

would otherwise qualify as a tax-free reorganization described in section 368(a)(1)(A) by reason of section 368(a)(2)(D) from so qualifying because the deemed issuance of a nominal share of stock of the acquiring corporation would violate the requirements of section 368(a)(2)(D)(i). If so, the transaction would be treated as described only in section 368(a)(1)(D), and the stock of the corporation in control of the acquiring corporation would be treated as boot.

The IRS and Treasury Department did not intend for the temporary regulations to apply to such transactions.

#### Explanation of Provisions

These temporary regulations clarify and amend the temporary regulations (TD 9303) under § 1.368-2T(l) by providing that the deemed issuance of the nominal share of stock of the transferee corporation in a transaction otherwise described in section 368(a)(1)(D) does not apply if the transaction otherwise qualifies as a triangular reorganization described in § 1.358-6(b)(2) or section 368(a)(1)(G) by reason of section 368(a)(2)(D). Accordingly, if a transaction qualifies as a triangular reorganization described in § 1.358-6(b)(2) or section 368(a)(1)(G) by reason of section 368(a)(2)(D) without regard to the temporary regulations, it will not be treated as a reorganization described in section 368(a)(1)(D).

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Drafting Information

The principal author of these regulations is Bruce A. Decker of the Office of the Associate Chief Counsel (Corporate).

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*.

■ **Par. 2.** Section 1.368-2T is amended by adding paragraph (l)(2)(iv) to read as follows:

#### § 1.368-2T Definition of terms (temporary).

\* \* \* \* \*

(1) \* \* \*

(2) \* \* \*

(iv) *Exception.* Paragraph (l)(2) of this section does not apply to a transaction otherwise described in § 1.358-6(b)(2) or section 368(a)(1)(G) by reason of section 368(a)(2)(D).

\* \* \* \* \*

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 21, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E7-3534 Filed 2-28-07; 8:45 am]

**BILLING CODE 4830-01-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R08-ND-2006-0001; FRL-8274-6]

#### Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for North Dakota

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

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is revising the format of 40 CFR part 52 for materials submitted by the State of North Dakota that are incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by North Dakota and approved by EPA.

**DATES:** *Effective Date:* This action is effective March 1, 2007.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection Monday through Friday, 8 a.m. to 4

p.m., excluding Federal holidays, at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that, if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to arrange a time to view the hard copy of the North Dakota SIP compilation. An electronic copy of the North Dakota regulations we have approved for incorporation into the SIP are also available by accessing <http://www.epa.gov/region8/air/sip.html>. A hard copy of the regulatory and source-specific portions of the compilation will also be maintained at the Air and Radiation Docket and Information Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460 and the National Archives and Records Administration (NARA). If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number (202) 566-1742. For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

#### FOR FURTHER INFORMATION CONTACT:

Amy Platt, EPA Region 8, at (303) 312-6449, or [Platt.Amy@epa.gov](mailto:Platt.Amy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, wherever “we” or “our” is used it means the EPA.

#### Table of Contents

- I. Change of IBR Format
  - A. Description of a SIP
  - B. How EPA Enforces the SIP
  - C. How the State and EPA Update the SIP
  - D. How EPA Compiles the SIP
  - E. How EPA Organizes the SIP Compilation
  - F. Where You Can Find a Copy of the SIP Compilation
  - G. The Format of the New Identification of Plan Section
  - H. When a SIP Revision Becomes Federally Enforceable
  - I. The Historical Record of SIP Revision Approvals
- II. What EPA is Doing in This Action
- III. Good Cause Exemption
- IV. Statutory and Executive Order Review

#### I. Change in IBR Format

This format revision will affect the “Identification of plan” section of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA); the Air and Radiation Docket and Information Center located at EPA

Headquarters in Washington, DC, and the EPA Region 8 Office.

#### A. Description of a SIP

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) and achieve certain other Clean Air Act (Act) requirements (e.g., visibility requirements, prevention of significant deterioration). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network descriptions, attainment demonstrations, and enforcement mechanisms.

#### B. How EPA Enforces the SIP

Each SIP revision submitted by North Dakota must be adopted at the state level after undergoing reasonable notice and public hearing. SIPs submitted to EPA to attain or maintain the NAAQS must include enforceable emission limitations and other control measures, schedules and timetables for compliance.

