Reference, .0105—Mailing List, .0202—Registration of Air Pollution Sources, .0302—Episode Criteria, .0531—Sources in Nonattainment Areas, .0953—Vapor Return Piping for Stage II Vapor Recovery, .1902—Definitions, .1903—Permissible Open Burning Without a Permit, 15 A NCAC 2Q .0103—Definitions, .0108—Delegation of Authority, .0307—Public Participation Procedures

These regulations were amended to change the Division’s name from Division of Environmental Management to the Air Quality Division, due to restructure of the organization.

15A NCAC 2Q .0207—Annual Emissions Reporting

This regulation was amended to add perchloroethylene to the list of compounds in 15A NCAC 2Q .0207,

since annual reporting of emissions is required.

15A NCAC 2Q .0805—Grain Elevators, .0806—Cotton Gins, .0807—Emergency Generators

These regulations were amended to revise the exclusionary levels for permit fee purposes for both grain elevators and cotton gins and to clarify that storage tanks that store fuel for an emergency generator would not disqualify the generator from exclusionary rules.

15A NCAC 2D .0506—Particulates from Hot Mix Asphalt Plants, .0507—Particulates From Chemical Fertilizer Manufacturing Plants, .0508—Particulates From Pulp and Paper Mills, .0509—Particulates from Mica or Feldspar Processing Plants, .0510—Particulates From Sand, Gravel, or Crushed Stone Operations, .0511—Particulates From Lightweight Aggregate Processes, .0513—Particulates From Portland Cement Plants, .0514—Particulates From Ferrous Jobbing Foundries, .0515—Particulates From Miscellaneous Industrial Processes, .0540—Particulates From Fugitive Non-Process Dust Emission Sources

These regulations were adopted to clarify existing and adopt new rules for the control of particulate emissions. The allowable emission rates for the sections were simplified from a table format to a bullet listing of emission rates for each section.

15A NCAC 2D .0521—Control of Visible Emissions

This regulation amends language to use consistent terminology in the visible emissions rule.

15A NCAC 2D .0914—Determination of VOC Emission Control System Efficiency

This regulation was amended to correct a deficiency identified by the EPA in the procedures for determining capture efficiency. EPA recommends capture efficiency protocols and test methods be determined as described in the EPA document, EMTIC GD-035, “Guidelines for Determining Capture Efficiency.” The State is incorporating this rule by reference.

15A NCAC 2D .0927—Bulk Gasoline Terminals

This regulation was amended to require bulk gasoline terminals to weld or gasket deck seams on contact decks.

15A NCAC 2D .0953—Vapor Return Piping for Stage II Vapor Recovery

This regulation was amended to require affected facilities (any gasoline