

airplanes. Accordingly, the proposed rule is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Tom Groves, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1503; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Dassault Model Falcon 2000 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on August 23, 2002 (67 FR 54596). The proposed rule would have required performing an inspection to determine the serial number on the identification plate on each of the three hydraulic shut-off valve (HSOV) actuators on the left-hand and right-hand hydraulic reservoirs, and replacing an HSOV actuator with a new HSOV actuator, if necessary. The proposed actions were intended to ensure that proper HSOV actuators are installed on the hydraulic fluid reservoirs. In the event of an engine fire, a faulty HSOV, if not corrected, could allow the flow of flammable fluid to the engine nacelle, which could result in an engine nacelle fire that could not be readily extinguished.

#### Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the manufacturer has provided the FAA with confirmation that the faulty HSOV actuators on all affected Model Falcon 2000 series airplanes have been replaced with new actuators, and that all the faulty actuators have been returned to the airplane manufacturer.

#### FAA's Conclusions

Upon further consideration, the FAA has determined that the identified unsafe condition no longer exists on the affected airplanes. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

#### Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and

Procedures (44 FR 11034, February 26, 1979).

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2001-NM-364-AD, published in the **Federal Register** on August 23, 2002 (67 FR 54596), is withdrawn.

Issued in Renton, Washington, on June 24, 2004.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-15380 Filed 7-6-04; 8:45 am]

**BILLING CODE 4910-13-P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 60

[ND-001-0011; FRL-7782-8]

#### Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards

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

**ACTION:** Proposed rule and delegation of authority.

**SUMMARY:** EPA is proposing to approve revisions to the State Implementation Plan submitted by the Governor of North Dakota with a letter dated April 11, 2003. The revisions affect portions of air pollution control rules regarding general provisions and emissions of particulate matter and sulfur compounds. This action is being taken under section 110 of the Clean Air Act. EPA is not acting on revisions to the shutdown and malfunction provisions, the construction and minor source permitting rules or the prevention of significant deterioration rules at this time. EPA will handle separately direct delegation requests for revisions to emission standards for hazardous air pollutants, emission standards for source categories and the State's Acid Rain Program.

In addition, EPA is providing notice that on November 6, 2003, North Dakota was delegated authority to implement and enforce certain New Source Performance Standards, as of January 31, 2002.

**DATES:** Comments must be received on or before August 6, 2004.

**ADDRESSES:** Submit your comments, identified by Docket ID No. ND-001-0011, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- E-mail: [long.richard@epa.gov](mailto:long.richard@epa.gov) and [platt.amy@epa.gov](mailto:platt.amy@epa.gov).

- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.

- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. ND-001-0011. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov), or e-mail. The Federal [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on

submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.”

*Docket:* Some information in the docket is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the docket. You may view the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, Environmental Protection Agency, Region 8, (303) 312–6449, [Platt.Amy@epa.gov](mailto:Platt.Amy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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- I. General Information
- II. Summary of State Implementation Plan Revision
- III. Delegation of Authority
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**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The word or initials *Act* or *CAA* mean or refer to the 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 *NDDH* mean or refer to the North Dakota Department of Health.
- (iv) The initials *SIP* mean or refer to the State Implementation Plan.
- (v) The word or initials *State* or *ND* mean the State of North Dakota, unless the context indicates otherwise.

**I. General Information**

*A. What Should I Consider As I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a

copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

**II. Summary of State Implementation Plan Revision**

*A. Procedural 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 a State submits must be adopted after reasonable notice and public hearing.

To provide for public comment, the North Dakota Department of Health (NDDH), after providing adequate notice, held a public hearing on April 19, 2002 to address the revisions to the State Implementation Plan (SIP) and Air Pollution Control Rules. Following the public hearing, public comment period, and legal review by the North Dakota Attorney General’s Office, the North Dakota State Health Council adopted the rule revisions, which became effective on March 1, 2003. The Governor of North Dakota submitted the SIP revisions to EPA with a letter dated April 11, 2003.