EPA evaluates submitted SIPs to determine if they meet the Act's requirements. If a SIP meets the Act's requirements, EPA will approve the SIP. EPA's notice of approval is published in the **Federal Register** and the approval is then codified in the Code of Federal Regulations (CFR) at 40 CFR part 52. Once EPA approves a SIP, it is enforceable by EPA and citizens in Federal district court.

We do not reproduce in 40 CFR part 52 the full text of the North Dakota regulations that we have approved; instead, we incorporate them by reference ("IBR"). We approve a given state regulation with a specific effective date and then refer the public to the location(s) of the full text version of the state regulation(s) should they want to know which measures are contained in a given SIP (see "I.F. Where You Can Find a Copy of the SIP Compilation").

#### C. How the State and EPA Update the SIP

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations.

On May 22, 1997 (62 FR 27968), EPA announced revised procedures for incorporating by reference federally approved SIPs. The procedures announced included: (1) A new process for incorporating by reference material submitted by states into compilations

and a process for updating those compilations on roughly an annual basis; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the compilations and the CFR; and (3) a revised format for the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures.

#### D. How EPA Compiles the SIP

We have organized into a compilation the federally-approved regulations, source-specific requirements and nonregulatory provisions we have approved into the SIP. We maintain hard copies of the compilation in binders and we primarily update these binders on an annual basis.

#### E. How EPA Organizes the SIP Compilation

Each compilation contains three parts. Part one contains the state regulations, part two contains the source-specific requirements that have been approved as part of the SIP (if any), and part three contains nonregulatory provisions that we have approved. Each compilation contains a table of identifying information for each regulation, each source-specific requirement, and each nonregulatory provision. The state effective dates in the tables indicate the date of the most recent revision to a particular regulation. The table of identifying information in the compilation corresponds to the table of contents published in 40 CFR part 52 for the state. The EPA Regional Offices have the primary responsibility for ensuring accuracy and updating the compilations.

#### F. Where You Can Find a Copy of the SIP Compilation

EPA Region 8 developed and will maintain a hard copy of the compilation for North Dakota. An electronic copy of the North Dakota regulations we have approved are available on the following Web site: <http://www.epa.gov/region8/air/sip.html>. A hard copy of the regulatory and source-specific portions of the compilation will also be maintained at the Air and Radiation Docket and Information Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460; and National Archives and Records Administration (NARA). If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number (202) 566-1742. For information on the availability of this material at NARA, call (202) 741-6030, or go to: [\[www.archives.gov/federal\\\_register/code\\\_of\\\_federal\\\_regulations/ibr\\\_locations.html\]\(http://www.archives.gov/federal\_register/code\_of\_federal\_regulations/ibr\_locations.html\).](http://</a></p>
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#### G. The Format of the New Identification of Plan Section

In order to better serve the public, EPA has revised the organization of the "Identification of plan" section in 40 CFR part 52 and included additional information to clarify the elements of the SIP.

The revised Identification of plan section for North Dakota contains five subsections:

1. Purpose and scope (see 40 CFR 52.1820(a));
2. Incorporation by reference (see 40 CFR 52.1820(b));
3. EPA-approved regulations (see 40 CFR 52.1820(c));
4. EPA-approved source-specific requirements (see 40 CFR 52.1820(d)); and
5. EPA-approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc. (see 40 CFR 52.1820(e)).

#### H. When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP are Federally enforceable as of the effective date of EPA's approval of the respective revisions. In general, SIP revisions become effective 30 to 60 days after publication of EPA's SIP approval action in the **Federal Register**. In specific cases, a SIP revision action may become effective less than 30 days or greater than 60 days after the **Federal Register** publication date. In order to determine the effective date of EPA's approval for a specific North Dakota SIP provision that is listed in paragraph 40 CFR 52.1820 (c), (d), or (e), consult the volume and page of the **Federal Register** cited in the "EPA approval date" column of 40 CFR 52.1820 for that particular provision.

