MOSEBACH, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstance requiring this regulation results from large vessels (lakers) transiting the Cuyahoga River an average of four times a day through areas used increasingly by a large number of small, mainly recreational vessels. A pattern of collisions between large, underway vessels and small vessels located on the insides of bends in the river has been identified. On August 31, 1987, one such collision resulted in severe damage to two recreational boats, one of which had persons on board.

Ten areas are considered to present the greatest danger to life and property based on collisions that have occurred or are likely to occur. Those areas are in the vicinity of the river bends by Ontario Stone, Shooters, Nautica Stage, Columbus Road bridge, Alpha Precast Products (United Ready Mix), Upriver Marina and Shippers C&D. Preventing mooring, standing or anchoring of vessels in these areas will decrease danger to lives and property.

Seven safety zones were established on September 3, 1987. Those zones were located at specific bends in the Cuyahoga River at which a history of mishaps had developed, and were successful in preventing further mishaps at those designated areas. During the period in which the emergency rules were in effect, the Captain of the Port continued to study the river traffic situation, and determined that three other areas presented a severe hazard to life and property should small craft be allowed to moor there. These areas were incorporated into a proposed regulation which would make all ten areas permanent safety zones, and were published in the **Federal Register** on December 3, 1987.

The comments concerning these proposed regulations resulted in the Captain of the Port holding a public hearing on March 7, 1988, at which several witnesses expressed the desire to form a working group which would study the river situation, and present a mutually agreeable solution to the Captain of the Port within ninety days. The Captain of the Port has agreed to this.

These emergency regulations are being effected in order to safeguard life and property while that group is at work.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T0901 is added to read as follows:

§ 165.T0901 Safety zones; Cuyahoga River and Old River, Cleveland, Ohio.

(a) *Location.* The waters of the Cuyahoga River and Old River extending ten (10) feet into the river at the following ten (10) locations, including the adjacent shorelines, are safety zones:

(1) One hundred (100) feet downriver to one hundred (100) feet upriver from 41 degrees 29'53.5" N, 81 degrees 42'33.5" W, which is the knuckle on the north side of Old River entrance at Ontario Stone.

(2) Fifty (50) feet downriver and fifty (50) feet upriver from 41 degrees 29'48.4" N, 81 degrees 42'44" W, which is the knuckle adjacent to the Ontario Stone warehouse on the south side of Old River.

(3) From 41 degrees 29'51.1" N, 81 degrees 42'32.0" W, which is the corner of Nicky's Pier at Sycamore Slip on the Old River, to fifty (50) feet east of 41 degrees 29'55.1" N, 81 degrees 42'27.6" W, which is the north point of the pier at Shooter's Restaurant on the Cuyahoga River.

(4) Twenty-five (25) feet downriver to twenty-five (25) feet upriver of 41 degrees 29'48.9" N, 81 degrees 42'10.7" W which is the knuckle toward the downriver corner of the Nautica stage.

(5) Ten (10) feet downriver to ten (10) feet upriver of 41 degrees 29'45.5" N, 81 degrees 42'9.7" W which is the knuckle toward the upriver corner of the Nautica stage.

(6) The fender on the west bank of the river at 41 degrees 29'45.2" N, 81 degrees 42'10" W, which is the knuckle at Bascule Bridge (railroad).

(7) The two hundred seventy (270) foot area on the east bank of the river between the Columbus Road bridge (41 degrees 29'18.8" N, 81 degrees 42'02.3" W) to the chain link fence at the upriver end of Commodore's Club Marina.

(8) Fifty (50) feet downriver to twenty-five (25) feet upriver from 41 degrees 29'24.5" N, 81 degrees 41'57.2" W which is the knuckle at the Upriver Marina fuel pump.

(9) Seventy-five (75) feet downriver and seventy-five (75) feet upriver from 41 degrees 29'33.7" N, 81 degrees 41'57.5" W, which is the knuckle adjacent to the warehouse at Alpha Precast Products (United Ready Mix).

(10) Fifteen (15) feet downriver to fifteen (15) feet upriver from 41 degrees 29'41" N, 81 degrees 41'38.6" W, which is the end of the chain link fence between Jim's Steak House and Shipper's C&D.

(b) *Effective Date.* This regulation becomes effective on April 8, 1988. It terminates on August 1, 1988 unless sooner terminated by the Captain of the Port.

(c) *Regulations*—(1) *General Rule.* Except as provided below, entry of any kind or for any purpose into the foregoing zones is strictly prohibited in accordance with the general regulations in § 165.23 of this part.

(2) *Exception.* Vessels may *transit*, but not moor, stand or anchor in, the foregoing zones as necessary to comply with the Inland Navigation Rules or to otherwise facilitate safe navigation.

(3) *Waivers.* Owners or operators of docks wishing a partial waiver of these regulations may apply to the Captain of the Port, Cleveland. Waivers received under the previous emergency rule must be reinstated, as they expired on 31 December, 1987. Partial waivers will only be considered to allow for the mooring of vessels in a safety zone when vessels of 1600 gross tons (GT) or greater are not navigating in the proximate area.

Any requests for a waiver must include a plan to ensure immediate removal of any vessels moored in a safety zone upon the approach of a vessel(s) 1600 GT or greater.

Dated: April 5, 1988.

John H. Distin,

CDR, U.S. Coast Guard, Captain of the Port, Cleveland, OH

[FR Doc. 88–10620 Filed 5–12–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule provides separate and streamlined procedures by which persons may appeal resource recovery and rehabilitation decisions of Forest Service officials that result from natural catastrophes. The need for the rule arises from the agency's experience following the severe fire situation that occurred in the National Forests of California and Oregon in the late summer and fall of 1987. The intended effect is twofold: (1) To preserve a meaningful opportunity for the public to appeal resource recovery and rehabilitation-related decisions and (2) to preserve the agency's ability to rehabilitate lands and recover forest resources before such deterioration occurs that the resource is irretrievably lost or rendered useless. In order to preserve the Agency's ability to meet resource management objectives within the areas affected by the catastrophic events of the 1987 fire season in California and Oregon, it is necessary to make this rule effective upon publication. However, the Agency invites public comment on the interim rule, which will be considered in promulgating a final rule.

DATES: This rule is effective May 13, 1988.

Comments on this rule must be received by July 12, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (1570), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this rule in the office of the Staff Assistant for Operations, National Forest System, Room 4211 South Agriculture Building, 12th and Independence Avenue SW., Washington, DC, during regular business hours.

FOR FURTHER IMFORMATION CONTACT: Larry Hill, Staff Assistant for Operations, National Forest System, Forest Service, USDA, (202) 382–9349.

SUPPLEMENTARY INFORMATION: While the procedures outlined in this rule speak primarily to future natural catastrophes, the agency also is faced with providing appeal procedures for recovery and rehabilitation activities, including salvage of timber and attendant roading, resulting from the severe fire situation during the summer of 1987. It is this situation which brought to the Agency's attention the need to consider developing appeal procedures that would be more consistent with the need to expeditiously manage and mitigate the effects of natural catastrophes, and recover, to the extent practicable, resources that might otherwise be lost to the economy.

