

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation <sup>3</sup>	Explanations
VI. Revision to Implementation Plan for Air Quality Control Plan State of Wyoming: Addition of section to Control Strategy Chapter for Implementation Plan Reviews	Statewide .....	4/30/91 .....	4/19/83, 48 FR 16682.	
VII. SIP to meet Air Quality Monitoring 40 CFR part 58	Statewide .....	Submitted: 8/26/81 .....	2/9/82, 47 FR 5892.	
VIII. Emergency Episode Contingency Plan	Statewide .....	Submitted: 8/26/81 .....	2/9/82, 47 FR 5892.	
IX. Implementation Plan for Lead	Statewide .....	Submitted: 8/30/84 .....	10/11/84, 49 FR 39843.	
X. Implementation Plan for Class I Visibility Protection	Statewide .....	Submitted: 9/6/88 .....	2/15/89, 54 FR 6912.	
XI. Commitment to conduct stack height evaluations in accordance with the "Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulations)," EPA 450/4-80-023R, June, 1985.	Statewide .....	Submitted: 12/9/88 .....	3/17/89, 54 FR 11186.	
XII. Stack Height Demonstration Analyses	Statewide .....	Submitted: 8/5/86 .....	6/7/89, 54 FR 24334.	
XIII. Implementation Plan on Air Quality Surveillance for Inhalable Particulate Matter (PM10)	Statewide .....	Submitted: 3/14/89, Adopted: 12/13/88.	7/10/89 55 FR 28197.	
XIV. NOx Increment Implementation	Statewide .....	Submitted: 11/20/90 ...	5/24/91, 56 FR 23811.	
XV. Small Business Program	Statewide .....	Submitted: 11/1/93 .....	6/20/94, 59 FR 31548.	
XVI. Implementation Plan for PM-10 Control Strategies Sheridan, Wyoming (includes City of Sheridan—Air Quality Maintenance Plan)	Sheridan .....	Submitted: 8/28/89, Adopted: 7/17/89.	6/23/94, 59 FR 32360	Approval does not include sections 2 and 3, Voluntary Curtailment of Solid Fuel Combustion and Industrial Sources.
XVII. Memorandum of Agreement on Procedures for Protecting PM10 NAAQS in the Powder River Basin	Powder River Basin ...	Signed: 12/22/93 .....	9/12/95, 60 FR 47290.	

<sup>3</sup>In order to determine the EPA effective date for a specific provision that is listed in this table, consult the **Federal Register** cited in this column for that particular provision.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R08-OAR-2005-CO-0002; FRL-8232-2]

**Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection**

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

**ACTION:** Final rule.

**SUMMARY:** On January 24, 2006, EPA published a proposed approval of a revision updating the Long-Term Strategy of the State Implementation Plan (SIP) for Class I Visibility Protection, which was submitted by the Governor of Colorado with a letter dated March 24, 2005. In a February 13, 2006, letter EPA received adverse comments

on our proposed approval from Rocky Mountain Clean Air Action. In this final rulemaking, we address the adverse comments received and finalize our approval.

**DATES:** *Effective Date:* This rule is effective on December 4, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. R08-OAR-2005-CO-0002. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202-2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, Environmental Protection

Agency, Region 8, (303) 312-6449, [platt.amy@epa.gov](mailto:platt.amy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**Definitions**

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

(i) The word *Act* or initials *CAA* mean the Clean Air Act, unless the context indicates otherwise.

(ii) The word *we* or initials *EPA* mean the United States Environmental Protection Agency.

(iii) The initials *SIP* mean State Implementation Plan.

(iv) The word *State* or initials *CO* mean the State of Colorado, unless the context indicates otherwise.

(v) The initials *FLM* mean Federal Land Manager.

## I. Background

Section 169A of the Clean Air Act (CAA),<sup>1</sup> 42 U.S.C. 7491, establishes as a National goal the prevention of any future, and the remedying of any existing, anthropogenic visibility impairment in mandatory Class I Federal areas<sup>2</sup> (referred to herein as the "National goal" or "National visibility goal"). Section 169A called for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National visibility goal, including requiring each State with a mandatory Class I Federal area to revise its SIP to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal (see CAA section 169A(b)(2)). Section 110(a)(2)(I) of the CAA, 42 U.S.C. 7410(a)(2)(I), similarly requires SIPs to meet the visibility protection requirements of the CAA.

We promulgated regulations that required affected States to, among other things, (1) coordinate development of SIPs with appropriate FLMs; (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term (10–15 years) strategy to assure reasonable progress toward the National visibility goal. See 45 FR 80084, December 2, 1980 (codified at 40 CFR 51.300–51.307). The regulations provide for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regulations require that the SIPs provide for periodic review, and revision as appropriate, of the Long-Term Strategy not less frequently than every three years, that the review process include consultation with the appropriate FLMs, and that the State provide a report to the public and EPA that includes an assessment of the State's progress toward the National visibility goal. See 40 CFR 51.306(c).

