

■ 2. Add a temporary § 100.T07–0942 to read as follows:

**§ 100.T07–0942 Special Local Regulations; Key West World Championship, Atlantic Ocean; Key West, FL.**

(a) *Regulated Areas.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°32'08" N, 81°50'19" W; thence east to Point 2 in position 24°32'23" N, 81°48'58" W; thence northeast to Point 3 in position 24°33'14" N, 81°48'47" W; thence northeast to Point 4 in position 24°33'54" N, 81°48'22" W; thence west to Point 5 in position 24°33'54" N, 81°48'25" W; thence southwest back to origin. All persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) *Buffer Zone.* All waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°33'26" N, 81°49'02" W; thence southwest to Point 2 in position 24°32'22" N, 81°50'39" W; thence south to Point 3 in position 24°31'53" N, 81°50'39" W; thence northeast to Point 4 in position 24°32'06" N, 81°48'35" W thence northwest to back to origin. All persons and vessels except those persons and vessels enforcing the buffer zone are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone.

(3) *Spectator Area 1.* All waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°33'26" N, 81°49'02" W; thence northeast to Point 2 in position 24°33'36" N, 81°48'49" W; thence northwest to Point 3 in position 24°33'39" N, 81°49'26" W; thence southwest to Point 4 in position 24°33'24" N, 81°49'28" W; thence northeast back to origin. All vessels are prohibited from anchoring in spectator area 1. On-scene designated representatives will direct spectator vessels to spectator area 1.

(4) *Spectator Area 2.* All waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°33'41" N, 81°48'44" W; thence northeast to

Point 2 in position 24°33'55" N, 81°48'34" W; thence southwest to Point 3 in position 24°33'52" N, 81°48'42" W; thence southwest back to origin. All vessels are prohibited from anchoring in spectator area 2. On-scene designated representatives will direct spectator vessels to spectator area 2.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Key West in the enforcement of the regulated areas.

(c) *Regulations.*

(1) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Key West by telephone at (305) 292–8727, or a designated representative via VHF radio on channel 16, to seek authorization. If authorization to enter, transit through, anchor in, or remain within any of the regulated areas is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative.

(2) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date and Enforcement Periods.* This rule is effective from 9 a.m. on November 9, 2011 through 5 p.m. on November 13, 2011. This rule will be enforced daily from 9 a.m. until 5 p.m. on November 9, 2011; November 11, 2011; and November 13, 2011.

Dated: October 18, 2011.

**Pat DeQuattro,**

*Captain, U.S. Coast Guard, Captain of the Port Key West.*

[FR Doc. 2011–28587 Filed 11–3–11; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R08–OAR–2009–0556; FRL–9486–2]

### Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Revisions to the Air Pollution Control Rules

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to the North Dakota State Implementation Plan (SIP) that the Governor of North Dakota submitted with a letter dated April 6, 2009. The revisions affect North Dakota's air pollution control rules regarding general provisions (including rules regarding shutdowns and malfunctions), ambient air quality standards, emissions of particulate matter, permitting, and fees. In addition, EPA is making administrative corrections to the regulatory text for North Dakota that will be codified in the Code of Federal Regulations; we made errors in the identification of plan table when we approved the North Dakota State Implementation Plan revisions for Interstate Transport of pollution, which the Governor also submitted on April 6, 2009. EPA proposed approval of these rules on May 5, 2011 and received no adverse comments. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This action is effective on December 5, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R08–OAR–2009–0556. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 8, Air Quality Planning Unit (8P–AR), 1595 Wynkoop Street, Denver, Colorado 80202. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jody Ostendorf, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7814, or [ostendorf.jody@epa.gov](mailto:ostendorf.jody@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### Definitions

For the purpose of this document, the following definitions apply:

(i) The words or initials *Act* or *CAA* mean or refer to the Federal Clean Air

Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.

(v) The words *State* or *ND* mean the State of North Dakota, unless the context indicates otherwise.