The summer of 1987 was the most severe fire situation since 1929 on National Forest System lands. In the West, the fire complexes stretched from central California into southern Oregon, burning more than 837,000 acres of public and private land. Of that total, some 750,000 acres were within the boundaries of the National Forest System, administered by the Forest Service of the U.S. Department of Agriculture.

Wildfires create devastating effects on National Forest resources which require urgent attention. The loss to timber and vegetation present an immediate threat of flooding, landslides, and damage to water quality from stream siltation in many areas. Additionally, fires result in substantial losses of fish and wildlife and their habitat, trails, and recreation areas and facilities.

The greatest loss from the 1987 fire season was in the West. Approximately 2.2 billion board feet of National Forest System timber was destroyed or damaged: 1.8 billion board feet in California and 400 million in Oregon. This is about 25 percent of the total volume offered for sale from the entire National Forest System in an average year, about 40 percent of the volume offered for sale in California and Oregon in an average year, and more than 100 percent of the annual sale volume in California alone. Approximately 1.8 billion board feet of the destroyed or damaged timber is in non-wilderness areas (400 million is in 43 roadless areas). The Forest Service estimates about 75 percent (or 1.4 to 1.8 billion board feet timber) can be salvaged, if prompt action is taken. The timber is valued at nearly $400 million.

Because of the type of timber affected, mainly ponderosa pine, Douglas-fir, and the true firs, the salvageable volume must be offered for sale and removed as quickly as possible. The pine and true fir will not remain viable for lumber if not offered within 1 year and harvested within 2. Douglas fir will generally remain viable for lumber if harvested within 3 years.

Because of the urgent need to identify, study, prepare, and conduct recovery and rehabilitation work resulting from the 1987 fires and because it is likely that similar situations will occur in the future, the Secretary of Agriculture has decided that it is in the nation's best interest to provide a streamlined process for administrative appeals of Forest Service decisions concerning resource recovery and rehabilitation activities resulting from natural causes, such as wildfire, flooding, earthquakes, winds, and insect or disease epidemics.

The current rules set forth at 36 CFR 211.18 provide a process by which anyone who disputes a decision of a Forest officer may appeal that decision and have it reviewed by the next highest level. Two levels of appeal are available. The appeal process is lengthy and highly procedural. It may take up to a year to decide an appeal. In the case of current resource recovery and rehabilitation needs in California and Oregon, such a delay on fire-caused salvage sales and related rehabilitation activities would result in unacceptable losses of valuable natural resources—the loss of the salvageable timber itself as well as additional losses should the deteriorating timber become infested with insects and disease and spread to healthy timber in adjoining, unburned areas. Moreover, the economy of timber dependent communities in the burn areas could be adversely affected by delays in salvage and related rehabilitation work. The fires have created a major disruption in the timber sale programs of affected National Forests; for example, in Region 5 (California), the fires have reduced the normal green timber sales program by half. Salvage sales and activities necessary to support them will help the timber industry recover some of its planned harvesting and thus offset the otherwise severe economic effects on timber dependent communities, especially in California.

The Forest Service has an obligation to rehabilitate National forest lands and resources damaged in burned areas. With full consideration to be given to environmental values, specific management objectives for resource recovery and rehabilitation are to:

1. Reforest burned-over areas to ensure watershed and soil quality and to provide for future timber needs;

2. Restore watershed and soil values damaged as a result of the fires;

3. Restore wildlife and fisheries habitat;

4. Salvage as much of the burned timber as possible;

5. Reduce the potential for insect infestation in adjacent unburned areas; and

6. Reduce accumulation of fuel in the burned areas to prevent future fire susceptibility.

The accomplishment of these objectives can involve not only harvest of the timber but also road construction and reconstruction, application of herbicides, and reconstruction of physical facilities installed for wildlife and fisheries habitat, range management, and recreation.

With respect to the California and Oregon fire situation of 1987, the urgent need to act to salvage as much timber as practicable does not relieve the Forest Service of its obligation to conduct environmental analyses pursuant to the National Environmental Policy Act (NEPA) and implementing regulations (40 CFR 1500–1508). In the initial scoping phase of the process, the Regions and National Forests involved will seek to give interested segments of the public an opportunity to participate in the analyses. Individuals and organizations interested in specific National Forest areas burned in the recent fires and in monitoring salvage and related decisions are encouraged and advised to contact the appropriate Forest Supervisor or District Ranger to make their interest known and to request participation in the analyses. The Agency will identify reasonable alternatives and will record its analyses in the appropriate environmental document. Notice will be given of the decisions made. The Forest Service is committed to conducting and documenting environmental analyses of activities associated with resource recovery and rehabilitation efforts in full compliance with applicable laws and regulations.

In promulgating this rule, the Department considered as alternatives exempting recovery and rehabilitation activities from administrative appeal; taking no action (allowing appeals under the current rules, 36 CFR 211.18); and exempting from appeal only sales of timber most susceptible to deterioration and infestation. If the recovery and rehabilitation activities in California and Oregon remained subject to the current lengthy and procedurally detailed administrative appeal process, the chance of salvaging the pines, true firs, and small diameter trees of all species would be significantly reduced. The mixed species composition of many timber stands in burned areas makes it impracticable to sell only the species that deteriorate most quickly. Moreover, some burned stands are intermixed with green, relatively undamaged timber. Thus, the alternative of exempting from appeal only salvage sales of fire damaged, fast deteriorating species is impracticable. Also, this alternative would likely not be acceptable to potential appellants, since sale appeals are normally not species specific, but rather relate to the potential impacts of the sale on the land. Finally, exempting all salvage sales in California and Oregon and other parts of the country from appeal would deny potentially affected individuals and groups an administrative process for resolving their concerns directly with the Agency and leave them remedy only in the courts—a time consuming and expensive process for appellants and the Agency.

The principal procedures contained in this rule are as follows:

1. Decisions on recovery and rehabilitation activities that result from natural catastrophes are entitled to a 1-level appeal process, to be completed within 90 days.

2. Notice of decisions on recovery and rehabilitation appealable under this section and made after May 13, 1988, are to be published in a local newspaper of general circulation. Any individual or organization has 30 days from publication of the notice of decision about a particular activity associated with recovery and rehabilitation efforts resulting from natural catastrophes to file a notice of appeal and request a stay.

3. Formal procedures for intervention are not included; however, interested persons may submit comments to the record for use by the Reviewing Officer.

4. Procedural appeals, such as appealing decisions to deny a stay, are not allowed.

5. A responsive statement from the initial Forest Officer who made the decision is not required.

6. No extensions of time will be allowed for appellants or the Forest Service.

In addition, paragraph (b) of 36 CFR 211.18, the current applicable appeal procedure, is being amended to exclude appeals of decisions arising from recovery and rehabilitation activities resulting from natural catastrophes under those rules. This is a corollary technical amendment necessary to avoid conflict and inconsistency between this interim rule and the existing administrative appeal process.