#### I. The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and to provide a smooth transition to the new SIP processing system, we are retaining the original Identification of plan section (see 40 CFR 52.1837). This section previously appeared at 40 CFR 52.1820. After an initial two-year period, we will review our experience with the new table format and will decide whether or not to retain the original Identification of plan section (40 CFR 52.1837) for some further period.

## II. What EPA Is Doing in This Action

Today's action constitutes a "housekeeping" exercise to reformat the codification of the EPA-approved North Dakota SIP.

## III. Good Cause Exemption

EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon a finding of "good cause," authorizes agencies to dispense with public participation, and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's action simply reformats the codification of provisions which are already in effect as a matter of law.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Likewise, there is no purpose served by delaying the effective date of this action.

## IV. Statutory and Executive Order Review

### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules is discussed in previous actions taken on the State's rules.

### B. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply reformats the codification of provisions

which are already in effect as a matter of law. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of March 1, 2007. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These corrections to the Identification of plan for South Dakota is not a "major rule" as defined by 5 U.S.C. 804(2).

### C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the North Dakota SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need to reopen the 60-day period for filing such petitions for judicial review for this reorganization of the "Identification of plan" section of 40 CFR 52.1820 for North Dakota.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 19, 2006.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

■ Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

### PART 52—[AMENDED]

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

*Authority:* 42 U.S.C. 7401 *et seq.*

### Subpart JJ—North Dakota

■ 2. Section 52.1820 is redesignated as § 52.1837 and the section heading and paragraph (a) are revised to read as follows:

#### § 52.1837 Original identification of plan section.

(a) This section identifies the original "Air Implementation Plan for the State

of North Dakota” and all revisions submitted by North Dakota that were federally approved prior to July 31, 2006.

\* \* \* \* \*

■ 3. A new § 52.1820 is added to read as follows:

**§ 52.1820 Identification of plan.**

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan for North Dakota under section 110 of the Clean Air Act, 42 U.S.C. 7410 and 40 CFR part 51 to meet national ambient air quality standards or other requirements under the Clean Air Act.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c), (d), and (e) of this section with an EPA approval date prior to July 31, 2006, was approved for incorporation by reference

by the Director of the Federal Register in accordance with 5 U.S.C. § 552(a) and 1 CFR part 51. Material is incorporated as submitted by the state to EPA, and notice of any change in the material will be published in the **Federal Register**. Entries for paragraphs (c), (d), and (e) of this section with EPA approval dates after July 31, 2006, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 8 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the State Implementation Plan as of July 31, 2006.

(3) Copies of the materials incorporated by reference may be

inspected at the Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202–1129; Air and Radiation Docket and Information Center, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460; and the National Archives and Records Administration (NARA). If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number (202) 566–1742. For information on the availability of this material at NARA, call (202) 741–6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(c) *EPA approved regulations.*

STATE OF NORTH DAKOTA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date and citation <sup>1</sup>	Explanations
<b>33–15–01 General Provisions</b>				
33–15–01–01 .....	Purpose .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–01–02 .....	Scope .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–01–03 .....	Authority .....	9/1/97	4/2/04, 69 FR 17302.	
33–15–01–04 .....	Definitions .....	3/1/03	10/21/04, 69 FR 61762.	
33–15–01–5 .....	Abbreviations .....	10/1/87	5/12/89, 54 FR 20574.	
	Except the following abbreviations: CFR, PM <sub>10</sub> , scm <sub>h</sub> , TSP, & ohm.	1/1/89	8/9/90, 55 FR 32403.	
33–15–01–06 .....	Entry onto premises—Authority .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–01–07 .....	Variances: Subsection 1 and Subsection 2 .....	10/1/87	5/12/89, 54 FR 20574.	
		6/1/90	6/26/92, 57 FR 28619.	
33–15–01–08 .....	Circumvention .....	6/1/90	6/26/92, 57 FR 28619.	
33–15–01–09 .....	Severability .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–01–10 .....	Land use plans and zoning regulations .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–01–11 .....	Reserved .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–01–12 .....	Measurements of emissions of air contaminants.	6/1/01	2/28/03, 68 FR 9565.	
33–15–01–13 .....	Shutdown and malfunction of an installation—Requirements for notification.	10/1/87	5/12/89, 54 FR 20574 .....	Excluding subsection 2(b) which was subsequently revised and approved. See below.
33–15–01–13.2(b) .....	Malfuncions .....	9/1/97	8/27/98, 63 FR 45722.	
33–15–01–14 .....	Time schedule for compliance .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–01–15 .....	Prohibition of air pollution .....	6/1/01	2/28/03, 68 FR 9565.	
33–15–01–16 .....	Confidentiality of records .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–01–17 .....	Enforcement .....	3/1/03	10/21/04, 69 FR 61762.	
33–15–01–18 .....	Compliance certifications .....	3/1/03	10/21/04, 69 FR 61762.	