(vi) The initials *NDDH* mean or refer to the North Dakota Department of Health.

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## I. Background

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to us. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan must be adopted after reasonable notice and public hearing.

To provide for public comment, the North Dakota Department of Health (NDDH), after providing notice, held a public hearing on October 7, 2008 to consider the revisions to the Air Pollution Control Rules. Following the public hearing, comment period, and legal review by the North Dakota Attorney General's Office, NDDH adopted the revisions. The revisions to the Air Pollution Control Rules became effective on April 1, 2009. The North Dakota Governor submitted the SIP revisions to us with a letter dated April 6, 2009. This submittal also included (1) SIP revisions to address Interstate Transport requirements related to the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS, which we acted on in 2010 (75 FR 31290, June 3, 2010, and 75 FR 71023, November 22, 2010), and (2) SIP revisions (commonly referred to as "infrastructure" requirements) to address implementation of current NAAQS for PM<sub>10</sub>, PM<sub>2.5</sub>, and ozone, which we will be acting on separately. In our June 3, 2010 and November 22, 2010 actions on North Dakota's Interstate Transport SIP revisions, we made errors in the identification of plan table located in 40 CFR 52.1820(e). We describe these errors in section III, below.

## II. Analysis of SIP Revisions

The SIP revisions in the April 6, 2009 submittal that we are acting on in this document involve the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33-15-01, "General Provisions;" 33-15-02, "Ambient Air Quality Standards;" 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;" and 33-15-23, "Fees." The following is our description and analysis of the revisions.

### A. Chapter 33-15-01, N.D.A.C., General Provisions

The State revised sections 33-15-01-04, 33-15-01-05, and 33-15-01-13 and submitted the entire revised sections to us for approval. In section 33-15-01-04, the State made the following changes: (1) The State revised the definition of "air contaminant" to add the words, "emitted to the ambient air" to the end of the definition; (2) the State added definitions for "excess emissions" and "PM<sub>2.5</sub>;" (3) the State re-numbered the definitions to account for the addition of new definitions; and (4) the State cross-referenced and incorporated by reference the version of 40 CFR 51.100(s) as it existed on March 1, 2008 for purposes of defining "volatile organic compounds" (the prior date used was January 1, 2006). These changes are minor and are consistent with relevant CAA and regulatory requirements.

In section 33-15-01-05, the State added abbreviations for PM and PM<sub>2.5</sub>. These revisions are minor and are consistent with the CAA.

The State made several revisions to 33-15-01-13, "Shutdown and Malfunction of an Installation—Requirement for notification." In 33-15-01-13.1, "Maintenance shutdowns," the State adopted new subdivision f, which reads, "Nothing in this subsection shall in any manner be construed as authorizing or legalizing the emission of air contaminants in excess of the rate allowed by this article or a permit issued pursuant to this article." Previously, we had been concerned that the language of 33-15-01-13.1 could be construed as exempting from enforcement excess emissions during shutdown of air pollution control equipment for scheduled maintenance. EPA's interpretation is that the CAA requires that all periods of excess emissions, regardless of cause, be treated as violations and that automatic

exemptions from emissions limits are not appropriate.<sup>1</sup> Subdivision f clarifies that excess emissions are not authorized during maintenance shutdowns. Subdivision f is consistent with CAA requirements.

In 33-15-01-13.2, "Malfunctions," the State removed certain language and added other language. In 33-15-01-13.2.a, the State removed language indicating that the State could permit the continued operation of an installation during a malfunction resulting in a violation of an emissions limit. We were concerned that this language could be construed to exempt excess emissions caused by malfunctions when the State granted permission to continue operations. EPA's interpretation is that such an exemption would be inconsistent with the CAA. The removal of the language is consistent with CAA requirements.