Public Comment

The Department of Agriculture is making the interim rule effective upon publication. This rule establishes agency policy and procedures on appeal of decisions concerning recovery and rehabilitation of National Forest System lands and resources affected by natural catastrophes, such as forest fires. Good cause exists for issuance of this policy and procedures effective upon publication because some associated activities are already prepared, and the delay that could be caused by appeal of these sales would result in unacceptable loss of raw material needed by the Nation. This rule contains the same procedures as those set forth at 36 CFR 211.17 governing appeal of decisions to reoffer returned or defaulted timber sales, which was promulgated as a final rule on April 22, 1988 (53 FR 13263). Those provisions were developed as a result of public comment on an interim rule published January 28, 1988 (53 FR 2490). While the circumstances driving the need for the two rules is quite different, the agency intends that the appeal process attendant to each be essentially the same.

Regulatory Impact

This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule itself will not substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Because of the need to implement these procedures immediately to facilitate orderly recovery and rehabilitation efforts, time has not permitted advance review by the Office of Management and Budget. However, as required by E.O. 12291, notice of this rule is being given to the Director of the Office of Management and Budget upon publication in the **Federal Register**.

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), and it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities.

Environmental Impact

The interim rule establishes an administrative process to decide appeals. The process itself will have no significant effect on the human environment, individually or cumulatively. Although individual actions which may precipitate appeals under the rule require conformance with agency policy and regulations promulgated pursuant to the National Environmental Policy Act, this interim rule is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, Intergovernmental relations (Federal/State cooperation), National forests.

Therefore, for the reasons set forth in the preamble, Subpart B of Part 211 of

chapter II of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 211—[AMENDED]

1. The authority citation for Part 211 continues to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

Subpart B—[Amended]

2. Add a new § 211.16 to read as follows:

§ 211.16 Appeal of resource recovery and rehabilitation decisions resulting from natural catastrophes.

(a) *Purpose.* These rules provide an expedited and streamlined administrative appeal process for decisions arising from recovery and rehabilitation efforts on National Forest System lands and resources damaged in natural catastrophes.

(b) *Matters subject to appeal.* The procedures established in this section apply only to initial written decisions concerning resource removal, recovery, and rehabilitation activities resulting from natural catastrophes, such as forest fires, insect and disease epidemics, floods, winds, and earthquakes, that result from documentation required by the National Environmental Policy Act and its implementing regulations, policies, and procedures. Notice of the decisions appealable under this section and made after the effective date of this regulation shall be published in a local newspaper of general circulation immediately following the documentation referenced above. Subsequent implementing decisions, such as advertising timber salvage sales and/or awarding contracts, are not appealable under this section or 36 CFR 211.18.

(c) *Who may appeal.* The process set forth in this section is available to any individual or organization wishing to appeal a decision arising from resource removal, recovery, and rehabilitation activities resulting from natural catastrophe.

(d) *Who may comment.* Any person or organization interested in an appeal of a decision under this subpart may submit written comments to the Reviewing Officer for inclusion in the record.

(e) *Levels of appeal.* One level of administrative appeal is available.

(1) Appeals of decisions subject to the procedures of this section made by a District Ranger shall be filed with the Forest Supervisor.

(2) Appeals of decisions subject to the procedures of this section made by a Forest Supervisor shall be filed with the Regional Forester.

(f) *Filing procedures.* (1) To appeal a decision under this section, an appellant must file a written notice of appeal with the Reviewing Officer. If an appellant wishes to request a stay of implementation of the decision, the request must accompany the notice of appeal and be made in accordance with paragraph (i) of this section. The appellant must simultaneously provide a copy of the notice of appeal and any stay request to the Forest officer making the initial decision.

(2) All notices of appeal must be filed within 30 days of publication of the notice of decision.

(g) *Extensions of time.* There shall be no extension of the time periods specified in this section for either an appellant or the Forest Service.

(h) *Content of notice of appeal.* Parties appealing a decision under this section must include the following information in the written notice of appeal:

(1) The specific activity being appealed;

(2) The date notice of the decision was published;

(3) The Forest Officer who made the decision;

(4) How the appellant is affected by the decision; and

(5) The relief desired.

(i) *Stays.* (1) To request a stay, the appellant must:

(i) File a written request with the Reviewing Officer at the time the appeal is filed, simultaneously providing a copy to the Forest officer who made the initial decision in question.

(ii) Provide a written justification of the need for a stay, which includes a description of the specific activities to be stayed, and specific reasons why the stay should be granted, including:

(A) Harmful site-specific impacts or effects on resources in the area affected by the activity; and

(B) How the cited effects and impacts would prevent a meaningful decision on the merits.

(2) The Reviewing Officer shall rule on a stay request no later than 10 calendar days from receipt.

(i) If a stay is granted, the stay shall specify the activities to be stopped, duration of the stay, and reasons for granting the stay.

(ii) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(iii) A copy of the stay decision shall be sent to the appellant and the Forest Officer who made the initial decision.

(iv) A Reviewing Officer's decision on a stay is not subject to further appeal or review.

(j) *Review procedures.* (1) The Reviewing Officer shall determine if the notice of appeal has been timely filed. In the event of question, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely receipt of the notice of appeal. If the appeal is untimely, the Reviewing Officer will immediately dismiss the appeal and notify the Forest Officer making the initial decision and the appellant.

(2) Upon receipt of a copy of the notice of appeal, the Forest Officer making the decision shall assemble the relevant decision documents and pertinent records and transmit them to the Reviewing Officer within 15 calendar days.

(3) In transmitting the decision documentation to the Reviewing Officer, the Forest Officer shall indicate how and specifically where the appellant's issues are addressed. Where time permits, the Forest Officer may also respond briefly to issues raised in the notice of appeal. A copy of the transmittal letter shall be provided to the appellant(s).

(4) The record on which the Reviewing Officer shall conduct a review consists of the notice of appeal, any other written comments received, the official documentation prepared by the Forest Officer making the initial decision, and any related correspondence, including additional information requested by the Reviewing Officer.

(5) The review record is available for public inspection.

(k) *Requests for additional information.* At any time during the appeal, the Reviewing Officer may request additional information from an appellant, the Forest Officer making the initial decision, or anyone who has submitted written comments. In addition, the Reviewing Officer may discuss issues related to the appeal with the Forest Officer making the initial decision, appellants, or affected parties.

(l) *Decision.* (1) The Reviewing Officer shall issue a final decision on the appeal, in writing, within 90 days of the Reviewing Officer's receipt of the notice of appeal, with a copy to anyone submitting comments.

(2) The Reviewing Officer's decision shall either affirm or reverse the original decision in whole or in part and include

the reason(s) for the decision. The Reviewing Officer's decision may include instructions for further action by the Forest Officer making the initial decision.

(3) The Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this section or any other appeal regulation.

(m) *Dismissal.* (1) A Reviewing Officer shall dismiss an appeal without decision on the merits when:

(i) The appeal is not received within the time specified in paragraph (f) of this section;

(ii) The requested relief cannot be granted under existing facts, law or regulation;

(iii) The notice of appeal does not meet the requirements of paragraph (h) of this section;

(iv) The appellant withdraws the appeal; or

(v) The Forest Officer making the initial decision withdraws that decision.

(2) A Reviewing Officer's decision to dismiss is not subject to further appeal or review.

(3) A Reviewing Officer shall give written notice of a dismissal to the appellant and Forest Officer whose initial decision or appeal decision is being appealed.

(n) *Continuance.* Provisions of 36 CFR 211.18 will remain in effect for appeals of decisions concerning activities that result from natural catastrophes filed prior to May 13, 1988.

3. Amend § 211.18 by adding a new paragraph (b)(15) to read as follows:

§ 211.18 Appeal of decisions of Forest Officers.

* * * * *

(b) *Matters excluded from appeal under this section.* * * *

(15) Initial decisions arising from recovery and rehabilitation activities resulting from natural catastrophes appealable under § 211.16 of this subpart and subsequent implementing decisions, such as advertising timber salvage sales and/or awarding contracts made pursuant to such decisions.

* * * * *

Date: May 6, 1988.

Peter Myers,

Acting Secretary, Department of Agriculture.

[FR Doc. 88-10606 Filed 5-12-88; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3376-1]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On January 7, 1985, the Minnesota Pollution Control Agency (MPCA) submitted revised rules, including a Consolidated Permit Rule (CPR), as proposed revisions to the Minnesota State Implementation Plan (SIP). MPCA's submission is intended to satisfy the requirements of 40 CFR 51.160 through 51.164 [1] for a general New Source Review (NSR) program, as well as the Federal requirements for a lead (Pb) NSR program. In addition, on October 28, 1985, the MPCA submitted to USEPA a Memorandum of Agreement (MOA), and on October 1, 1986, and January 14, 1987, it submitted a commitment concerning stack height requirements.

MPCA's submittals include: 6 MCAR sections 4.0002 Parts A through C, which contain Definitions, Abbreviations, and Applicability of Standards; the CPR, which consists of subparts 6 MCAR sections 4.4001 through 4.4021, 6 MCAR sections 4.4301 through 4.4305, and 6 MCAR sections 4.4311 through 4.4321; and an MOA entitled Appendix A. USEPA has reviewed these submittals and is, with one exception, approving them as meeting the requirements of 40 CFR 51.160 through 51.164. The one exception involves certain small sources for which there are Standards of Performance in 40 CFR Part 60, but which are exempted from new source review under Minnesota's CPR. USEPA is disapproving this rule for these small sources.

Minnesota did not submit these regulations to meet the requirements of either Section 111, Part C, or Part D of the Clean Air Act (Act), and USEPA is not rulemaking on them as such. USEPA is approving these submittals as satisfying the one remaining deficiency in the Minnesota Pb Plan by meeting the Pb NSR requirements. Therefore, USEPA is also approving Minnesota's Pb plan as meeting the requirements of section 110(a) of the Act.

EFFECTIVE DATE: This final rulemaking becomes effective on June 13, 1988.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 886-6034, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

A copy of today's revision to the Minnesota SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886-6034.

SUPPLEMENTARY INFORMATION: On January 7, 1985, the MPCA submitted to USEPA a proposed revision to the Minnesota SIP in order to satisfy the requirements of 40 CFR 51.160 through 51.164 for a general NSR program, as well as the Federal requirements for a Pb NSR program. The CPR rule submission included provisions intended to replace the previously approved NSR rules in the Minnesota SIP. On October 28, 1985, the MPCA submitted to USEPA a MOA which satisfies certain deficiencies. On October 1, 1986, and January 14, 1987, Minnesota committed to use USEPA's July 8, 1985 (50 FR 27892), stack height regulations in all SIP matters, which would include reviewing its construction permits. This satisfies the requirements of 40 CFR 51.164.

The January 7, 1985, submittal contains the following rules:

1. 6 MCAR section 4.0002 Definitions, Abbreviations, Applicability of Standards, and Circumvention (formerly APC 2)
2. 6 MCAR sections 4.4001 through 4.4021 Air Permit Rules (formerly APC 3)
3. 6 MCAR sections 4.4301 through 4.4305 Supplements to Air Permit Rules
4. 6 MCAR sections 4.4311 through 4.4321 Indirect Source Air Permits (formerly APC 19).

The October 28, 1985, submittal contained Appendix A, which is the

[1] On November 7, 1986 (51 FR 40655), USEPA rewrote and recodified 40 CFR Part 51 (1986), including the NSR requirements in § 51.18. The NSR requirements to which USEPA is comparing Minnesota's program are those which were codified at 40 CFR 51.18 (a) through (h) and (l) and are now codified as 40 CFR 51.160 through 51.164.

MOA between USEPA and the MPCA on implementing the NSR plan. This is an amended and signed version of the draft Appendix E MOA, submitted with the remainder of the plan on January 7, 1985.

In today's rulemaking action, USEPA is approving, with one exception, this revision to the Minnesota SIP, as requested by the State of Minnesota. Each rule and the exception are discussed in detail below. However, USEPA wishes to clarify that this final rulemaking action only pertains to the approvability of this SIP revision with respect to the general NSR requirements of 40 CFR 51.160 through 51.164, and the Pb NSR requirements.[2]

USEPA is not rulemaking on this submittal with respect to the requirements of Part D of the Act, which contains additional new source permitting requirements that apply in designated nonattainment areas. For this reason, the section 110(a)(2)(i) growth prohibition for major sources that is currently in effect in areas designated as primary nonattainment areas at 40 CFR 81.324 will not be affected by this rulemaking action. Additionally, USEPA is not approving the rules with respect to those portions of Minnesota's submittal which relate to Prevention of Significant Deterioration (PSD) permitting requirements as required in Part C of the Act,[3] New Source Performance Standards (NSPS) as required by section 111 of the Act,[4] and permit provisions applicable to other media (water, solid waste).

Finally, USEPA is not at this time rulemaking on 6 MCAR section 4.0002 Part D, Opacity Standard Adjustment.

If the State of Minnesota submits a SIP revision to satisfy the permitting requirements in Part C and/or Part D of the Act, the definitions and exemptions approved here today must be re-evaluated for approvability under those parts. For example, the definition of "fugitive emissions" in Rule 6 MCAR section 4.0002 A.13 is less stringent than the Federal requirements for sources subject to Part C or D of the Act. Additionally, MPCA has not demonstrated that the exemptions provided for in Rule 6 MCAR 4.4303 P1 are in conformance with Parts C or D of the Act. Finally, the definition of "modification" has been changed from that which USEPA previously approved in Minnesota's NSPS definitions. The definition of "modification" is discussed further below.

I. Definitions, Abbreviations, Applicability of Standards

Rule 6 MCAR section 4.40002 (formerly APC 2) includes sections on Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention. USEPA will rulemake on Minnesota's provisions for setting alternative opacity limits (6 MCAR section 4.0002 Part D) in a future **Federal Register** notice.

A. Definitions

The revision contains new and/or revised definitions that differ from those in APC 2, the similar rule in the current SIP, which USEPA approved in the May 6, 1982, **Federal Register** (47 FR 19520). Minor changes were made to the definitions for "new facility," "owner or operator," and "reconstruction." These revised definitions are generally consistent with the definitions which USEPA has previously approved in APC 2. These revised definitions are also consistent with the requirements of 40 CFR 51.160 through 51.164. Therefore, USEPA is approving them.

Minnesota has also revised and clarified the definition of "New Source Performance Standard" by directly referencing the Federal NSPS established under section 111 of the Clean Air Act. USEPA finds this revised definition acceptable and is approving it, but only as it relates to Minnesota's general NSR program. (As stated above, USEPA is not rulemaking on Minnesota's rules as they relate to the section 111 NSPS program.) The definition of "modification" has been revised at section 4.40002 (A)(15) to read as follows:

"Modification" means a physical change or a change in the operation of an emission facility that is not allowed under a permit, stipulation agreement, or an applicable air pollution control rule, and that results in an increase in the emission of an air pollutant.

This revision differs from the definition of "modification" found in APC 2(c)(5)(aa), which USEPA approved as part of the Minnesota NSPS SIP on May 6, 1982, in that it exempts from the definition of "modification" any physical or operational changes if they are provided for by stipulation agreement, an applicable air pollution control rule, or a permit. It thereby exempts such changes from the State's new source rule.

The current SIP definition of "modification," at APC 2(c)(5), however, only applies to NSPS sources listed in APC 2(c) and not to the NSR program for general sources covered by today's regulations. There presently is no other definition of "modification" in the Minnesota SIP to which the new definition can be compared. Moreover, there is no USEPA requirement for a SIP definition of "modification." USEPA is approving Minnesota's new definition for general sources, because (1) there is no other definition of "modification" in the SIP for general sources and (2) its approval will not jeopardize the attainment and maintenance of the NAAQS. The USEPA' final approval of Minnesota's NSR program only applies to a limited range of sources. It does not apply to new major sources or major modifications of existing sources in nonattainment areas, new PSD sources or major modifications of PSD sources, or NSPS requirements for new sources or major modifications of existing sources. Further, USEPA notes that Appendix A, as discussed later, commits Minnesota to use the definition of "major modification," as defined at 40 CFR 51.18(j)(1)(v),[5] in determining whether anticipated construction at a source requires notification of the public and opportunity for public comment.

It should be noted that USEPA's NSPS regulations do not exempt physical or operational changes from the definition of "modification," just because they are provided for by permits, agreements, or State rules. Therefore, USEPA cannot approve the revised definition for purposes of the State's regulations for implementing the Federal NSPS and is not rulemaking on it, nor on the remainder of the State's submittals, for this purpose. USEPA notes that Minnesota has been delegated the Federal NSPS program and is implementing USEPA's rules at 40 CFR Part 60. Therefore, Minnesota's definition of "modification" at section 4.40002 should have no effect on its implementation of 40 CFR Part 60.

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[2] On July 6, 1984 (49 FR 27507), USEPA approved all other elements of Minnesota's Pb plan. USEPA is approving Minnesota's NSR Pb plan, will satisfy the one remaining element of Minnesota's Pb plan.

[3] On September 20, 1977, March 26, 1979, and October 15, 1980, USEPA delegated to Minnesota the PSD program. Minnesota is implementing this program using USEPA regulations found at 40 CFR 52.21.

[4] On March 29, 1984, USEPA delegated to Minnesota the NSPS program. Minnesota is implementing this program using USEPA regulations found at 40 CFR Part 60.

However, in addition to meeting the emission limits and other requirements of Part 60 on which USEPA is not rulemaking, NSPS sources must also meet the requirements of Minnesota's general NSR plan. USEPA is rulemaking on Minnesota's general NSR plan today as it applies to sources covered by a NSPS.

Similarly, sources in nonattainment areas and PSD sources must also meet the requirements of Minnesota's general NSR plan. Although USEPA is not rulemaking on Minnesota's submittal in relationship to the requirements of Part C or D of the Act, USEPA is rulemaking today on Minnesota's general NSR plan as it applies to sources which are also subject to the PSD and/or Part D requirements.

[5] Title 40 CFR 51.18(j)(1)(v) (1986) is currently codified at 40 CFR 51.165(a)(1)(v) (1987).

USEPA periodically reviews all delegated NSPS programs, including Minnesota's, and will at the time of Minnesota's review determine whether Minnesota is properly implementing its delegation.

The following new terms have been added to revised Rule 6 MCAR section 4.0002:

1. "Fugitive Emissions" mean pollutant discharges to the atmosphere that do not pass through a stack, chimney or other functionally equivalent opening, at which a measurement of the emissions can be made using a reference method other than (40 CFR Part 60, Appendix A) Method 9.
2. "Reference Method" means the procedure for performance test in the Code of Federal Regulations, Title 40, Part 60, Appendix A (1982).
3. "Emission source" means a single source whereby an emission is caused to occur.
4. "Total emission facility" means an assemblage of all emission sources on adjacent property that are under common ownership or control and that exist for a common function.
5. "Potential emissions" means the emissions from an emission facility, after control equipment has been applied, when the facility is operating at maximum design capacity and maximum hours of operation or as limited by enforceable permit conditions, whichever results in fewer emissions.

USEPA finds these definitions acceptable.

USEPA has reviewed all the revised and new definitions discussed above, not only with respect to whether the definitions meet the Federal NSR requirements, but also with respect to their impact on the federally approved Total Suspended Particulates (TSP) and Sulfur Dioxide (SO_2) SIPs in Minnesota. These revisions are acceptable. Therefore, USEPA is approving the definitions as set forth at 6 MCAR section 4.0002(A) for the purposes of Minnesota's general NSR program.

B. Abbreviations, Applicability of Standards, and Circumvention

USEPA has reviewed 6 MCAR section 4.0002(B), Abbreviations; 6 MCAR section 4.0002(C) Applicability of Standards of Performance; and 6 MCAR section 4.0002(E), Circumvention. Parts B and E contain requirements similar to those previously approved in APC 2 (b) and (f), respectively, and USEPA is approving them. Part C has been changed and simplified from APC 2(c). USEPA finds it approvable and is approving Part C as well.

C. Opacity Standard Adjustments

Part D of Rule 6 MCAR section 4.0002 allows an emission facility to apply for an alternative opacity limit. USEPA will rulemake on this provision in future Federal Register notices.

II. Consolidated Permit Rule and Air Emission Facility Permits

The Consolidated Permit Rule is comprised of the following: Rule 6 MCAR sections 4.4001 through 4.4021, Permit Rule; Rule 6 MCAR sections 4.4301 through 4.4305, Supplement to Permit Rule; and Rule 6 MCAR sections 4.4311 through 4.4321, Indirect Source Air Permits. In addition, the MPCA submitted an MOA to USEPA on October 28, 1985. The rules submitted by MPCA are intended to replace the previously approved rules, APC 2 and APC 3. The State took several provisions from APC 3 (the State's former general NSR rule for air pollution sources), which are common to all other environmental media permit programs, and included them in a new multi-media CPR Rule.

Rule 6 MCAR section 4.4001 through 4.4021, Permit Rule

Rule 6 MCAR section 4.4001 through 4.4021 establishes MPCA's standard permitting procedures. The review procedures will enable MPCA to determine whether a proposed new or modified source will cause a violation of a SIP control strategy or interfere with attainment or maintenance of the NAAQS. Rule 6 MCAR section 4.4015 requires each permit to contain conditions necessary to achieve compliance with all applicable State and Federal rules. Rule 6 MCAR section 4.4014 B authorizes MPCA to deny a permit if the proposed source will not comply with all applicable State or Federal rules administered by MPCA. All SIP emission rules and the NAAQS are considered by the State to be rules administered by the MPCA.

Rule 6 MCAR sections 4.4301 through 4.4305, Supplements to Air Permit Rules

USEPA reviewed the provisions of this CPR rule to assure that the appropriate sizes and types of air pollution sources will be subject to review by MPCA, as required by 40 CFR 51.160 through 51.164. Section 4.4303 requires all air emission facilities to obtain a permit except for certain small sources. Exempted sources are those that emit less than specified *de minimus* levels for all criteria pollutants. For instance, 6 MCAR section 4.4303 B.1 and 2 exempt such sources with less than 25 tons per year of emissions (except for lead which is less than 0.5 tons per year), natural gas sources which are smaller than 50 million British Thermal Units (BTU) per hour, and wood sources which are smaller than 5 million BTUs per hour. These exemptions are approvable for all sources.[6] However, 6 MCAR section 4.4303 B.3 exempts certain NSPS sources from applying for a permit which may require a NAAQS review under sections 110(a)(2)(D) and 110(a)(4) of the Act. For instance, the NSPS for Nonmetalic Mineral Processing Plants exempts fixed sand and gravel operations with capacities of less than 25 tons per hour (40 CFR 60.670(c)(1)), while the Minnesota regulation exempts operations that produce less than 150,000 tons of product per year. Thus, a 70 tons per hour facility operating 2080 hours per year would be exempted under Minnesota's regulation. Additionally, the NSPS for Metal Coil Surface Coating does not exempt any facility constructed after January 5, 1981, regardless of size (40 CFR 60.460), while Minnesota's regulation exempts facilities that use less than 10,000 gallons of solvent-borne coatings per year. Because Minnesota's regulation may exempt certain NSPS sources from a NAAQS review, USEPA is disapproving Minnesota's CPR rule for those sources subject to an NSPS requirement (40 CFR Part 60), and otherwise exempted from review under 6 MCAR section 4.4303 B.3. For these sources, APC 3, as approved in the September 22, 1972, Federal Register (37 FR 19810), will continue to apply. (None of the exemptions in 6 MCAR section 4.4303 B.3 apply to Pb sources. Therefore, USEPA's final, limited disapproval does not affect its final approval of Minnesota's NSR plan for Pb discussed below.) For all other sources, USEPA is approving Minnesota's CPR, including 6 MCAR section 4.4303.

Lead NSR Rules

USEPA's criteria for approving Pb NSR programs are found in two documents. One is an April 8, 1980, memorandum from Richard G. Rhoads, then Director, Control Programs Development Division, to the Directors of the Regional Air and Hazardous Materials Divisions. The other is section

[6] With respect to particulate matter, the 25 tons per year exemption was intended to apply to TSP, which was the indicator at the time of the State's submittal of its CPR. USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 microns or less (PM_{10}) and establishes a 15 ton/year cut-off for NSR purposes. As part of Minnesota's PM_{10} plan, it must submit a revised NSR plan which requires review of all sources of PM_{10} which emit more than 15 tons per year. Although USEPA is approving Minnesota's general NSR plan at this time, Minnesota's obligation to submit a NSR plan for PM_{10}, in conformance with requirements for implementation of the PM_{10} standard, remains.

4.5.3 of USEPA's Pb guidance document entitled "Updated Information on Approval and Promulgation of Pb Implementation Plans," dated July 1983.

Rule 6 MCAR section 4.4303 B.1.c exempts from review new or modified Pb sources that have the potential to emit less than 0.5 tons per year. This rule is consistent with USEPA's April 8, 1980, policy memorandum which requires review of all Pb point sources which have the potential to emit Pb in excess of 5 tons per year. This rule is also consistent with USEPA's policy on Pb plans which requires review of any modification to a source with actual emissions in excess of 5 tons per year of Pb, if the modification would result in a net increase of 0.6 or more tons of Pb per year of potential emissions. Since Rule 6 MCAR section 4.4303 of the permit rule subjects all Pb sources emitting 0.5 tons per year of Pb or more to State review, this rule is approvable as it pertains to new Pb sources and modifications to existing Pb sources.

The rules contain provisions which require all new or modified Pb sources above 0.5 tons per year to be reviewed against the ambient air quality standards.

The NAAQS for Pb has been approved for Minnesota as part of the SIP. Furthermore, Rule 6 MCAR section 4.4014 B requires the Agency to deny a permit if the proposed source would not comply with this Federal requirement, which is administered by the State.

On July 6, 1984 (49 FR 27507), USEPA approved all other elements of Minnesota's Pb plan. Approval of Minnesota's NSR Pb plan satisfies the one remaining element needed in Minnesota's Pb plan. Therefore, USEPA is also approving Minnesota's complete Pb plan as meeting all the requirements of the Act.

Rule 6 MCAR Sections 4.4311 Through 4.4321, Indirect Source Air Permits

Although there are no current Federal requirements that a State submit an indirect source review program, the State of Minnesota did submit such a program. This will replace the previous indirect source review program in Minnesota (codified at 40 CFR 52.1225 (a) and (b)—February 25, 1974, 39 FR 7282). USEPA has reviewed the indirect source rule and finds that it does not eliminate any requirement upon which the State depended to demonstrate attainment or maintenance of any NAAQS. USEPA is, therefore, approving this rule.

Memorandum of Agreement Between USEPA and MPCA

Appendix A, the MOA between Minnesota and USEPA, consists of an agreement signed by the USEPA on July 8, 1985, and by Minnesota on July 24, 1985. This MOA between the MPCA and USEPA satisfies certain remaining deficiencies for the NSR permitting requirements, as described below.

Section 4.4002 I. exempts many air emission sources from public notice and comment provisions. Such exemption violates the requirements of 40 CFR 51.161. To address this deficiency, the State and USEPA executed a MOA which requires the MPCA to give notice and provide for a public comment period in accordance with 40 CFR 51.161. Title 40 CFR 51.161 requires that public comment procedures apply to all sources, both major and minor, that affect the attainment and maintenance of the air quality standards. The MOA provides that the public notice and comment requirements of 40 CFR 51.161 will be met in cases with the following types of permits:

1. A permit for a "major stationary source" and for a "major modification" as defined and applied by 40 CFR 51.18(j)(1) (iv), (v), (vi), and (x);[7]

2. A permit for an emission facility with an actual Pb emission rate of 0.6 tons or more per year; or

3. A permit for a facility, building, structure or installation in accordance with 40 CFR 51.18(a) (recodified at 40 CFR 51.160(a)) which must be reviewed to assure that the source will not potentially violate a control strategy or interfere with attainment or maintenance of a national ambient air quality standard.

The MOA provides an appropriate mechanism to satisfy the notice requirements for both a general source permitting program and a Pb NSR program. Therefore, USEPA is approving the MOA as part of the Minnesota SIP.

Stack Height Requirements

Section 123 of the Act limits credit in attainment demonstrations for stack height in excess of that which exceeds good engineering practice. On July 8, 1985, USEPA promulgated regulations implementing these provisions (50 FR 27892).[8] These regulations require that State and local agencies conform with Section 123 when implementing the SIP generally, including reviewing construction permits. See 40 CFR 51.118 and 51.164. In October 1, 1986, and January 14, 1987, letters, Minnesota committed to implement its SIP program using USEPA's July 8, 1985, regulations rather than develop its own regulations.

Public Comment

On February 17, 1987 (52 FR 4785), USEPA proposed to approve Minnesota's Consolidated Permit Rule 6 MCAR sec. 4.0002. One public comment was received by the Agency from the National Resources Defense Council (NRDC) which stated:

> We object to the proposed approval of Minnesota's commitments to implement its SIP in accordance with USEPA's July 1985 § 123 rules (SIC). Our comments to USEPA on the illegality of those rules and subsequent "guidance" and our petition for reconsideration of these rules are hereby incorporated by reference as our comments on the instant proposal.

USEPA published its final stack height regulations on July 8, 1985 (50 CFR 27982). In that rulemaking, USEPA responded to NRDC's comments on the proposed regulations (49 FR 44878, November 9, 1984), and such responses are hereby incorporated by reference. USEPA's proposed stack height rules are irrelevant because Minnesota's commitment is based on USEPA's July 8, 1985, adopted rule and on the stack height rules which USEPA proposed on November 9, 1984, which NRDC commented on.

NRDC filed a petition for review of the July 8, 1985, rules under Section 307 of the Act on August 5, 1985. *NRDC*. In its petition for review, NRDC raised

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[7] 40 CFR 51.18(j)(1) (iv), (v), (vi), and (x) was recodified on November 7, 1986, to 40 CFR 51.165(a)(1) (iv), (v), (vi), and (x). See Footnote 1 and 5.

[8] Certain provisions of these rules were overturned in *NRDC* v. *Thomas* (D.C. Cir. No. 85–1488 et al. (January 22, 1988)). Petitions for rehearing of its opinion have been filed with the D.C. Circuit, and are pending disposition by the court. The provisions potentially subject to remand are grandfathering stack height credits for sources who raise their stacks prior to October 1, 1983, up to the height permitted by good engineering practice formula height (40 CFR 51.100(kk)(2)), dispersion credit for sources originally designed and constructed with merged or multi-flue stacks, (40 CFR 51.100(hh)(2)(ii)(A)), and grandfathering credit for the refined (H+1.5L) formula height for sources unable to show reliance on the original (2.5H) formula (40 CFR 51.100(ii)(2)).

Although USEPA today generally approves Minnesota's new source review plan on the grounds that it satisfies the applicable attainment area requirements of 40 CFR Part 51, USEPA also today provides notice that Minnesota's commitment to use USEPA's July 8, 1985, stack height rules in its new source review plan is subject to review and possible revision as a result of *NRDC*. If USEPA's response to *NRDC* modifies the applicable July 8, 1985, provision(s), USEPA will notify the State of Minnesota that its commitment must be changed to comport with USEPA's modified requirements. USEPA's approval of Minnesota's new source review plan today is intended to avoid delay in the establishment of a federally enforceable new source review plan for lead while awaiting resolution of the *NRDC* litigation.

essentially the same issues as in its comments on USEPA's guidance and in its petition for reconsideration. USEPA's, therefore, hereby incorporates by reference the briefs it filed in the above case for the purpose of responding to NRDC's comments on USEPA's guidance and NRDC's petition for reconsideration in reference to Minnesota's proposed CPR.

As was noted in Footnote 8, portions of USEPA's stack height rules were remanded to the Agency in *NRDC*. Although USEPA today generally approves Minnesota's new source review plan on the grounds that it satisfies the applicable attainment area requirements of 40 CFR Part 51, USEPA also today provides notice that Minnesota's commitment to use USEPA's July 8, 1985, stack height rules in its new source review plan is subject to review and possible revision as a result of *NRDC*. If USEPA's response to the *NRDC* remand modifies the applicable July 8, 1985, provision(s), USEPA will notify the State of Minnesota that its commitment must be changed to comport with USEPA's modified requirements. USEPA's approval of Minnesota's new source review plan today is intended to avoid delay in the establishment of a federally enforceable new source review plan for lead while awaiting resolution of the *NRDC* remand.

Conclusion

In conclusion, USEPA is approving 6 MCAR section 4.0002, except that it is not acting today on section 4.0002(D), Opacity Standard Adjustment. USEPA is approving the MPCA's Consolidated Permit Rule as meeting the new source permitting requirements of 40 CFR 51.160 through 51.164, including the MOA between the MPCA and USEPA, except as applicable to sources subject to an NSPS requirement and exempted from review by 6 MCAR section 4.4303 B.3. USEPA is disapproving the CPR for these sources, and for them SIP Rule APC 3 will continue to apply. USEPA has determined that the submitted NSR rules will meet the Pb NSR requirements and satisfy the one remaining deficiency in the Minnesota Pb Plan. USEPA is finally approving this one remaining element in Minnesota's Pb plan and approving Minnesota's Pb plan as meeting all the requirements of the Act. Finally, Minnesota did not submit these regulations to meet the requirements of either Section 111, Part C, or Part D of the Act, and USEPA is not rulemaking on them as such.

USEPA has yet to approve a Part D NSR plan, *inter alia*, for Minnesota, and, therefore, the section 110(a)(2)(1) growth restrictions have been in place in Minnesota's primary nonattainment areas since July 1, 1979. Because USEPA is not acting on (and could not approve) Minnesota's CPR in relationship to Part D, these restrictions remain in place.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 28, 1988.

Lee M. Thomas.

Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart Y—Minnesota

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1220 is amended by adding paragraph (c)(24) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(24) On January 7, 1985, the State of Minnesota submitted a consolidated permit rule (CPR) to satisfy the requirements of 40 CFR 51.160 through 51.164 for a general new source review (NSR) program, including lead. On October 25, 1985, the State submitted a Memorandum of Agreement (MOA) which remedied certain deficiencies (40 CFR 52.1225(d)). On October 1, 1986, and January 14, 1987, the State committed to implement its NSR program using USEPA's July 8, 1985 (50 FR 27892), regulations for implementing the stack height requirements of Section 123 of the Clean Air Act (40 CFR 52.1225(e)). USEPA is approving the above for general NSR purposes for all sources, except it is disapproving them for those few sources subject to an NSPS requirement (40 CFR Part 60) and exempted from review under 6 MCAR section 4.4303 B.3. For these sources, NSR Rule APC 3 (40 CFR 52.1220(c)(5)), will continue to apply. Additionally, USEPA is taking no action on the CPR in relationship to the requirements of Section 111, Part C, and Part D of the Clean Air Act.