33–15–02 Ambient Air Quality Standards

33–15–02–01 .....	Scope .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–02–02 .....	Purpose .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–02–03 .....	Air quality guidelines .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–02–04 .....	Ambient air quality standards .....	9/1/98	8/31/99, 64 FR 47395 .....	See additional interpretive materials cited in 64 FR 47395, 8/31/99.
33–15–02–05 .....	Method of sampling and analysis .....	12/1/94	10/8/96, 61 FR 52865.	
33–15–02–06 .....	Reference conditions .....	10/1/87	5/12/89, 54 FR 20574.	
33–15–02–07 .....	Concentration of air contaminants in the ambient air restricted.	10/1/87	5/12/89, 54 FR 20574 .....	Excluding subsection 3 and 4 which were subsequently revised and approved. See below.
33–15–02, Table 1 .....	Ambient Air Quality Standards .....	12/1/94	10/8/96, 61 FR 52865.	

## STATE OF NORTH DAKOTA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date and citation <sup>1</sup>	Explanations
33-15-02-07.3, 33-15-02-07.4 and 33-15-02, Table 2.	Concentration of air contaminants in the ambient air restricted and National Ambient Air Quality Standards table.	9/1/98	8/31/99, 64 FR 47395 .....	See additional interpretive materials cited in 64 FR 47395, 8/31/99.
<b>33-15-03 Restrictions of Visible Air Contaminants</b>				
33-15-03-01 .....	Restrictions applicable to existing installations	10/1/87	5/12/89, 54 FR 20574.	
33-15-03-02 .....	Restrictions applicable to new installations and all incinerators.	10/1/87	5/12/89, 54 FR 20574.	
33-15-03-03 .....	Restrictions applicable to fugitive emissions ...	10/1/87	5/12/89, 54 FR 20574.	
33-15-03-03.1 .....	Restrictions applicable to flares .....	10/1/87	5/12/89, 54 FR 20574.	
33-15-03-04 .....	Exceptions .....	2/1/82	11/12/82, 47 FR 51131.	
33-15-03-05 .....	Method of measurement .....	10/1/87	5/12/89, 54 FR 20574.	
<b>33-15-04 Open Burning Restrictions</b>				
33-15-04-01 .....	Refuse burning restrictions .....	1/1/96	4/21/97, 62 FR 19224.	
33-15-04-02 .....	Permissible open burning .....	1/1/96	4/21/97, 62 FR 19224.	
<b>33-15-05 Emissions of Particulate Matter Restricted</b>				
33-15-05-01 .....	Restrictions of emissions of particulate matter from industrial processes.	10/1/87	5/12/89, 54 FR 20574.	
33-15-05-02 .....	Maximum allowable emissions of particulate matter from fuel burning equipment used for indirect heating.	3/1/03	10/21/04, 69 FR 61762.	
33-15-05-03 .....	Incinerators (repealed) .....	8/1/95	4/21/97, 62 FR 19224.	
33-15-05-03.1 .....	Infectious waste incinerators (repealed) .....	7/12/00	2/28/03, 68 FR 9565.	
33-15-05-03.2 .....	Refuse incinerators .....	8/1/95	4/21/97, 62 FR 19224.	
33-15-05-03.3 .....	Other waste incinerators .....	3/1/03	10/21/04, 69 FR 61762.	
33-15-05-04 .....	Methods of measurement .....	3/1/03	10/21/04, 69 FR 61762.	
<b>33-15-06 Emissions of Sulfur Compounds Restricted</b>				
33-15-06-01 .....	Restrictions of emissions of sulfur dioxide from use of fuel.	3/1/03	10/21/04, 69 FR 61762 ....	See additional interpretive materials cited in 63 FR 45722, 8/27/98.
33-15-06-02 .....	Restrictions of emissions of sulfur oxides from industrial processes.	6/1/92	10/20/93, 58 FR 54041.	
33-15-06-03 .....	Methods of measurement .....	3/1/03	10/21/04, 69 FR 61762.	
33-15-06-04 .....	Continuous emission monitoring requirements	6/1/92	10/20/93, 58 FR 54041.	
33-15-06-05 .....	Reporting and recordkeeping requirements ....	6/1/92	10/20/93, 58 FR 54041.	
<b>33-15-07 Control of Organic Compounds Emissions</b>				
33-15-07-01 .....	Requirements for construction of organic compounds facilities.	6/1/92	8/21/95, 60 FR 43396 .....	Excluding subsection 1 which was subsequently revised and approved. See below.
33-15-07-01.1 .....	Scope .....	9/1/98	8/31/99, 64 FR 47395.	
33-15-07-02 .....	Requirements for organic compounds gas disposal.	6/1/92	8/21/95, 60 FR 43396.	
<b>33-15-08 Control of Air Pollution From Vehicles and Other Internal Combustion Engines</b>				
33-15-08-01 .....	Internal combustion engine emissions restricted.	7/1/78	11/2/79, 44 FR 63102.	
33-15-08-02 .....	Removal or disabling of motor vehicle pollution control devices prohibited.	7/1/78	11/2/79, 44 FR 63102.	
<b>33-15-10 Control of Pesticides</b>				
33-15-10-01 .....	Pesticide use restricted Subsection 1 and Subsection 2.	10/1/87 1/1/89	5/12/89, 54 FR 20574. 8/9/90, 55 FR 32403.	
33-15-10-02 .....	Restrictions on the disposal of surplus pesticides and empty pesticide containers.	10/1/87	5/12/89, 54 FR 20574 .....	Excluding subsections 2, 3, 4, and 5 which were subsequently revised and approved. See below.