The State added 33-15-01-13.2.c to 33-15-01-13.2. This new subdivision c identifies procedures sources and the State will follow with respect to unavoidable malfunctions. Where a source believes that excess emissions have resulted from an unavoidable malfunction, the source must submit a written report to the State that includes evidence relevant to six criteria specified in the rule. The report must be submitted within thirty days of the end of the calendar quarter in which the malfunction occurred or within thirty days of a written request by North Dakota, whichever is sooner. The rule provides that North Dakota will evaluate

<sup>1</sup> This interpretation has been expressed in several documents. Most relevant to this action are the following: memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" (the 1982 Memorandum); a clarification to that memorandum from Kathleen M. Bennett issued on February 15, 1983 (the 1983 Memorandum); and a memorandum dated September 20, 1999 entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation (the 1999 Memorandum). As explained in these memoranda, because excess emissions might aggravate air quality so as to prevent attainment and maintenance of the NAAQS and compliance with other CAA requirements, EPA views all periods of excess emissions as violations of the applicable emission limitation. Therefore, EPA will disapprove SIP revisions that automatically exempt from enforcement excess emissions claimed to result from an equipment malfunction. In addition, as made explicit in the 1999 Memorandum, EPA will disapprove SIP revisions that give discretion to a state director to determine whether an instance of excess emissions is a violation of an emission limitation, because such a determination could bar EPA and citizens from enforcing applicable requirements.

the information submitted by the source on a case-by-case basis to determine whether to pursue an enforcement action and that North Dakota may elect not to pursue an enforcement action after considering whether excess emissions resulted from an unavoidable equipment malfunction. The rule also provides that the burden of proof is on the source to provide sufficient information to demonstrate that an unavoidable equipment malfunction occurred.

Under EPA's interpretations of the CAA as set forth in the 1982, 1983, and 1999 Memoranda, if a state in its SIP chooses to address violations that occur as a result of claimed malfunctions, the state may take two approaches. The first, the "enforcement discretion" approach, allows a state director to refrain from taking an enforcement action for a violation if certain criteria are met. The second, the "affirmative defense" approach, allows a source to avoid penalties if it can prove that certain conditions are met. North Dakota's 33-15-01-13.2.c follows the enforcement discretion approach.

We have evaluated North Dakota's enforcement discretion provisions for excess emissions caused by unavoidable equipment malfunctions and find that they are consistent with EPA's interpretations of the CAA as described in the memoranda above. In particular, the criteria specified in 33-15-01-13.2.c that the State will consider in deciding whether to pursue an enforcement action generally parallel the criteria outlined in the 1982 and 1983 Memoranda.

As noted in footnote 1, above, the 1999 Memorandum also discusses a point not explicitly addressed in North Dakota's new rule—i.e., EPA will not approve SIP revisions that recognize or appear to recognize a state's decision not to pursue enforcement as barring enforcement action by EPA or citizens. Rule 33-15-01-13.2.c only addresses the State's exercise of its enforcement discretion and contains no language suggesting that a State decision not to pursue an enforcement action for a particular violation bars EPA or citizens from taking an enforcement action. Therefore, EPA interprets the rule, consistent with EPA's interpretations of the CAA, as not barring EPA and citizen enforcement of violations of applicable requirements when the State declines enforcement.

In 33-15-01-13.3, "Continuous emission monitoring system failures," the State removed the phrase, "acceptable to the department," from the text, "When a failure of a continuous emission monitoring system

occurs, an alternative method, acceptable to the department, for measuring or estimating emissions must be undertaken as soon as possible." Following this sentence, the State added a new sentence that reads as follows: "The owner or operator of a source that uses an alternative method shall have the burden of demonstrating that the method is accurate." We had asked the State to remove the language "acceptable to the department" from the rule and find that the new language is consistent with CAA requirements.

In previous rulemakings, we referenced an April 11, 2003 submission of revisions to 33-15-01-13 and indicated that we would act on that submission at a later date. See 69 FR 61762, October 21, 2004; 70 FR 45539, October 8, 2005; and 71 FR 3764, January 24, 2006. However, in an August 17, 2009 letter, North Dakota advised EPA that the April 11, 2003 submission erroneously indicated there had been revisions to 33-15-01-13.1.d, and that in fact the cited revisions to 33-15-01-13.1.d had not been adopted and were not submitted to EPA with the Governor's April 11, 2003 letter. Therefore, there are no remaining revisions from the April 11, 2003 submittal awaiting EPA's action.