*B. April 11, 2003 Revisions*

As noted above, we will handle separately the revisions in the April 11, 2003 submittal addressing North Dakota Air Pollution Control Rules Section 33–15–01–13, regarding shutdown and malfunction of an installation, Chapter 33–15–14, regarding construction and minor source permitting, and Chapter 33–15–15, regarding prevention of significant deterioration. In addition, we will handle separately the direct delegation requests for Chapter 33–15–13, regarding emission standards for hazardous air pollutants, Chapter 33–15–21, regarding the State’s Acid Rain Program, and Chapter 33–15–22, regarding emission standards for hazardous air pollutants for source categories. The submittal also included a direct delegation request for standards of performance for new stationary sources (see below).

The revisions in the April 11, 2003 submittal to be addressed in this document pertain to portions of the general provisions and the restriction of emissions of particulate matter and sulfur compounds, which involve sections of the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; and 33–15–06 Emissions of Sulfur Compounds Restricted. EPA’s review of these revisions has resulted in our proposing this approval. We are soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the Addresses section of this document.

1. Chapter 33–15–01, N.D.A.C., General Provisions

Revisions to Section 33–15–01–04, regarding definitions, included the addition of a definition for “pipeline quality natural gas” and an update to the baseline date for incorporating by reference the definition of volatile organic compounds to August 1, 2001. In addition, Sections 33–15–01–17 and 33–15–01–18, regarding enforcement and compliance certifications, were modified to indicate that information from compliance assurance monitoring protocols, which are in accordance with the requirements of the State’s permitting chapter, is credible evidence of whether compliance is achieved. Because these revisions are consistent

with Federal requirements, we are proposing that they are approvable.

2. Chapter 33–15–05, N.D.A.C., Emissions of Particulate Matter Restricted

Section 33–15–05–02, regarding emissions from fuel burning equipment used for indirect heating, was revised to exempt fuel burning equipment that burns gaseous fuels from the emissions limitation requirements of the chapter. Burning gaseous fuels results in very low particulate matter emissions. Using AP–42 emission factors for natural gas and propane, the State calculated emission rates of 0.01 lb/10<sup>6</sup> Btu and 0.006 lb/10<sup>6</sup> Btu, respectively. This is contrasted with the allowable emission rate of Chapter 33–15–05 of 0.6 lb/10<sup>6</sup> Btu for a boiler rated at 10 × 10<sup>6</sup> Btu/hr. The State believes that, under normal operation, no unit burning gaseous fuels would ever exceed the limits of this chapter. The exempted sources will still be subject to the visible emission standards under Chapter 33–15–03, Restriction of Emission of Visible Air Contaminants, which allow the NDDH to take action should a malfunction occur. Since burning gaseous fuels results in very low particulate matter emissions, well below the emissions limitation requirements of the chapter, we propose that this revision to Section 33–15–05–02 is approvable.

In Subsection 33–15–05–03.3, Other Waste Incinerators, requirements for salvage waste incinerators and crematoriums were revised. Requirements were added for construction, operational, and recordkeeping standards for salvage incinerators. Requirements for installation and operation of a temperature recorder for the secondary chamber, as well as requirements for charging and operation, were added for crematoriums. Although there are no Federal requirements for crematoriums, the State believes that these revisions ensure that units are operating properly to protect human health and the environment. In addition, any new units will still be subject to the Ambient Air Quality Standards under Chapter 33–15–02, a visible emissions standard under Chapter 33–15–03, and prevention of significant deterioration increments under Chapter 33–15–15. Therefore, we propose that these revisions are approvable.

Finally, 33–15–05–04, Methods of Measurement, was revised to allow various alternative test methods for determining percent oxygen or carbon dioxide, and the reference for fuel factors (F factors) was updated. Since

these revisions simply incorporated reference information from Federal rules, we are proposing that they are approvable.

3. Chapter 33–15–06, N.D.A.C., Emissions of Sulfur Compounds Restricted

Section 33–15–06–01, Restriction of Emissions of Sulfur Dioxide (SO<sub>2</sub>) from Use of Fuel, was revised to provide an exemption from the requirements of the chapter for installations that burn pipeline quality natural gas or commercial-grade propane. However, sources that burn any fuel must still comply with the Ambient Air Quality Standards of Chapter 33–15–02 and the prevention of significant deterioration increments of Chapter 33–15–15. Since sources that burn pipeline quality natural gas or commercial grade propane are expected to emit far less SO<sub>2</sub> than the emissions limitation requirements of the chapter, we propose that this revision is approvable.