STATE OF NORTH DAKOTA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date and citation <sup>1</sup>	Explanations
33-15-10-02.2, 33-15-10-02.3, 33-15-10-02.4.	Restrictions on the disposal of surplus pesticides and empty pesticide containers.	1/1/89	8/9/90, 55 FR 32403.	
33-15-10-02.5 .....	Restrictions on the disposal of surplus pesticides and empty pesticide containers.	6/1/90	6/26/92, 57 FR 28619.	
<b>33-15-11 Prevention of Air Pollution Emergency Episodes</b>				
33-15-11-01 .....	Air pollution emergency .....	10/1/87	5/12/89, 54 FR 20574.	
33-15-11-02 .....	Air pollution episode criteria .....	10/1/87	5/12/89, 54 FR 20574.	
33-15-11-03 .....	Abatement strategies emission reduction plans.	10/1/87	5/12/89, 54 FR 20574.	
33-15-11-04 .....	Preplanned abatement strategies plans .....	10/1/87	5/12/89, 54 FR 20574.	
33-15-11-Table 6 .....	Air pollution episode criteria .....	8/1/95	4/21/97, 62 FR 19224.	
33-15-11-Table 7 .....	Abatement strategies emission reduction plans.	8/1/95	4/21/97, 62 FR 19224.	
<b>33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate</b>				
33-15-14-01 .....	Designated air contaminant sources .....	8/1/95	4/21/97, 62 FR 19224.	
33-15-14-01.1 .....	Definitions .....	1/1/96	4/21/97, 62 FR 19224.	
33-15-14-02 .....	Permit to construct .....	3/1/94	8/21/95, 60 FR 43396 .....	Excluding subsections 12, 3.c, 13.b.1, 5, 13.c, 13.i(5), and 19 (one sentence) which were subsequently revised and approved. See below. See additional interpretive materials cited in 57 FR 28619, 6/26/92, regarding the State's commitment to meet the requirements of EPA's "Guideline on Air Quality Models (Revised)."
33-15-14-02.12 .....	[Reserved] .....	8/1/95 & 1/1/96	4/21/97, 62 FR 19224 .....	Moved this section related to fees for Permit to Construct to a new chapter, 33-15-23, Fees.
33-15-14-02.3.c .....	Alterations to a source .....	9/1/98	8/31/99, 64 FR 47395 .....	See additional interpretive materials cited in 64 FR 47395, 8/31/99.
33-15-14-02.13.b.1 ...	Exemptions .....	6/1/01	2/28/03, 68 FR 9565.	
33-15-14-02.5, 33-15-14-02.13.c and 33-15-14-02.13.i(5).	Review of application—standard for granting permits to construct and exemptions.	3/1/03	8/8/05, 70 FR 45539.	
33-15-14-02.19 (one sentence—see explanation).	Amendment of permits .....	3/1/03	1/24/06, 71 FR 3764 .....	Only one sentence was revised and approved with this action. That sentence reads: "In the event that the modification would be a major modification as defined in Chapter 33-15-15, the department shall follow the procedures established in Chapter 33-15-15." The remainder of subsection 19 was approved on 8/21/95 (60 FR 43396). See above.
33-15-14-03 .....	Minor source permit to operate .....	3/1/94	8/21/95, 60 FR 43396 .....	Excluding subsections 10, 1.c, 4, 5.a(1)(d), 11, and 16 (one sentence) which were subsequently revised and approved. See below. Also see 40 CFR 52.1834.