#### *B. Chapter 33-15-02, N.D.A.C., Ambient Air Quality Standards*

Table 1 was revised to amend the PM<sub>10</sub> and ozone standards and to add the 2006 PM<sub>2.5</sub> standard. These revisions were made to reflect the Federal standards and are consistent with CAA requirements.

#### *C. Chapter 33-15-05, N.D.A.C., Emissions of Particulate Matter Restricted*

The State removed section 33-15-05-03.2.2.d., which provided that the State could approve continued operation of a trash incinerator during a malfunction of combustion equipment, emission control equipment, monitoring equipment, or waste charging equipment. We were concerned that section 33-15-05-03.2.2.d could be construed to exempt excess emissions at trash incinerators caused by malfunctions when the State granted permission to the source to continue operations. EPA's interpretation is that such an exemption would be inconsistent with the CAA. We asked the State to address our concern. The removal of section 33-15-05-03.2.2.d addresses our concern and is consistent with CAA requirements. The SIP will no longer provide a potential exemption to trash incinerators operating during malfunctions based on State approval of

continued operation during such periods. Instead, malfunctions at trash incinerators would be treated the same as malfunctions at other sources subject to SIP requirements—i.e., the source would need to follow the procedures contained in section 33-15-01-13.2.

#### *D. Chapter 33-15-14, N.D.A.C., Designated Air Contaminant Sources, Permit To Construct, Minor Source Permit To Operate, Title V Permit To Operate*

In section 33-15-14-01, "Designated Air Contaminant Sources," the State revised the list of sources "capable of causing or contributing to air pollution." Specifically, the State added the word "major" to 33-15-14-01.14 so that it now reads as follows: "Any major source to which a national emission standard for hazardous air pollutants for source categories (40 CFR 63) would apply." This change only affects the applicability of certain permitting requirements contained in Chapter 33-15-14. It does not affect emission limits in the SIP or other requirements that would affect ambient concentrations of criteria pollutants. It also does not affect the applicability of 40 CFR part 63 requirements. This change is consistent with CAA requirements.

#### *E. Chapter 33-15-23, N.D.A.C., Fees*

The State revised section 33-15-23-03, "Minor source permit to operate fees." The State simplified the definition of a "designated" source. (The rule establishes a fee for designated sources.) The State also expanded the exemption from fees for State government facilities to include local government facilities. This latter revision simply codified the State's standing practice of not collecting fees from local governments. In addition, the State made a minor change to the due date for sources to submit the annual permit fee; the fee is now due within 60 days following the date of the State's fee notice rather than within 60 days of receipt of the fee notice. These are minor clarifying changes that do not impact compliance with CAA requirements.

### **III. Corrections to Regulatory Text**

On June 3, 2010 and November 22, 2010 we published final rules approving portions of the revised North Dakota SIP for Interstate Transport of Pollution for the 1997 PM<sub>2.5</sub> and 8-Hour Ozone NAAQS. See 75 FR 31290 and 75 FR 71023. When we published those rules, we included regulatory text that was incorrect. Specifically, we made errors in the "Identification of plan" table contained in 40 CFR 52.1820(e), "EPA-

approved nonregulatory provisions.” As published in our November 22, 2010 action (which augmented and revised the table contained in our June 3, 2010 action), the first portion of the explanation for item (1) in the table read as follows: “Excluding subsequent revisions, as follows: Chapters 1, 2, 6, 7, 9, 11, and 12; Sections 2.11, 3.7, 6.8, 6.10, 6.11, 6.13, 7.7, and 8.3; subsections 7.8.1.B., 7.8.1.D., and 8.3.1.”<sup>2</sup> It should have read, “Excluding subsequent revisions, as follows: Chapters 6, 11, and 12; Sections 2.11, 3.7, 6.10, 6.11, 6.13, and 8.3; and Subsections 3.2.1, 5.2.1, 7.8.1.A, 7.8.1.B, 7.8.1.C, and 8.3.1.” We also incorrectly listed the submittal date for items (21) and (22) in the table as 4/09/09 instead of 4/06/09. We are also revising part of the explanation for item (21) without changing its meaning. Therefore, we are correcting the identification of plan table in 40 CFR 52.1820(e) accordingly.

