

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[SIP Nos. ND7-001-6882 and ND-001-0004; FRL-7641-8]

### Approval and Promulgation of Air Quality Implementation Plans; North Dakota; State Implementation Plan Corrections

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

**ACTION:** Final rule; technical corrections.

**SUMMARY:** When EPA approved revisions to the North Dakota State Implementation Plan (SIP) on October 8, 1996, we inadvertently incorporated by reference some revisions to the North Dakota Century Code statute pertaining to an asbestos law. When EPA approved revisions to the North Dakota SIP on August 27, 1998, we inadvertently failed to include a subsection of one of the submitted North Dakota Air Pollution Control Rules. EPA is correcting these errors with this document.

**EFFECTIVE DATE:** This rule is effective on May 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, EPA, Region 8, (303) 312-6449.

#### SUPPLEMENTARY INFORMATION:

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

Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today’s rule final without prior proposal and opportunity for comment because we are merely correcting incorrect text in previous rulemakings. Thus notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

#### I. Corrections

*A. Correction to Federal Register Document Published on October 8, 1996 (61 FR 52865)*

When we approved the revisions to the North Dakota SIP and Air Pollution Control Rules on October 8, 1996 (61 FR 52865), we inadvertently incorporated by reference some revisions to the North Dakota Century Code statute pertaining to asbestos law. Specifically, we incorporated by reference revisions to

North Dakota Century Code sections 23-25-01, 23-25-03, and 23-25-03.1, as in effect on August 1, 1993. It is not appropriate to approve and incorporate by reference such statutes into the SIP. Further, all implementing asbestos regulations have since been removed from the federally approved SIP making the authorizing statutes irrelevant in the context of the SIP. Therefore, we are correcting our error by revising the introductory text of 40 CFR 52.1820(c)(28) and deleting the existing 40 CFR 52.1820(c)(28)(i)(A) regarding the North Dakota Century Code legislation from the North Dakota SIP. In addition, the deletion necessitates the redesignation of the existing 40 CFR 52.1820(c)(28)(i)(B) to paragraph (A).

*B. Correction to Federal Register Document Published on August 27, 1998 (63 FR 45722)*

On August 27, 1998 (63 FR 45722) we approved revisions to the North Dakota SIP. However, we inadvertently failed to include a subsection of one of the submitted North Dakota Air Pollution Control Rules. Specifically, we failed to include the revision to Chapter 33-15-01-03, which identifies the department with the authority to provide and administer the North Dakota Air Pollution Control Rules. This revision was not substantive, *i.e.*, there was no change in authority, but simply was administrative in nature to reflect the name change of the North Dakota health department. Previously, the department was referred to as the North Dakota state department of health and consolidated laboratories. This revision, effective September 1, 1997, identifies the department as the North Dakota state department of health. Since this revision was not substantive in nature and we inadvertently failed to include it in our August 27, 1998 approval, we are correcting our error now. Therefore, we are amending 40 CFR 52.1820(c)(30)(i)(B) to incorporate by reference Air Pollution Control Rule 33-15-01-03, as in effect on September 1, 1997, into the North Dakota SIP.

#### II. Statutory and Executive Order Review

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 technical correction action 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 are discussed in the October 8, 1996 rule

approving various revisions to the North Dakota SIP and Air Pollution Control Rules and the August 27, 1998 rule approving various revisions to the North Dakota SIP and Air Pollution Control Rules.

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. This determination must be supported by a brief statement. 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 May 3, 2004. 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 North Dakota are not a "major rule" as defined by 5 U.S.C. 804(2).

#### 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: March 19, 2004.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

- 40 CFR part 52 is amended as follows:

#### PART 52—[CORRECTED]

- 1. The authority 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 amended by:
  - a. Revising the (c)(28) introductory text, removing the existing paragraph (c)(28)(i)(A), and redesignating the existing paragraph (c)(28)(i)(B) as (c)(28)(i)(A); and
  - b. Revising paragraph (c)(30)(i)(B). The revisions read as follows:

#### § 52.1820 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(28) The Governor of North Dakota submitted revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules with a letter dated December 21, 1994. The submittal addressed revisions to air pollution control rules regarding general provisions; ambient air quality standards; new source performance standards (NSPS); and national emission standards for hazardous air pollutants (NESHAPs).

\* \* \* \* \*

(30) \* \* \*

(i) \* \* \*

(B) Revisions to the Air Pollution Control Rules as follows: General Provisions 33–15–01–03, 33–15–01–04.49, 33–15–01–13.2(b), 33–15–01–15.2, and 33–15–01–17.3; Emissions of Particulate Matter Restricted 33–15–05–03.3.4; and Control of Organic Compound Emissions 33–15–07–01.1; effective September 1, 1997.

\* \* \* \* \*

[FR Doc. 04–7075 Filed 4–1–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 166

[OPP–2004–0039; FRL–7345–7]

**RIN 2070–AD36**

### Pesticides; Emergency Exemption Process Revisions; Notification to the Secretary of Agriculture

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

**ACTION:** Notification to the Secretary of Agriculture.

**SUMMARY:** This document notifies the public that the Administrator of EPA has forwarded to the Secretary of Agriculture a draft proposed rule as required by section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As described in the Agency's semi-annual Regulatory Agenda, the draft proposed rule proposes several improvements to the pesticide emergency exemption process under section 18 of FIFRA. The two primary proposed improvements are currently being tested through a limited pilot, and are based on recommendations from the States which are the primary applicants for emergency exemptions. EPA has established regulations under section 18 of FIFRA which allow a Federal or State

agency to apply for an emergency exemption to allow an unregistered use of a pesticide for a limited time when such use is necessary to alleviate an emergency condition.

#### FOR FURTHER INFORMATION CONTACT:

Joseph Hogue, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–9072; e-mail address: [hogue.joe@epa.gov](mailto:hogue.joe@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does This Action Apply to Me?

This action is directed to the public in general. It simply announces the submission of a draft proposed rule to the U.S. Department of Agriculture and does not otherwise affect any specific entities. This action may, however, be of particular interest to Federal, State, or Territorial government agencies that petition EPA for FIFRA section 18 emergency use authorization for a pesticide, not otherwise registered for the use, to address an emergency pest situation. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0039. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at