(i) Incorporation by Reference.

(A) Within Title 6 Environment, Minnesota Code of Administrative Rules, Part 4 Pollution Control Agency (6 MCAR 4), Rule 6 MCAR 4 section 4.0002, Parts A, B, C, and E—Definitions, Abbreviations, Applicability of Standards, and Circumvention (formerly APC 2) Proposed and Published in Volume 8 of the State of Minnesota STATE REGISTER (8 S.R.) on October 17, 1983, at 8 S.R. 682 and adopted as modified on April 16, 1984, at 8 S.R. 2275.

(B) Rules 6 MCAR section 4.4001 through section 4.4021—Permits (formerly APC 3)—Proposed and Published on December 19, 1983, at 8 S.R. 1419 (text of rule starting at 8 S.R. 1420) and adopted as modified on April 16, 1984, at 8 S.R. 2278.

(C) Rules 6 MCAR section 4.4301 through section 4.4305—Air Emission Facility Permits—Proposed and Published on December 19, 1983, at 8 S.R. 1419 (text of rule starting at 8 S.R. 1470) and adopted as proposed on April 16, 1984, at 8 S.R. 2276.

(D) Rules 6 MCAR section 4.4311 through section 4.4321—Indirect Source Permits (formerly APC 19)—Proposed and Published on December 19, 1983, at 8 S.R. 1419 (text of rule starting at 8 S.R. 1472) and adopted as modified on April 16, 1984, at 8 S.R. 2277.

* * * * *

3. Section 52.1225 is amended by removing and reserving paragraphs (a) and (b) and adding paragraphs (c), (d), and (e) to read as follows:

§ 52.1225 Review of new sources and modifications.

(a)–(b) [Reserved]

(c) Minnesota's Consolidated Permit Rules (CPR) (40 CFR 52.1220(c)(24)), are disapproved for those sources to which an NSPS requirement applies (40 CFR Part 60) and which are also exempted from review under 6 MCAR section 4.4303 B.3. These are being disapproved because they do not meet the requirements of sections 110(a)(2)(D) and 110(a)(4) of the Clean Air Act (Act). For these sources, NSR Rule APC 3 (40 CFR 52.1220(c)(5)), will continue to apply.

(d) The USEPA and the State of Minnesota signed a Memorandum of Agreement (MOA) on July 8, 1985, and July 24, 1985, respectively, for implementing Minnesota's CPR (40 CFR 52.1220(c)(24)). The MOA provides that Minnesota will meet the public notice and comment requirements of 40 CFR 51.161 in cases with the following types of permits:

(1) A permit for a "major stationary source" and for a "major modification" as defined and applied by 40 CFR 51.165(a)(1) (iv), (v), (vi), and (x).

(2) A permit for an emission facility with an actual Pb emission rate of 0.6 tons or more per year; or

(3) A permit for a facility, building, structure or installation in accordance with 40 CFR 51.160(a) which must be reviewed to assure that the source will not potentially violate a control strategy or interfere with attainment or maintenance of a national ambient air quality standard.

(e) The State of Minnesota has committed to conform to the Stack Height Regulations, as set forth in 40 CFR Part 51. In a January 14, 1987, letter to David Kee, USEPA; Thomas J. Kalitowski, Executive Director, Minnesota Pollution Control Agency, stated:

> Minnesota does not currently have a stack height rule, nor do we intend to adopt such a rule. Instead, we will conform with the Stack Height Regulations as set forth in the July 8, 1985, **Federal Register** in issuing permits for new or modified sources. In cases where that rule is not clear, we will contact USEPA Region V and conform to the current federal interpretation of the item in question.

[FR Doc. 88-10215 Filed 5-12-88; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[FRL-3379-3]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces an extension of previously issued delegations of authority for the implementation and enforcement of the federal Standards of Performance for New Stationary Sources (commonly known as New Source Performance Standards or NSPS), 40 CFR Part 60, and the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61. The action which involved EPA and the state of Iowa added six (6) NSPS and one (1) NESHAP categories to the delegations of authority and modified two (2) previously-delegated NSPS categories. The NSPS delegation now includes all categories except for grain elevators (Subpart DD) for which federal standards have been promulgated by the EPA through June 4, 1987. The NESHAP delegation now includes all categories promulgated through March 19, 1987, except for those covering radon (Subparts B and W), radionuclides (Subparts H, I, and K), asbestos renovation and demolition (under Subpart M), and two inorganic arsenic source categories (Subparts N and O).

EFFECTIVE DATE: March 16, 1988.

ADDRESSES: All requests, reports, applications, submittals and such other communications required to be submitted under 40 CFR Part 60 or Part 61, including notifications required to be submitted under Subpart A of the regulations, for affected facilities or activities in Iowa should be sent to Chief, Air Quality and Solid Waste Protection Bureau, Iowa Department of Natural Resources (IDNR), Henry A. Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319. A copy of all notices required by Subpart A also must be sent to Director, Air and Toxics Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address or by calling 913/236-2896 (FTS: 757-2896).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of the EPA to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR Part 60 and Part 61, respectively. EPA retains concurrent authority to implement and enforce the delegated standards. The delegation shifts the primary responsibility for implementation and enforcement of the standards from EPA to the state government.

On August 20, 1984, EPA and the state of Iowa entered into a delegation of authority agreement whereby Iowa automatically receives authority to implement and enforce federal NSPS and NESHAP standards upon the adoption of the standards by the state government. (See 50 FR 933.) Prior to August 20, 1984, EPA delegated to the state of Iowa authority to implement and enforce the standards for numerous categories in various delegation and extension of authority actions. The action described below does not affect these previous delegation or extension of authority actions.

On January 19, 1988, Iowa revised its rules to adopt, by reference, the standards for six (6) additional NSPS and one (1) additional NESHAP regulations promulgated by EPA. Iowa also revised two previously-adopted NSPS categories to match the amended federal regulations. The adoption action and regulation changes became effective on March 16, 1988. The IDNR informed EPA of the adoption action in a letter dated January 22, 1988.

EPA subsequently acknowledged the adoption and the corresponding delegation of authority in a letter to IDNR on April 5, 1988. The delegation occurred under the terms of the above-mentioned August 20, 1984, automatic delegation of authority agreement.

EPA hereby notifies interested individuals that, effective March 16, 1988, EPA delegates the authorization to implement and enforce the federally-established standards for the following additional or amended categories to the state of Iowa.

NSPS Adoptions

Subpart Na—Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983;

Subpart KKK—Equipment Leaks of VOC from Onshore Natural Gas Processing Plants;

Subpart LLL—Onshore Natural Gas Processing; SO_2 Emissions;

Subpart OOO—Nonmetallic Mineral Processing Plants;

Subpart Db—Industrial-Commercial-Institutional Steam Generating Units; and

Subpart Kb—Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.

NSPS Amendments

Subpart K—Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.

Subpart Ka—Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.