#### IV. Response to Comments

EPA did not receive any adverse comments on our May 5, 2011 proposal.

#### V. Section 110(l)

Under section 110(l) of the CAA, EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. As described in section II, above, most of the revisions we are approving conform the North Dakota SIP to relevant CAA requirements. In particular, the State revised shutdown and malfunction provisions to comport with CAA requirements. The other changes we are approving are minor and will not interfere with attainment or reasonable further progress toward attainment of the NAAQS<sup>3</sup> or any other CAA requirements.

#### VI. Final Action

EPA is approving revisions to the North Dakota SIP that the Governor of North Dakota submitted with a letter dated April 6, 2009 and that were State-

effective April 1, 2009. Specifically, EPA is approving North Dakota's revisions to the following portions of the North Dakota Administrative Code: Chapter 33–15–01, “General Provisions,” sections 33–15–01–04, 33–15–01–05, and 33–15–01–13; Chapter 33–15–02, “Ambient Air Quality Standards,” section 33–15–02, Table 1; Chapter 33–15–05, “Emissions of Particulate Matter Restricted,” subsection 33–15–05–03.2.2; Chapter 33–15–14, “Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate,” subsection 33–15–14–01.14; and Chapter 33–15–23, “Fees,” section 33–15–23–03. See section II of this action, above, for a description of these revisions.

In addition, EPA is making administrative corrections to the regulatory text for North Dakota that will appear in the Code of Federal Regulations. Specifically, we are changing the identification of plan table that will appear at 40 CFR 52.1820(e) as follows:

a. We are changing the first portion of the explanation for item (1) in the table to read, “Excluding subsequent revisions, as follows: Chapters 6, 11, and 12; Sections 2.11, 3.7, 6.10, 6.11, 6.13, and 8.3; and Subsections 3.2.1, 5.2.1, 7.8.1.A, 7.8.1.B, 7.8.1.C, and 8.3.1.”

b. We are changing the submittal dates for items (21) and (22) in the table to read, “4/06/09,” and revising part of the explanation for item (21) without changing its meaning.

See section III of this action, above, for further information regarding these corrections.

#### VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

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

Dated: October 25, 2011.

**James B. Martin,**

*Regional Administrator, Region 8.*

40 CFR part 52 is amended to read 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.*

<sup>2</sup> As of the date of signature of this action, the official, published version of 40 CFR 52.1820 was current as of July 1, 2010 and does not reflect the regulatory language contained in our November 22, 2010 action. The regulatory language as contained in our November 22, 2010 action does appear in the unofficial electronic CFR on the GPOAccess Web site: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=4d2eed6d6a2a14bd914c123a19f553c3&rgn=div8&view=text&node=40:4.0.1.1.16.1.1&idno=40>.

<sup>3</sup> North Dakota has no nonattainment areas. Thus, CAA part D requirements, including the requirement to make reasonable further progress toward attainment, do not apply in North Dakota.

**Subpart JJ—North Dakota**

■ 2. Section 52.1820 is amended as follows:

■ a. In paragraph (c) by revising the table entries for “33–15–01–04;” “33–15–01–05;” “33–15–01–13;” “33–15–02,

Table 1;” “33–15–05–03.2;” “33–15–14–01;” and “33–15–23–03;” and by removing the entry for “33–15–14–01.1”.

■ b. In paragraph (e) by revising the table entries for “(1),” “(21),” and “(22).”