## STATE OF NORTH DAKOTA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date and citation <sup>1</sup>	Explanations
33-15-14-03.10 .....	[Reserved] .....	8/1/95 & 1/1/96	4/21/97, 62 FR 19224 .....	Moved this section related to fees for Permit to Operate to a new chapter, 33-15-23, Fees.
33-15-14-03.1.c .....	Permit to operate required .....	6/1/01	2/28/03, 68 FR 9565.	
33-15-14-03.4, 33-15-14-03.5.a(1)(d) & 33-15-14-03.11.	Performance testing, action on applications, and performance and emission testing.	3/1/03	8/8/05, 70 FR 45539.	
33-15-14-03.16 (One sentence—see explanation).	Amendment of permits .....	3/1/03	1/24/06, 71 FR 3764 .....	Only one sentence was revised and approved with this action. That sentence reads: "In the event that the modification would be a major modification as defined in Chapter 33-15-15, the department shall follow the procedures established in Chapter 33-15-15." The remainder of subsection 16 was approved on 8/21/95 (60 FR 43396). See above.
33-15-14-04 .....	Permit fees (repealed) .....	3/1/94	8/21/95, 60 FR 43396.	
33-15-14-05 .....	Common provisions applicable to both permit to construct and permit to operate (repealed).	3/1/94	8/21/95, 60 FR 43396.	
33-15-14-07 .....	Source exclusion from title V permit to operate requirements.	6/1/01	2/28/03, 68 FR 9565.	

**33-15-15 Prevention of Significant Deterioration of Air Quality**

33-15-15-01 .....	General provisions .....	6/1/92	8/21/95, 60 FR 43396 .....	Excluding subsections 1.a(3), 1.a(4), 1.c, 1.e(4), 1.h, 1.i, 1.m, 1.x(2)(h-k), 1.aa(2)(c), 1.bb, 1.dd, 1.ee, 1.ff, 4.d(3)(a), 4.j(4)(b), 1.hh, 2, 1.x.2(d), and 4.h(3) which were subsequently revised and approved. See below. See additional interpretive materials cited in 56 FR 12848, 3/28/91, regarding NO <sub>x</sub> increments and in 57 FR 28619, 6/26/92, regarding the State's commitment to meet the requirements of EPA's "Guideline on Air Quality Models (Revised)." Also see 40 CFR 52.1829.
33-15-15-01. sub-sections: 1.a(3), 1.a(4), 1.c, 1.e(4), 1.h, 1.i, 1.m, 1.x(2)(h-k), 1.aa(2)(c), 1.bb, 1.dd, 1.ee, & 1.ff, 4.d(3)(a), & 4.j(4)(b).	Definitions & review of new major stationary sources and major modifications.	3/1/94	11/3/95, 60 FR 55792.	
33-15-15-01.1.hh & 33-15-15-01.2.	Definitions & significant deterioration of air quality—area designation and deterioration increment.	6/1/01	2/28/03, 68 FR 9565.	
33-15-15-01.1.x.2(d) & 33-15-15-01.4.h(3).	Definitions & review of new major stationary sources and major modifications.	3/1/03	8/8/05, 70 FR 45539.	
33-15-15-02 .....	Reclassification .....	1/1/89	8/9/90, 55 FR 32403.	

