3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115–232), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by the APA or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

1. The authority citation for 15 CFR part 744 continues to read as follows:


2. Supplement No. 4 to part 744 is amended by adding in alphabetical order, under CHINA, PEOPLE’S REPUBLIC OF, one Chinese entity, “Fujian Jinhua Integrated Circuit Company, Ltd.” to read as follows:

Supplement No. 4 to Part 744—Entity List

<table>
<thead>
<tr>
<th>Country</th>
<th>Entity</th>
<th>License requirement</th>
<th>License review policy</th>
<th>Federal Register citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHINA, PEOPLE’S REPUBLIC OF ....</td>
<td>Fujian Jinhua Integrated Circuit Company, Ltd., a.k.a., the following one alias: -JHICC.</td>
<td>For all items subject to the EAR. (See § 744.11 of the EAR).</td>
<td>Presumption of denial.</td>
<td>83 FR [INSERT FR PAGE NUMBER] 10/30/2018.</td>
</tr>
<tr>
<td></td>
<td>Sanchuang Park, Century Avenue, Jinjiang City, Fujian Province, China.</td>
<td>*</td>
<td>*</td>
<td></td>
</tr>
</tbody>
</table>

Richard E. Ashooh,
Assistant Secretary for Export Administration.

[FR Doc. 2018–23693 Filed 10–29–18; 8:45 am]
BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272


North Dakota: Authorization of State Hazardous Waste Management Program Revisions and Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting final authorization to the hazardous waste program revisions submitted by North Dakota on September 20, 2016 and March 24, 2017. The EPA published a proposed rule on June 5, 2018, and provided for public comment. The comment period ended on July 5, 2018. No comments were received for this rulemaking. No further opportunity for comment will be provided. This final rule also codifies and incorporates by reference the authorized provisions of the North Dakota regulations in the Code of Federal Regulations.

DATES: This final rule is effective on October 30, 2018. The incorporation by reference of authorized provisions in the North Dakota regulations contained in this rule is approved by the Director of the Federal Register as of October 30, 2018, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

FOR FURTHER INFORMATION CONTACT: Moye Lin, Resource Conservation and Recovery Program, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129; phone number (303) 312–6667; Email address: lin.moye@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authorization of Revisions to North Dakota’s Hazardous Waste Program and Clarification

North Dakota submitted a final complete program revision application on September 20, 2016, and March 24, 2017, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision that North Dakota’s hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. For a list of rules that become effective with this final rule, please see the proposed rule published in the June 5, 2018 Federal Register at 83 FR 25986. The EPA is making one clarification to the proposed rule with respect to the impact of the vacatur of certain provisions of the Revisions to the Definition of Solid Waste (DSW) Rule published on January 13, 2015 (80 FR 1694), by the U.S. Court of Appeals for the District of Columbia Circuit, Am. Petroleum Inst. v. EPA, 862 F.3d 50 (D.C. Cir. 2017) and Am. Petroleum Inst. v. EPA, No. 09–1038 (D.C. Cir. Mar. 6, 2018). On May 30, 2018 (83 FR 24664; Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule), the EPA published a final which determined that for states such as North Dakota that had adopted the 2000 DSW Rule before the vacatur, those state provisions will be considered broader in scope than the federal program as it pertains to the specific vacated provisions.

II. Incorporation by Reference

In the proposed rule published on June 5, 2018 (83 FR 25986), the EPA also proposed to codify the EPA’s authorization of North Dakota’s base hazardous waste management program and the state’s revisions to that program. In this action, the EPA is amending 40 CFR 272.1751 to incorporate by reference North Dakota’s authorized hazardous waste statutes and regulations. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference North Dakota’s authorized hazardous waste statutes and regulations as described in Section I, above. The EPA has made, and will continue to make, these materials generally available electronically through http://www.regulations.gov and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information). Copies of the regulations that are incorporated by reference are also available from the North Dakota Department of Health (NDDH) from 9:00 a.m. to 4:00 p.m., 918 East Divide Avenue, 3rd Floor, Bismarck, North Dakota 58501–1947, phone number (701) 328–5166. The public is advised to call in advance to verify business hours.

Section 272.1751 also references material which is not being incorporated by reference, but which the EPA considered in determining the adequacy of North Dakota’s program. Section 272.1751(c)(2) references the demonstration of adequate authority, including procedural and enforcement provisions, which provides the legal basis for the state’s implementation of the hazardous waste management program. In addition, § 272.1751(c)(5), (c)(6), and (c)(7) reference the Memorandum of Agreement, the Attorney General’s Statements, and the Program Description, respectively. These documents are evaluated as part of the approval process of the hazardous waste management program in accordance with subtitle C of CRRA but are not part of the material to be incorporated by reference. The public is reminded that some provisions of North Dakota’s hazardous waste program are not part of the federally-authorized state program. These non-authorized provisions include:

1. Provisions that are not part of the CRRA subtitle C program because they are “broader in scope” than CRRA subtitle C (see 40 CFR 271.11(i)).
2. Federal rules for which North Dakota is not authorized, but which have been incorporated into the state regulations because of the way the state adopted federal regulations by reference.
3. State procedural and enforcement authorities which are necessary to establish the ability of the state’s program to enforce compliance, but which do not supplant the federal statutory enforcement and procedural authorities.
4. Federal rules which North Dakota adopted, but which were vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 09–1038, rulings dated July 7, 2017, and March 6, 2018). State provisions that are “broader in scope” than the federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, the EPA lists in 40 CFR 272.1751(c)(3) the North Dakota provisions that are “broader in scope” than the federal program, and which are not part of the authorized program being incorporated by reference. While “broader in scope” provisions are not part of the authorized program and cannot be enforced by the EPA, the state may enforce such provisions under state law.