In addition, section 33–15–06–03, Methods of Measurement, was updated to incorporate by reference the Federal F factors. We propose that these revisions are approvable since they are consistent with Federal requirements.

### III. Delegation of Authority

#### A. New Source Performance Standards

With the April 11, 2003 submittal, North Dakota requested delegation of authority for revisions to the New Source Performance Standards (NSPS), promulgated in Chapter 33–15–12, N.D.A.C. On November 6, 2003 delegation was given with the following letter: Ref: 8P–AR

Honorable John Hoeven,  
Governor of North Dakota, State Capitol,  
Bismarck, North Dakota 58505–0001

Re: Delegation of Clean Air Act New Source Performance Standards

Dear Governor Hoeven: In an April 11, 2003, letter from you and an April 17, 2003, letter from David Glatt, North Dakota Department of Health (NDDH), the State of North Dakota submitted revisions to its Air Pollution Control Rules and requested direct delegation to implement and enforce the Federal New Source Performance Standards (NSPS). Specifically, North Dakota Administrative Code Chapter 33–15–12, Standards of Performance for New Stationary Sources, was revised to update the citation for the incorporated Federal NSPS in 40 CFR Part 60 as those in effect on January 31, 2002, with the exception of subpart Eb, which the State has not adopted.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the State's regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of North Dakota and

determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60. The categories of new stationary sources covered by this delegation are all NSPS subparts in 40 CFR Part 60, as in effect on January 31, 2002, with the exception of subpart Eb, which the State has not adopted. *Note this delegation does not include the emission guidelines in subparts Cb, Cc, Cd, Ce, BBBB, and DDDD. These subparts require state plans which are approved under a separate process pursuant to Section 111(d) of the Act.*

(B) Not all authorities of NSPS can be delegated to States under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) Approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. Therefore, of the NSPS of 40 CFR Part 60 being delegated in this letter, the enclosure lists examples of sections in 40 CFR Part 60 that cannot be delegated to the State of North Dakota.

(C) The North Dakota Department of Health (NDDH) and EPA will continue a system of communication sufficient to guarantee that each office is always fully informed and current regarding compliance status of the subject sources and interpretation of the regulations.

(D) Enforcement of the NSPS in the State will be the primary responsibility of the NDDH. If the NDDH determines that such enforcement is not feasible and so notifies EPA, or where the NDDH acts in a manner inconsistent with the terms of this delegation, EPA may exercise its concurrent enforcement authority pursuant to section 113 of the Act, as amended, with respect to sources within the State of North Dakota subject to NSPS.

(E) The State of North Dakota will at no time grant a variance or waiver from compliance with NSPS regulations. Should the NDDH grant such a variance or waiver, EPA will consider the source receiving such relief to be in violation of the applicable Federal regulation and initiate enforcement action against the source pursuant to section 113 of the Act. The granting of such relief by the NDDH shall also constitute grounds for revocation of delegation by EPA.

(F) If at anytime there is a conflict between a State regulation and a Federal regulation (40 CFR Part 60), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

(G) If the Regional Administrator determines that a State procedure for

enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the NDDH.

(H) Acceptance of this delegation of presently promulgated NSPS does not commit the State of North Dakota to accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's requests of April 11, and 17, 2003.

(I) Upon approval of the Regional Administrator of EPA Region 8, the Director of the NDDH may subdelegate his authority to implement and enforce the NSPS to local air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

(J) The State of North Dakota must require reporting of all excess emissions from any NSPS source in accordance with 40 CFR 60.7(c).

(K) Performance tests shall be scheduled and conducted in accordance with the procedures set forth in 40 CFR Part 60 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternate test methods as specified in 40 CFR 60.8(b)(2) and (3), the State may approve minor changes in methodology provided

these changes are reported to EPA Region 8. The Administrator also retains the right to change the opacity standard as specified in 40 CFR 60.11(e).