STATE OF NORTH DAKOTA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date and citation <sup>1</sup>	Explanations
<b>33–15–17 Restriction of Fugitive Emissions</b>				
33–15–17–01 .....	General provisions—applicability and designation of affected facilities.	6/1/01	2/28/03, 68 FR 9565.	
33–15–17–02 .....	Restriction of fugitive particulate emissions ....	1/1/96	4/21/97, 62 FR 19224.	
33–15–17–03 .....	Reasonable precautions for abating and preventing fugitive particulate emissions.	6/20/78	11/2/79, 44 FR 63102.	
33–15–17–04 .....	Restriction of fugitive gaseous emissions .....	6/20/78	11/2/79, 44 FR 63102.	
<b>33–15–18 Stack Heights</b>				
33–15–18–01 .....	General provisions .....	10/1/87	11/14/88, 53 FR 45763.	
33–15–18–02 .....	Good engineering practice demonstrations .....	10/1/87	11/14/88, 53 FR 45763.	
33–15–18–03 .....	Exemptions .....	10/1/87	11/14/88, 53 FR 45763.	
<b>33–15–19 Visibility Protection</b>				
33–15–19–01 .....	General provisions .....	10/1/87	9/28/88, 53 FR 37757.	
33–15–19–02 .....	Review of new major stationary sources and major modifications.	10/1/87	9/28/88, 53 FR 37757.	
33–15–19–03 .....	Visibility monitoring .....	10/1/87	9/28/88, 53 FR 37757.	
<b>33–15–20 Control of Emissions From Oil and Gas Well Production Facilities</b>				
33–15–20–01 .....	General provisions .....	6/1/92	8/21/95, 60 FR 43396.	
33–15–20–02 .....	Registration and reporting requirements .....	6/1/92	8/21/95, 60 FR 43396.	
33–15–20–03 .....	Prevention of significant deterioration applicability and source information requirements.	6/1/92	8/21/95, 60 FR 43396.	
33–15–20–04 .....	Requirements for control of production facility emissions.	6/1/90	6/26/92, 57 FR 28619.	
<b>33–15–23 Fees</b>				
33–15–23–01 .....	Definitions .....	8/1/95	4/21/97, 62 FR 19224.	
33–15–23–02 .....	Permit to construct fees .....	8/1/95	4/21/97, 62 FR 19224.	
33–15–23–03 .....	Minor source permit to operate fees .....	8/1/95	4/21/97, 62 FR 19224.	

<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.

*(d) EPA-approved source-specific requirements.*

Name of source	Nature of requirement	State effective date	EPA approval date and citation <sup>2</sup>	Explanations
—Tesoro Mandan Refinery —Leland Olds Station Units 1 & 2 —Milton R. Young Unit 1 —Heskett Station Units 1 & 2 —Stanton Station Unit 1 —American Crystal Sugar at Drayton	SIP Chapter 8, Section 8.3, Continuous Emission Monitoring Requirements for Existing Stationary Sources, including amendments to Permits to Operate and Department Order.	5/6/77	10/17/77, 42 FR 55471.	

<sup>2</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) EPA-approved nonregulatory provisions.*