On July 12, 1985 (50 FR 28544) and November 24, 1987 (52 FR 45132), we disapproved the SIPs of states, including Colorado, that failed to comply with the requirements of the

provisions of 40 CFR 51.302 (visibility general plan requirements), 51.305 (visibility monitoring), and 51.306 (visibility long-term strategy). We also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the CAA, 42 U.S.C. 7410(c)(1).

The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987, which met the criteria of 40 CFR 51.302, 51.305, and 51.306 for general plan requirements, monitoring strategy, and long-term strategies. We approved this SIP revision in the August 12, 1988 **Federal Register** (53 FR 30428), and this revision replaced the Federal plans and regulations in the Colorado Visibility SIP. The Governor of Colorado submitted a subsequent SIP revision for visibility protection with a letter dated November 18, 1992, which we approved on October 11, 1994 (59 FR 51376).

After Colorado's 1992 Long-Term Strategy review, the U.S. Forest Service (USFS) certified visibility impairment at Mt. Zirkel Wilderness Area (MZWA) and named the Hayden and Craig generating stations in the Yampa Valley of Northwest Colorado as suspected sources. The USFS is the FLM for MZWA. This certification was issued on July 14, 1993. Emissions from the Hayden Station were addressed in the State's August 23, 1996 Long-Term Strategy review and revision (see 62 FR 2305, January 16, 1997). Emissions from the Craig Generating Station were addressed in the State's April 19, 2001 Long-Term Strategy review and revision (see 66 FR 35374, July 5, 2001).

The State conducted its next complete periodic review and revision of the long-term strategy in 2002. With an April 12, 2004, letter, the Governor of Colorado submitted that revision to the Long-Term Strategy of Colorado's SIP for Class I Visibility Protection, which we approved on August 1, 2005 (70 FR 44052).

## II. March 24, 2005 Submittal

With a March 24, 2005 letter, the Governor of Colorado submitted a revision to the Long-Term Strategy of Colorado's SIP for Class I Visibility Protection, contained in Part II of the November 18, 2004 document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection." This revision was made to fulfill the requirements to periodically review and, as appropriate, revise the Long-Term Strategy.

The SIP revision is contained in Part II of the November 18, 2004 document entitled "Long-Term Strategy Review

and Revision of Colorado's State Implementation Plan for Class I Visibility Protection." Part II, "Revision of the Long-Term Strategy," incorporates by reference requirements for the Hayden and Craig Generating Stations, including emissions limits and schedules of compliance, as previously approved by EPA on January 16, 1997 (see 62 FR 2305) and July 5, 2001 (see 66 FR 35374). Part II also contains explanatory provisions and analyses that are required by section 169A of the CAA, Federal visibility regulations (40 CFR 51.300 to 51.307), and/or the Colorado Visibility SIP. These requirements address existing impairment, ongoing air pollution programs, smoke management practices, prevention of future impairment, and FLM consultation and communication.

We reviewed the SIP revision and determined it adequately demonstrates that the State is making reasonable progress toward the National visibility goal as required by 40 CFR 51.306. Therefore, on January 24, 2006 (71 FR 3796), EPA proposed approval of this SIP revision.

In addition, Appendix B of Part II of the November 18, 2004 document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection," contains an update of Section XIV, Visibility, of Part D of the Colorado Air Quality Control Commission Regulation No. 3 (Stationary Source Permitting and Air Pollutant Emission Notice Requirements). Although this section has not changed substantively since it was last incorporated into the Visibility SIP (see 53 FR 30431, August 12, 1988, and 59 FR 51379, October 11, 1994), it has been recodified. Therefore, on January 24, 2006 (71 FR 3796) for clarification purposes, we also proposed approval of this recodified version of the State's visibility regulations in order to update the version incorporated into the Visibility SIP.

## III. Response to Comments

*Comment:* In a letter dated February 13, 2006, Rocky Mountain Clean Air Action (RMCAA) submitted adverse comments on our proposed approval. Specifically, RMCAA commented that the SIP revision cannot be approved because of an existing provision in the Colorado SIP related to upsets at stationary sources. In RMCAA's view, the "broad exception to air quality standards and limitations" contained in Colorado's upset provision interferes with applicable requirements concerning attainment and reasonable further progress towards attainment of

<sup>1</sup> The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

<sup>2</sup> Mandatory class I Federal areas include international parks, national wilderness areas, and national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) of the Act (42 U.S.C. 7472(a)). Each mandatory Class I Federal area is the responsibility of a "Federal land manager" (FLM), the Secretary of the department with authority over such lands. See section 302(i) of the Act, 42 U.S.C. 7602(i).

the National Ambient Air Quality Standards (NAAQS) and other applicable requirements of the Act, including the visibility goals under Section 169A. Although the comments address an existing SIP provision that the State did not submit as part of its Visibility SIP revision, the commenter does not believe that EPA can approve the State's Visibility SIP revision until the existing provision is eliminated or revised.

*EPA's Response:* Colorado's upset rule is located in the Colorado Common Provisions Regulation, Section ILE., Upset Conditions and Breakdowns. EPA approved the upset rule on May 31, 1972 (see 37 FR 10842). As noted above, the State did not submit any revisions to its upset rule with the Visibility SIP revision we are approving today. Therefore, we are not acting on the upset rule in this action, and our approval of the Visibility SIP revision will not change Colorado's upset rule or its effect on the implementation and enforcement of the Colorado SIP. Also, our approval of the Visibility SIP revision will not interfere with attainment, reasonable further progress, or any other requirement of the Clean Air Act. Colorado's Visibility SIP revision meets the requirements of our visibility regulations. Thus, our approval is appropriate.

#### IV. Section 110(l)

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. The Colorado SIP revisions that are the subject of this document are consistent with Federal requirements and rules. These revisions were made to demonstrate reasonable further progress toward the National visibility goal, as required by the Act. They do not interfere with the attainment or maintenance of the NAAQS or other applicable requirements of the Act

#### V. Final Action

We have reviewed the adequacy of the State's revision to the Long-Term Strategy of Colorado's SIP for Class I Visibility Protection, contained in Part II of the November 18, 2004 document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection," as submitted by the Governor with a letter dated March 24, 2005. We are approving the revision

as demonstrating reasonable further progress toward the National visibility goal as required by 40 CFR 51.306.

This rule will be effective December 4, 2006 without further notice.

#### VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 4, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 3, 2006.

**Kerrigan G. Clough,**

*Acting Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended to read as follows:

#### **PART 52—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart G—Colorado**

■ 2. Section 52.320 is amended by adding paragraph (c)(108) to read as follows:

##### **§ 52.320 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(108) Revisions to the Long-Term Strategy of Colorado's State Implementation Plan for Class I Visibility Protection (Visibility SIP), as submitted by the Governor on March 24, 2005. The revisions update strategies, activities, and monitoring plans that constitute reasonable progress toward the National visibility goal.

(i) *Incorporation by reference.* (A) "Revision of the Long-Term Strategy," Part II of the November 18, 2004 document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection," effective November 18, 2004.

(B) Colorado Air Quality Control Commission Regulation No. 3, "Stationary Source Permitting and Air Pollutant Emission Notice Requirements," 5 CCR 1001–5, Part D, Section XIV, Visibility, Subsections A through F, effective April 16, 2004.

\* \* \* \* \*

[FR Doc. E6–18416 Filed 11–1–06; 8:45 am]

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[EPA–R03–OAR–2006–0528; FRL–8236–6]

#### **Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Amendments to Nonattainment New Source Review (NSR) Air Quality Permit Program**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia.

This revision consists of amendments to West Virginia's existing Nonattainment New Source Review (NSR) preconstruction air quality permit program regulation. The intended effect of this action is to approve a State Implementation Plan (SIP) revision submitted by West Virginia Department of Environmental Quality.

**DATES:** *Effective Date:* This final rule is effective on December 4, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2006–0528. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

**FOR FURTHER INFORMATION CONTACT:** Rosemarie Nino, (215) 814–3377, or by e-mail at [nino.rose@epa.gov](mailto:nino.rose@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On August 9, 2006 (71 FR 45482), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of amendments to West Virginia's nonattainment new source review (NSR) air quality permit program. The formal SIP revision was submitted by West Virginia Department of Environmental Protection (WVDEP) on December 1, 2005. On December 22, 2005, WVDEP provided supplemental materials consisting of a letter and an attached one page table requesting that EPA exclude from its December 1, 2005 request for SIP approval the provisions of 45 CSR 19, as set forth in the attached table, that pertain to "Clean Unit" and "Pollution Control Project" in order to ensure that their federally-approved regulations are consistent with the United States Court of Appeals for the District of Columbia Circuit's June 24, 2005 ruling in *New York v. EPA*, 413

F.3d 3 (D.C. Cir. 2005). In a separate action, EPA will act on changes made by West Virginia to its prevention of significant deterioration (PSD) construction permit program, also submitted on December 1, 2005.

The Clean Air Act requires that all states including the District of Columbia to submit revisions to their State Implementation Plans that requires State and local permitting agencies to adopt and submit revisions to their part 51 permitting programs, implementing the minimum program elements of the December 31, 2002 "NSR Reform" rulemaking no later than January 2, 2006 (67 FR 80240). West Virginia amended its regulation to satisfy this requirement.

##### **II. Summary of SIP Revision**

West Virginia amended its regulation (45 CSR 19) to meet the minimum requirements of 40 CFR 51.165 and the Clean Air Act. This approval action will effectively replace the previously approved version of 45 CSR 19 as approved in WV SIP on July 2, 1985 (50 FR 27247).

Other specific requirements of West Virginia's existing Nonattainment New Source Review (NSR) preconstruction air quality permit program as 45 CSR 19 and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

##### **III. Final Action**

EPA is approving West Virginia's Nonattainment New Source Review (NSR) preconstruction air quality permit program regulation (45 CSR 19) as a revision to the West Virginia SIP.

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

###### **A. General Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this