North Dakota has adopted, but is not authorized for, the federal rules published in the Federal Register on April 12, 1996 (61 FR 16290); October 22, 1998 (63 FR 56710), and January 8, 2010 (75 FR 1235). Therefore, these federal amendments included in North Dakota’s adoption by reference at section 33–24–06–16.5 of the North Dakota Administrative Code, are not part of the state’s authorized program and are not part of the incorporation by reference. The June 5, 2018 proposed rule provides details about state provisions which are not part of this amendment to the CFR, as well as the effect of North Dakota’s codification on enforcement and on federal requirements promulgated under the Hazardous and Solid Waste Amendments of 1984 (HSWA).

III. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes and codifies state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. Therefore, this action is not subject to review by OMB. This action is not subject to Executive Order 13771 (82 FR 9339, February 3, 2017) because today’s authorization and codification of North Dakota’s revised hazardous waste program under RCRA is exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes and codifies pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will have substantial direct effects on the states, on the relationship between the national...
government and the states, or on the
distribution of power and
responsibilities among the various
levels of government, as specified in
Executive Order 13132 (64 FR 43255,
August 10, 1999), because it merely
authorizes and codifies state
requirements as part of the state RCRA
hazardous waste program without
altering the relationship or the
distribution of power and
responsibilities established by RCRA.
This action also is not subject to
Executive Order 13045 (62 FR 19885,
April 23, 1997), because it is not
economically significant, and it does not
make decisions based on environmental
health or safety risks. 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), because it is not a significant
regulatory action under Executive Order
12866.
Under RCRA 3006(b), the EPA grants
a state’s application for authorization as
long as the state meets the criteria
required by RCRA. It would thus be
inconsistent with applicable law for the
EPA, when it reviews a state
authorization application, to require the
use of any particular voluntary
consensus standard in place of another
standard that otherwise satisfies the
requirements of RCRA. Thus, the
requirements of section 12(d) of the
National Technology Transfer and
272 note) do not apply. As required by
section 3 of Executive Order 12866 (61
FR 4729, February 7, 1996), in issuing
this action, the EPA has taken the
necessary steps to eliminate drafting
errors and ambiguity, minimize
potential litigation and provide a clear
legal standard for affected conduct. The
EPA has complied with Executive Order
12630 (53 FR 8859, March 15, 1988) by
examining the takings implications of
the action in accordance with the
“Attorney General’s Supplemental
Guidelines for the Evaluation of Risk
and Avoidance of Unanticipated
Takings” issued under the executive
order. This action does not impose an
information collection burden under the
provisions of the Paperwork Reduction
Act of 1995 (44 U.S.C. 3501 et seq.).
“Burden” is defined at 5 CFR 1320.3(b).
Executive Order 12898 (59 FR 7629,
February 16, 1994) establishes federal
executive policy on environmental
justice. Its main provision directs
federal agencies, to the greatest extent
practicable and permitted by law, to
make race a principal aspect of their
mission by identifying and addressing,
as appropriate, disproportionately high
and adverse human health or
environmental effects of their programs,
policies, and activities on minority
populations and low-income
populations in the United States.
Because this rule authorizes and
codifies pre-existing state rules which
are at least equivalent to, and no less
stringent than existing federal
requirements, and imposes no
additional requirements beyond those
imposed by state law, and there are no
anticipated significant adverse human
health or environmental effects, the rule
is not subject to Executive Order 12898.
The Congressional Review Act, 5
U.S.C. 801–808, generally provides that
before a rule may take effect, the agency
promulgating the rule must submit a
rule report, which includes a copy of
the rule to each House of the Congress
and to the Comptroller General of the
United States. The EPA will submit a
report containing this document and
other required information to the U.S.
Senate, the U.S. House of
Representatives, and the Comptroller
General of the United States prior to
publication in the Federal Register.
A major rule cannot take effect until 60
days after it is published in the Federal
Register. This action is not a “major
rule” as defined by 5 U.S.C. 804(2). This
action will be effective October 30,
2018.

List of Subjects
40 CFR Part 271
Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 272
Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: October 24, 2018
Douglas Benevento,
Regional Administrator, EPA Region 8.

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), EPA is granting final authorization under part 272 of the State of North Dakota for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows:

PART 272—APPROVED STATE
HAZARDOUS WASTE MANAGEMENT
PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and

2. Revise § 272.1751 to read as follows:

§ 272.1751 North Dakota State-
administered program: Final authorization.

(a) History of the State of North
Dakota authorization. Pursuant to
section 3006(b) of RCRA, 42 U.S.C.
6926(b), North Dakota has final
authorization for the following elements
as submitted to the EPA in North
Dakota’s base program application for
final authorization which was approved
by the EPA effective on October 19,
1984. Subsequent program revision
applications were approved effective on
August 24, 1990, July 6, 1992, June 6,
1994, March 20, 2000, November 25,
2005, April 14, 2008, and October 30,
2018.

(b) Enforcement authority. The State of North Dakota has primary
responsibility for enforcing its
hazardous waste management program.
However, the EPA retains the authority
to exercise its inspection and
enforcement authorities in accordance
with sections 3007, 3008, 3013, 7003 of
RCRA, 42 U.S.C. 6927, 6928, 6934,
6973, and any other applicable statutory
and regulatory provisions, regardless of
whether the state has taken its own
actions, as well as in accordance with other statutory and regulatory
provisions.

(c) State Statutes and Regulations—
(1) Incorporation by reference. The
North Dakota statutes and regulations
cited in paragraph (c)(1)(i) of this
section are incorporated by reference as
part of the hazardous waste
management program under Subtitle C
of RCRA, 42 U.S.C. 6921 et seq. This
incorporation by reference is approved
by the Director of the Federal Register
in accordance with 5 U.S.C. 552(a) and
1 CFR part 51. You may obtain copies of
the North Dakota regulations that are
incorporated by reference in this
paragraph from the North Dakota
Legislative Council, Second Floor, State
Capitol, 600 E Boulevard Avenue,
Bismarck, North Dakota 58505, phone
(701) 328–2916. You may inspect a copy
at EPA Region 8, 1595 Wynkoop Street,
(3) Related legal provisions. The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the authorized program, are not incorporated by reference, and are not federally enforceable:

(i) North Dakota Century Code, 2012 Replacement, Volume 4A, Chapter 23–01 “State Department of Health,” Section 23–01–01.4.4; and 23–01–01.4.5.7.4.

(ii) North Dakota Century Code, 2012 Replacement, Chapter 23–20.3 “Hazardous Waste Management,” Sections 23–20.3–02(1); 23–20.3–05.1; 23–20.3–05.2; and 23–20.3–05.3.


(iv) North Dakota’s hazardous waste regulations set forth additional transporter requirements including permit requirements at 33–24–04–02. The transporter permit requirements are broader in scope than the federal program.

(4) Unauthorized State amendments and provisions. (i) North Dakota has partially or fully adopted, but is not authorized to implement, the federal rule published in the Federal Register on October 22, 1998, titled Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement and Closure Process; Final Rule (HSWA/non-HSWA). The EPA will continue to implement the federal HSWA requirements for which North Dakota is not authorized until the state receives specific authorization for those requirements.


(iii) North Dakota has adopted the following federal provisions from the Revisions to the Definition of Solid Waste Rule, published January 13, 2015, which have since been vacated by the U.S. Court of Appeals for the District of Columbia Circuit in Am. Petroleum Inst. v. EPA, 862 F.3d 50 (D.C. Cir. 2017) and Am. Petroleum Inst. v. EPA, No. 09–1038 (D.C. Cir. Mar. 6, 2018) (vacating both the Factor 4 Legitimacy Test and the Verified Recycler Exclusion aspects of the 2015 DSW Rule): One criterion in the determination of whether recycling is legitimate at 40 CFR 260.43(a)(4); the verified recycler exclusion, which allowed generators to send their hazardous secondary materials to certain reclaimers at 40 CFR 260.31(d) and the associated provisions at 40 CFR 260.30(d) and 260.31(d), which address the criteria in the variance determination for exceptions to the classification of hazardous secondary materials as a solid waste. As a result, those state provisions will be considered broader in scope than the federal program, as it pertains to the specific vacated provisions, and are listed in §272.1751(c)(3)(iii) with the rest of North Dakota’s broader in scope regulatory provisions.

(5) Memorandum of Agreement. The Memorandum of Agreement between the EPA Region 8 and the State of North Dakota, signed by the Environmental Health Section of the North Dakota Department of Health on July 18, 2016, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.


(7) Program Description. The Program Description and any other materials submitted as supplements, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.
Chapter 33–24–04—Standards for Transports: Sections 33–24–04–01, except .4 and Note following paragraph .3.b; 33–24–04–02.1, except the phrase “a transporter permit, and a registration certificate”; 33–24–04–02.2, except the phrases “a registration certificate, or a transporter permit,” in the first sentence, and “and issue a registration certificate” in the second sentence; and 33–24–04–03 through 33–24–04–08.


Copies of the North Dakota regulations that are incorporated by reference are available from North Dakota Legislative Counsel, Second Floor, State Capitol, 600 East Boulevard Avenue, Bismarck, North Dakota 58505, phone number: (701) 328–2916.

* * * * *

[F.R. Doc. 2018–23633 Filed 10–29–18; 8:45 am]

BILLING CODE 6560–50–P