**§ 52.1820 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**STATE OF NORTH DAKOTA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date and citation <sup>1</sup>	Explanations
* * *	* * *	* * *	* * *	* * *
33–15–01–04 .....	Definitions .....	4/1/09	11/4/11, [Insert <b>Federal Register</b> page number where the document begins.]	
33–15–01–05 .....	Abbreviations .....	4/1/09	11/4/11, [Insert <b>Federal Register</b> page number where the document begins.]	
* * *	* * *	* * *	* * *	* * *
33–15–01–13 .....	Shutdown and malfunction of an installation—Requirement for notification.	4/1/09	11/4/11, [Insert <b>Federal Register</b> page number where the document begins.]	
* * *	* * *	* * *	* * *	* * *
33–15–02, Table 1 .....	Ambient Air Quality Standards.	4/1/09	11/4/11, [Insert <b>Federal Register</b> page number where the document begins.]	
* * *	* * *	* * *	* * *	* * *
33–15–05–03.2 .....	Refuse incinerators .....	4/1/09	11/4/11, [Insert <b>Federal Register</b> page number where the document begins.]	
* * *	* * *	* * *	* * *	* * *
33–15–14–01 .....	Designated air contaminant sources.	8/1/95	11/4/11, [Insert <b>Federal Register</b> page number where the document begins.]	
* * *	* * *	* * *	* * *	* * *
33–15–23–03 .....	Minor source permit to operate fees.	4/1/09	11/4/11, [Insert <b>Federal Register</b> page number where the document begins.]	
* * *	* * *	* * *	* * *	* * *

<sup>1</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(e) \* \* \*

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation <sup>3</sup>	Explanations
(1) Implementation Plan for the Control of Air Pollution for the State of North Dakota.	Statewide .....	Submitted: 1/24/72; Adopted: 1/24/72.	5/31/72, 37 FR 10842	Excluding subsequent revisions, as follows: Chapters 6, 11, and 12; Sections 2.11, 3.7, 6.10, 6.11, 6.13, and 8.3; and Subsections 3.2.1, 5.2.1, 7.8.1.A, 7.8.1.B, 7.8.1.C, and 8.3.1. Revisions to these non-regulatory provisions have subsequently been approved. See below.
Chapters: 1. Introduction .....	.....	Clarification submitted: 6/14/73, 2/19/74, 6/26/74, 11/21/74, 4/23/75.	With all clarifications: 3/2/76, 41 FR 8956.	
2. Legal Authority. 3. Control Strategy. 4. Compliance Schedule. 5. Prevention of Air Pollution Emergency Episodes.				

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation <sup>3</sup>	Explanations
7. Review of New Sources and Modifications. 8. Source Surveillance. 9. Resources. 10. Inter-governmental Cooperation. 11. Rules and Regulations. With subsequent revisions to the chapters as follows:				
*(21) Section 7.8, Interstate Transport of Air Pollution (only 7.8.1.A, portions of 7.8.1.B, and 7.8.1.C, see explanation).	* Statewide .....	* Submitted: 4/6/09; Adopted: 4/01/09.	* 6/3/10, 75 FR 31290 ...	* Includes portions of Subsection 7.8.1 as indicated below: 7.8.1.A, "Overview," the language of Subsection 7.8.1.B, "Nonattainment and Maintenance Area Impact," that specifically addresses the "significant contribution to nonattainment" requirement of CAA Section 110(a)(2)(D)(i), and all of 7.8.1.C.
(22) Section 7.8, Interstate Transport of Air Pollution (only portion of 7.8.1.B).	Statewide .....	Submitted: 4/6/09; Adopted: 4/01/09.	11/22/10, 75 FR 71023	Includes portions of Subsection 7.8.1.B, "Nonattainment and Maintenance Area Impact," that specifically address the "interference with maintenance" requirement of CAA Section 110(a)(2)(D)(i).

<sup>3</sup>In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2011-28527 Filed 11-1-11; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 65

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-B-1225]

#### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided. Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

*National Environmental Policy Act.* This interim rule is categorically