

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[FL-90-200322(b); FRL-7640-5]

**Approval and Promulgation of Implementation Plans; Florida: Tampa Bay Area Maintenance Plan Update****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the Florida Department of Environmental Protection on December 20, 2002. This SIP revision satisfies the requirement of the Clean Air Act (CAA) as amended in 1990 for the second 10-year update for the Tampa Bay area (Hillsborough and Pinellas Counties) 1-hour ozone maintenance plan. For transportation purposes, EPA is also finalizing its adequacy determination of the new Motor Vehicle Emissions Budgets (MVEBs) for the year 2015. EPA has determined that the MVEBs for the year 2015 contained in this SIP revision are adequate for transportation conformity purposes. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before April 28, 2004.

**ADDRESSES:** Comments may be submitted by mail to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY**

**INFORMATION** (sections V. B.1. through 3.) which is published in the Rules Section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-90343. Mr. Lakeman can also be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov) or Lynorae Benjamin, Air Quality Modeling & Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Benjamin's phone number is 404-562-9040. She can be reached via electronic mail at [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: March 17, 2004.

**A. Stanley Meiburg,**  
Acting Regional Administrator, Region 4.  
[FR Doc. 04-6825 Filed 3-26-04; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 123**

[FRL-7641-1]

**State Program Requirements; Revision of the Approved National Pollutant Discharge Elimination System (NPDES) Program in North Dakota****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule; notice of application and public comment period.

**SUMMARY:** The State of North Dakota has submitted an application to EPA to revise the existing North Dakota Pollutant Discharge Elimination System (NDPDES) program to include administration and enforcement of the Industrial Pretreatment Program. According to the State's application dated November 12, 2003, this program would be administered by the North Dakota Department of Health (NDDOH), Division of Water Quality Department.

The application from North Dakota is complete and is available for viewing and copying. The EPA has reviewed the State's request for delegation for completeness and adequacy and has

found that the application meets federal equivalency regulations.

**DATES:** Written comments on this proposed rule received on or before April 28, 2004, will be considered before issuing an approved final rule. Comments postmarked after this date will not be considered.

**ADDRESSES:** Anyone can view and copy North Dakota's application for revision from 8 a.m. until 5 p.m., Monday through Friday, excluding holidays, at the North Dakota Department of Health, 1200 Missouri Avenue, Bismarck, North Dakota or at the EPA Regional Offices located at 999 18th Street, Suite 300, Denver, Colorado. Requests for copies should be addressed to Gary Bracht, North Dakota Department of Health at the above address or at telephone number (701) 328-5210. (There may be a charge for copies.) Electronic comments are encouraged and should be submitted to the e-mail address of [harris.jennifer@epa.gov](mailto:harris.jennifer@epa.gov) or send written comments to Jennifer Harris, U.S. EPA Region 8, 8P-W, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Harris, Water Program (8P-W), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466; telephone number (303) 312-6254, email address [harris.jennifer@epa.gov](mailto:harris.jennifer@epa.gov).

*I. Background:* Under section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, the EPA may issue permits allowing discharges of pollutants from point sources into waters of the United States, subject to various requirements of the CWA. These permits are known as National Pollutant Discharge Elimination System (NPDES) permits. Section 402(b) of the CWA, 33 U.S.C. 1342(b), allows states to apply to the EPA for authorization to administer their own NPDES permit programs. In 1975, the EPA approved North Dakota's application to administer the North Dakota Pollutant Discharge Elimination System (NDPDES) program.

Section 402(b) of the CWA, 33 U.S.C. 1345(c), authorizes any state desiring to administer its own industrial pretreatment program to do so in accordance with section 402 (b)(8) and (9) of the CWA, following the procedures and requirements set out in 40 CFR 403.10. On November 12, 2003, North Dakota submitted a letter to the EPA requesting that the State's original NPDES authorization be amended to include an Industrial Pretreatment program described in an accompanying application dated November 12, 2003.