(L) Determinations of applicability such as those specified in 40 CFR 60.5 and 60.6 shall be consistent with those which have already been made by the EPA.

(M) Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR 60.13(i), may be approved by the State with the prior concurrence of the Regional Administrator.

(N) If a source proposes to modify its operation or facility which may cause the source to be subject to NSPS requirements, the State shall notify EPA Region 8 and obtain a determination on the applicability of the NSPS regulations.

(O) Information shall be made available to the public in accordance with 40 CFR 60.9. Any records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of these regulations shall be made available to the designated representatives of EPA upon request.

(P) All reports required pursuant to the delegated NSPS should not be submitted to the EPA Region 8 office, but rather to the NDDH.

(Q) As 40 CFR Part 60 is updated, North Dakota should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

EPA is approving North Dakota's request for NSPS delegation for all areas within the State except for the following: lands within the exterior boundaries of the Fort Berthold, Fort Totten, Standing Rock and Turtle Mountain Indian Reservations; and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to accept all the terms of this delegation. EPA will publish an information notice in the **Federal Register** in the near future to inform the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me or have your staff contact Richard Long, Director of our Air and Radiation Program, at (303) 312-6005.

Sincerely yours,  
 Robert E. Roberts,  
*Regional Administrator.*  
 Enclosures  
 cc: David Glatt, NDDH,  
 Terry O'Clair, NDDH

**Enclosure to Letter Delegating NSPS in 40 CFR Part 60, Effective Through January 31, 2002, to the State of North Dakota**

EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED

40 CFR subparts	Section(s)
A .....	60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e).
Da .....	60.45a.
Db .....	60.44b(f), 60.44b(g) and 60.49b(a)(4).
Dc .....	60.48c(a)(4).
Ec .....	60.56c(i), 60.8.
J .....	60.105(a)(13)(iii) and 60.106(i)(12).
Ka .....	60.114a.
Kb .....	60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).
O .....	60.153(e).
S .....	60.195(b).
DD .....	60.302(d)(3).
GG .....	60.332(a)(3) and 60.335(a).
VV .....	60.482-1(c)(2) and 60.484.
WW .....	60.493(b)(2)(i)(A) and 60.496(a)(1).
XX .....	60.502(e)(6).
AAA .....	60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e) and 60.539.
BBB .....	60.543(c)(2)(ii)(B).
DDD .....	60.562-2(c).
GGG .....	60.592(c).
III .....	60.613(e).
JJJ .....	60.623.
KKK .....	60.634.
NNN .....	60.663(f).
QQQ .....	60.694.
RRR .....	60.703(e).
SSS .....	60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a) and 60.716.
TTT .....	60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e) and 60.725(b).
VVV .....	60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746.
WWW .....	60.754(a)(5).

*B. Error in November 6, 2003, NSPS Delegation of Authority*

Please note that in the November 6, 2003, delegation of authority to the State of North Dakota, we made an error. We inadvertently omitted one of the authorities in 40 CFR Part 60 which cannot be delegated to the State. Specifically, in the enclosure to the delegation letter, the table entitled "Examples of Authorities in 40 CFR Part 60 Which Cannot Be Delegated" should have included the following entry: 40 CFR Subpart CCCC Section 60.2030(c).

The omission relates to implementation and enforcement of Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced On or After June 1, 2001. The State has indicated that they are aware of only one source that will be subject to this subpart but no permit to operate has been issued yet. Given that we do not anticipate any issues related to this authority to arise in the near term, we will not amend the enclosure to the delegation letter to the Governor of North Dakota until the next time the State updates its NSPS regulations. Generally, the State conducts these updates on a one to two year cycle. Regardless, the Federal NSPS regulations, including those authorities which can and cannot be delegated, always take precedence.