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. Chapters: 1. Introduction 2. Legal Authority 3. Control Strategy 4. Compliance Schedule 5. Prevention of Air Pollution Emergency Episodes 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:	Statewide .....	Submitted: 1/24/72 Adopted: 1/24/72 Clarification submitted: 6/14/73 2/19/74 6/26/74 11/21/74 4/23/75	5/31/72, 37 FR 10842 with all clarifications on 3/2/76, 41 FR 8956.	Excluding subsequent revisions, as follows: Chapters 6, 11, and 12 and Sections 2.11, 3.2.1, 3.7, 5.2.1, 6.10, 6.11, 6.13, 8.3. Revisions to these non-regulatory provisions have subsequently been approved. See below.
(2) Revisions to SIP Chapter 8, Section 8.3.	.....	Submitted: 5/26/77	10/17/77, 42 FR 55471.	
(3) Revisions to SIP Chapter 2, Section 2.11.	.....	Submitted: 1/17/80	8/12/80, 45 FR 53475.	
(4) SIP Chapter 6, Air Quality Surveillance.	.....	Submitted: 1/17/80	8/12/80, 45 FR 53475.	
(5) Revisions to SIP Chapter 6, Section 6.10.	.....	Submitted: 1/26/88	9/28/88, 53 FR 37757.	
(6) Revisions to SIP Chapter 3, Section 3.7.	.....	Submitted: 4/18/89	10/5/89, 54 FR 41094.	
(7) Revisions to SIP Chapter 3, Section 3.2.1.	.....	Submitted: 4/18/89	8/9/90, 55 FR 32403.	
(8) Revisions to SIP Chapter 5, Section 5.2.1.	.....	Submitted: 4/18/89	8/9/90, 55 FR 32403.	
(9) Revisions to SIP Chapter 6, Section 6.11.	.....	Submitted: 4/18/89	8/9/90, 55 FR 32403.	
(10) Revisions to SIP Chapter 6, Section 6.13.	.....	Submitted: 1/9/96	4/21/97, 62 FR 19224.	
(11) Revisions to Chapter 11, Rules & Regulations.	.....	.....	.....	See the table listed above under §52.1820 (c)(1) for most current version of EPA-approved North Dakota regulations.
(12) SIP to meet Air Quality Monitoring 40 CFR part 58, subpart c, paragraph 58.20 and public notification required under section 127 of the Clean Air Act.	Statewide .....	Submitted: 1/17/80	8/12/80, 45 FR 53475.	
(13) Stack Height Demonstration Analysis.	Statewide .....	Submitted: 4/18/86 and 7/21/87.	6/7/89, 54 FR 24334.	
(14) Visibility New Source Review and Visibility Monitoring.	Statewide .....	Submitted: 1/26/88	9/28/88, 53 FR 37757.	
(15) Commitment to revise stack height rules in response to NRDC v. Thomas, 838 F.2d 1224 (DC Cir. 1988).	Statewide .....	Submitted: 5/11/88	11/14/88, 53 FR 45763.	See also 40 CFR 52.1832.
(16) Visibility General Plan and Long-term Strategy.	Statewide .....	Submitted: 4/18/89	10/5/89, 54 FR 41094.	See also 40 CFR 52.1831.
(17) Group III PM10 SIP .....	Statewide .....	Submitted: 4/18/89	8/9/90, 55 FR 32403.	See additional interpretive materials cited in 55 FR 32403, 8/9/90.
(18) Commitment to meet all requirements of EPA's Guideline on Air Quality Models (revised) for air quality modeling demonstrations associated with the permitting of new PSD sources, PSD major modifications, and sources to be located in non-attainment areas.	Statewide .....	Submitted: 2/14/92	6/26/92, 57 FR 28619.	See additional interpretive materials cited in 57 FR 28619, 6/26/92. Also see 40 CFR 52.1824.
(19) Small Business Assistance Program (SIP Chapter 12).	Statewide .....	Submitted: 11/2/92 and 1/18/93.	1/11/94, 59 FR 1485.	See additional interpretive materials cited in 59 FR 1485, 1/11/94.

<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.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070213033-7033-01; I.D. 022607B]

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 ft (18.3 m) LOA Using Jig or Hook-and-Line Gear in the Bogoslof Pacific Cod Exemption Area in the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 meters (m)) length overall (LOA) using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the limit of Pacific cod for catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 26, 2007, through 2400 hrs, A.l.t., December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.22(a)(7)(i)(C)(1) and (2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 113 metric tons of Pacific cod have been caught by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof exemption area described at § 679.22(a)(7)(i)(C)(1). Consequently, the Regional Administrator is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### **Classification**

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 23, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.22 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 26, 2007.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 07-933 Filed 2-26-07; 2:24 pm]

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