*II. Public Comments:* A public comment period will be conducted for

30 days and noticed in a **Federal Register** notice. Commenters may request a public hearing. A hearing will be held if there is significant public interest based on requests received. A request should be made in writing within the comment period and sent to Jennifer Harris, Water Program (8P-W), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466; telephone number (303) 312-6254, email address [harris.jennifer@epa.gov](mailto:harris.jennifer@epa.gov). A copy of the notice will be published in the following newspapers in North Dakota: Bismarck Tribune, Bismarck, the Herald in Grand Forks, and the Fargo Forum in Fargo, and in individual mailings to persons known to be interested in such matters.

**III. Threatened and Endangered Species:** On February 25, 2004, following discussions with representatives of the EPA, the Field Supervisor of the North Dakota Field Office of the United States Fish and Wildlife Service concurred with the EPA's determination that approving North Dakota's Industrial Pretreatment program application was unlikely either to jeopardize the continued existence of any species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, or to result in the adverse modification of designated critical habitat for any such species.

**IV. Historic Preservation:** On February 3, 2004, the North Dakota State Historical Society provided the EPA with a written determination that the addition of the Industrial Pretreatment program to the NDPDES program would have no effect on historic properties in North Dakota.

**V. Indian Country:** North Dakota is not authorized to carry out its Industrial Pretreatment program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

1. Lands within the exterior boundaries of the following Indian reservations located within the State of North Dakota:

- A. Fort Totten Indian Reservation,
- B. Standing Rock Indian Reservation,
- C. Fort Berthold Indian Reservation,
- and
- D. Turtle Mountain Indian Reservation,

2. Any land held in trust by the U.S. for an Indian Tribe, and

3. Any other land which is "Indian country" within the meaning of 18 U.S.C. 1151.

**VI. Administrative Requirements:** The EPA has long considered a determination to approve or deny a State NPDES program submission to

constitute an adjudication, not a rulemaking. This is because an "approval," as that term is used in the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, constitutes a "license," which, in turn, is the product of an "adjudication." Therefore, the requirements for rules that are established by the statutes and Executive Orders mentioned below would not apply to this action. Even if this action were considered a rulemaking, the statutes and Executive Orders discussed below would not apply for the following reasons.

**A. Paperwork Reduction Act:** The EPA has determined that there is no need for an Information Collection Request under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this action would not impose any new federal reporting or recordkeeping requirements. Because the State of North Dakota has adopted the EPA's Industrial Pretreatment regulations at 40 CFR 403.10(f)(1), the matters subject to reporting and recordkeeping requirements will remain the same after the EPA's approval of North Dakota's program.

**B. Regulatory Flexibility Act:** The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As Regional Administrator for EPA Region 8, I hereby certify, pursuant to 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

**C. Unfunded Mandates Reform Act:** Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA is generally required to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with federal mandates that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. The EPA's approval of North Dakota's program is not a federal mandate because there is no federal mandate for states to

establish industrial pretreatment programs.

**D. National Technology Transfer and Advancement Act:** Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, *e.g.*, material specifications, test methods, sampling procedures, and business practices, that are developed or adopted by voluntary consensus standards bodies. This action does not involve the use of technical standards subject to the NTTAA.

**E. Executive Order 12866:** Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether its regulatory actions are "significant" and therefore subject to review by the Office of Management and Budget. The EPA has determined that this approval action is not "significant" for purposes of Executive Order 12866 because, as mentioned above, North Dakota has adopted the EPA's industrial pretreatment program regulations.

**F. Executive Order 12898—Environmental Justice:** Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," dated February 11, 1994, focuses federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities. Today's action will not diminish the health protection to minority and low-income populations because, as mentioned above, it will not impose any different requirements than those already in effect for industrial pretreatment facilities.