#### **IV. Section 110(l)**

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. The North Dakota SIP revisions that are the subject of this document do not interfere with the attainment or maintenance of the NAAQS or any other applicable requirements of the Act. The SIP revisions to portions of N.D.A.C. Chapter 33-15-01, regarding the State's general provisions, simply added a definition, updated the baseline date for incorporating by reference the definition of volatile organic compounds, and added and/or clarified several administrative and reporting requirements. These changes are consistent with Federal requirements and rules. The SIP revisions to N.D.A.C. Chapter 33-15-05, regarding the control

of particulate matter emissions, address sources that emit far lower emissions than the limitations of the chapter (because they burn gaseous fuels), provide requirements where there are no existing Federal requirements, and simply incorporate reference information from Federal rules. Finally, the SIP revisions to N.D.A.C. Chapter 33-15-06, regarding the control of sulfur compound emissions, address installations that are expected to emit far less SO<sub>2</sub> than the emissions limitations of the chapter (because they burn pipeline quality natural gas or commercial-grade propane) and simply incorporate reference information from Federal rules. These revisions do not interfere with the attainment or maintenance of the NAAQS or any other applicable requirements of the Act.

#### **V. Proposed Action**

EPA is proposing to approve specific rule revisions to the North Dakota SIP, as covered in this document and submitted by the Governor with a letter dated April 11, 2003. The revisions in the April 11, 2003 submittal which we are proposing to approve in this document involve portions of the following chapters of the North Dakota Administrative Code: 33-15-01 General Provisions; 33-15-05 Emissions of Particulate Matter Restricted; and 33-15-06 Emissions of Sulfur Compounds Restricted. We are not proposing action at this time on revisions to the shutdown and malfunction provisions, the construction and minor source permitting rules nor the prevention of significant deterioration rules. In addition, the requests for direct delegation of Chapter 33-15-13, Emission Standards for Hazardous Air Pollutants, Chapter 33-15-21, Acid Rain Program and Chapter 33-15-22, Emission Standards for Hazardous Air Pollutants for Source Categories, are being handled separately.

Finally, as requested by the State with its April 11, 2003 submittal, we are providing notice that we granted delegation of authority to North Dakota on November 6, 2003, to implement and enforce the NSPS promulgated in 40 CFR part 60, promulgated as of January 31, 2002 (except subpart Eb, which the State has not adopted). However, the State's NSPS authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 60.

#### **VI. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory

action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for

EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

Dated: June 28, 2004.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

[FR Doc. 04-15341 Filed 7-6-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[OAR-2004-0068; FRL-7782-1]

RIN 2060-AK35

### Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing a facility-specific NO<sub>x</sub> standard for a steam generating unit which simultaneously

combusts fossil fuel and chemical by-product waste at the Weyerhaeuser Company facility located in New Bern, North Carolina. New source performance standards (NSPS) limiting emissions of nitrogen oxides (NO<sub>x</sub>) from industrial-commercial-institutional steam generating units capable of combusting more than 100 million British thermal units (Btu) per hour were proposed on June 19, 1984 and were promulgated on November 25, 1986. The standards limit NO<sub>x</sub> emissions from the combustion of fossil fuels, as well as the combustion of fossil fuels with other fuels or wastes. The standards include provisions for facility-specific NO<sub>x</sub> standards for steam generating units which simultaneously combust fossil fuel and chemical by-product waste(s) under certain conditions.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view the amendments as noncontroversial and we anticipate no significant adverse comments. We have explained our reasons for the proposed amendments in the preamble to the direct final rule.

If we receive no significant adverse comments, we will take no further action on the proposed amendments. If we receive significant adverse comments, we will withdraw only those provisions on which we received significant adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule amendments in the Rules and Regulations section of this **Federal Register** are withdrawn, all comments pertaining to those provisions will be addressed in a subsequent final action based on the proposed amendments. We will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so at this time.

**DATES:** *Comments.* Comments must be received on or before August 6, 2004, unless a hearing is requested by July 19, 2004. If a timely hearing request is submitted, we must receive written comments on or before August 23, 2004.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR-2004-0068, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Agency Web site:* <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment

system, is EPA's preferred method for receiving comments. Follow the online instructions for submitting comments.

- *E-mail:* [air-and-r-docket@epa.gov](mailto:air-and-r-docket@epa.gov).
- *Fax:* (202) 566-1741.
- *Mail:* EPA Docket Center,

Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.

- *Hand Delivery:* Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (*see FOR FURTHER INFORMATION CONTACT*).

*Instructions:* Direct your comments to Docket ID No. OAR-2004-0068. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102).