**G. Executive Order 13045—Protection of Children:** Executive Order 13045, dated April 23, 1997 (62 FR 19885), applies to any rule that (1) is determined to be "economically significant" as defined in Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and it does not concern any additional health or safety risks to children.

**H. Executive Order 13175—Consultation with Tribes:** Under Executive Order 13175, no federal

agency may issue a regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or the agency consults with tribal officials early in the process of developing the proposed regulation. This action will not significantly affect any Indian tribes. As indicated above, North Dakota is not authorized to implement its pretreatment program in Indian country. The EPA will continue to administer the existing Industrial Pretreatment program in Indian country in North Dakota.

**I. Executive Order 13132—Federalism:** Executive Order 13132, entitled “Federalism,” dated August 10, 1999 (64 FR 43255), requires the EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” The phrase “policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.” This action does not have federalism implications. It will not have any substantial direct effects on the States, on the relationship between States and the national government, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. It will merely put in place a State regulatory program that is identical to the existing federal program.

**J. Executive Order 13211—Energy Effects:** Because it is not a “significant regulatory action” under Executive Order 12866, this action is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001).

Dated: March 19, 2004.

**Robert E. Roberts,**

*Regional Administrator, Region VIII.*

[FR Doc. 04–6928 Filed 3–26–04; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter I

[WC Docket No. 04–36; FCC 04–28]

### Review of Regulatory Requirements for IP-Enabled Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document seeks comment on issues relating to services and applications utilizing Internet Protocol (IP), collectively referred to here as “IP-enabled services.” These services include, but are not limited to, voice over IP (VoIP) services, other communications capabilities utilizing the Internet Protocol, software-based applications that facilitate use of those services, and future services using IP expected to emerge in the market. As customers begin to substitute IP-enabled services for traditional communications, the Commission seeks comment as to the rate and extent of that substitution. Further, comments are requested on IP-enabled services presently available, expected future development of such services, how to distinguish among such services, and what regulatory requirements, if any, should apply to IP-enabled services.

This NPRM seeks comment on ways in which the Commission might categorize IP-enabled services to ensure that any regulations applied are limited to those services and/or applications for which they are most appropriate. In particular, comments are requested on whether the services comprising each category constitute “telecommunications services” or “information services” under the definitions set forth in the Act. Noting the importance of these legal classifications, as well as the Commission’s statutory forbearance authority and Title 1 ancillary jurisdiction, this NPRM describes several central regulatory requirements and asks which, if any, should apply to each category of IP-enabled service. These regulatory requirements include, among others, those addressing disability accessibility, the 911 and E911 systems, access charges, universal service, consumer protection, and traditional common carrier obligations.

**DATES:** Comments are due on or before May 28, 2004, and Reply Comments are due on or before June 28, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. *See*

**SUPPLEMENTARY INFORMATION** for further filing instructions.

### FOR FURTHER INFORMATION CONTACT:

Russell Hanser, Senior Attorney, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0832, or at [Russell.Hanser@fcc.gov](mailto:Russell.Hanser@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Notice of Proposed Rulemaking (NPRM)* in WC Docket No. 04–36, FCC 04–28, adopted February 12, 2004, and released March 10, 2004. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission’s duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com). It is also available on the Commission’s Web site at <http://www.fcc.gov>.

Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies. All filings should refer to WC Docket No. 04–36. Comments filed through ECFS can be sent as an electronic file via the Internet at <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is WC Docket No. 04–36. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfshelp@fcc.gov](mailto:ecfshelp@fcc.gov), and should include the following words in the regarding line of the message: “get form<your e-mail address>.” A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. Parties filing by paper must also send five (5) courtesy copies to the attention of Janice M. Myles, Wireline Competition Bureau, Competition Policy Division, 445 12th Street, SW., Suite 5–C327, Washington, DC 20554, or via e-mail [janice.myles@fcc.gov](mailto:janice.myles@fcc.gov). Paper filings and courtesy copies must be delivered in the following manner. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience