

proceed directly to shore to terminate at latitude 30°22'54.46" N, longitude 081°23'48.44" W.

(4) *Sherman Creek restricted area.* This restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, to include Sherman Creek, its tributaries and associated tidal marshes located within the NAVSTA Mayport area boundaries described in this section. The restricted area is completely encircled by roadways and is bordered on the south by Wonderwood Expressway, on the west by SR A1A, on the north by Perimeter Road, and on the east by Mayport Road.

(5) *Danger zone.* The danger zone shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°24'00.31" N, longitude 081°25'06.02" W; thence to latitude 30°24'11.16" N, longitude 081°25'03.90" W; thence to latitude 30°24'00.62" N, longitude 081°24'10.13" W; thence to a point on the shoreline riprap at latitude 30°23'41.26" N, longitude 081°24'08.82" W.

(b) *The regulations—(1) St. Johns River restricted area.* All persons, vessels, or other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the area described in paragraph (a)(2) of this section without the permission of the Commanding Officer, NAVSTA Mayport or his/her authorized representative. This restriction will be in place 24 hours a day, seven days a week. Warning signs notifying individuals of the restricted area boundary and prohibiting entry into the area will be posted at 500-foot intervals along the property boundary.

(2) *Atlantic Ocean restricted area.* All persons, vessels, or other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the area described in paragraph (a)(3) of this section without the permission of the Commanding Officer, NAVSTA Mayport or his/her authorized representative. This restriction will be in place 24 hours a day, seven days a week. Warning signs notifying individuals of the restricted area boundary and prohibiting entry into the area will be posted at 500-foot intervals along the property boundary.

(3) *Sherman Creek restricted area.* All persons, vessels, or other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the area described in paragraph (a)(4) of this section without the permission of the Commanding Officer, NAVSTA

Mayport or his/her authorized representative. This restriction will be in place 24 hours a day, seven days a week. Warning signs notifying individuals of the restricted area boundary and prohibiting entry into the area will be posted at 500-foot intervals along the property boundary where practicable (*e.g.*, not in the wetlands). In addition, a floating Small Craft Intrusion Barrier will be placed across Sherman Creek just east of the A1A bridge and another will be placed across tributaries to Sherman Creek just north of the Wonderwood Expressway.

(4) *Danger zone.* During periods of munitions movement at wharves Bravo and Charlie, no person or vessel shall be allowed to remain within the 1,250-foot Explosive Safety Quantity-Distance arcs generated by the activity. NAVSTA Mayport will not announce or publish notification prior to enforcing this regulation due to the unacceptable security threat posed by advance public notice of military munitions movements.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, NAVSTA Mayport and/or such persons or agencies as he/she may designate. Military vessels will patrol the areas identified in this section 24 hours a day, 7 days a week. Any person or vessel encroaching within the areas identified in this section will be asked to immediately leave the area. Failure to do so will result in the forceful removal of the person or vessel from the area in question.

Dated: April 7, 2010.

Approved.

Michael G. Ensich,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 2010-8786 Filed 4-15-10; 8:45 am]

BILLING CODE 3720-58-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2009-0052; FRL-9136-6]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to the Wyoming Air Quality Standards and Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving two State Implementation Plan revisions submitted by the State of Wyoming on September 11, 2008. Wyoming has revised its Air Quality Standards and

Regulations, specifically Chapter 1, Section 5, *Unavoidable equipment malfunction*, and Chapter 1, Section 6, *Credible evidence*. Because these revisions conform to the Clean Air Act and EPA regulations, EPA is approving the revisions with the intention of making them Federally enforceable. EPA is taking this action under section 110 of the Clean Air Act.

DATES: This rule is effective on June 15, 2010 without further notice, unless EPA receives adverse comment by May 17, 2010. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2009-0052, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* dolan.kathy@epa.gov.
- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2009-0052. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [http://](http://www.regulations.gov)

www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. 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:
Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. 303-312-6142, dolan.kathy@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. General Information
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- IV. Consideration of Section 110(l) of the CAA
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Definitions

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

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

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

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

(iv) The words *State* or *Wyoming* mean the State of Wyoming, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for Preparing Your Comments.** When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background of Wyoming's Submissions

On September 11, 2008 the State of Wyoming submitted to EPA two formal revisions to Wyoming's State Implementation Plan (SIP). These revisions amend Wyoming's Air Quality Standards and Regulations. In particular, Wyoming has revised Chapter 1, Common Provisions, Section 5, *Unavoidable equipment malfunction*, and has added a new section—Section 6, *Credible evidence*—to Chapter 1.

A. Chapter 1, Common Provisions, Section 5, Unavoidable Equipment Malfunction

Wyoming has revised its unavoidable equipment malfunction rule in response to a series of EPA actions. On November 16, 2000, the Administrator of the EPA issued an order granting in part a petition to object to Wyoming's issuance of a Title V permit. *In the Matter of: Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Petition No. VIII-00-1 (Nov. 16, 2000). In the order, the Administrator directed EPA's regional office in Denver (EPA Region 8) to review Wyoming's Abnormal Conditions and Equipment Malfunction rule. On November 1, 2002, in another Title V petition order, the Administrator repeated this direction. *In the Matter of: Title V Permit for Buckingham Lumber Company, Buckingham Lumber Mill*, Petition No. VIII-2002-01 (Nov. 1, 2002). After completing its review, EPA Region 8 identified for Wyoming deficiencies in the rule. Letter from Richard R. Long, Director, Air and Radiation Program, EPA Region 8, to Dan Olson, Administrator, Wyoming's Department of Environmental Quality (Jan. 30, 2003). EPA Region 8 noted that the rule did not conform to Clean Air Act requirements to protect National Ambient Air Quality Standards (NAAQS) and Prevention of Significant Deterioration (PSD) increments. Specifically, the rule allowed an exemption from enforcement for excess emissions that occurred during malfunctions and certain other conditions. EPA's interpretation was and continues to be that the Clean Air Act requires that all periods of excess emissions be treated as violations that cannot be exempted from enforcement. EPA therefore requested that the rule be revised.

On November 16, 2005, the Environmental Quality Council of the Wyoming Department of Environmental Quality approved a revision to the Abnormal Conditions and Equipment Malfunction rule. The revision removed

the existing automatic exemption and replaced it with enforcement discretion provisions for excess emissions caused by malfunctions. The revision became State-effective January 30, 2006. On September 11, 2008, the Governor of the State of Wyoming submitted the revision to Region 8.

B. Chapter 1, Common Provisions, Section 6, Credible Evidence

Wyoming has added the credible evidence section to its rules in response to an EPA SIP call. On February 24, 1997, EPA revised its rule governing the use of credible evidence in enforcement actions. 62 FR 8314. In parallel, EPA directed its Regional Offices to conduct a SIP call to States in order to ensure consistency with the revised credible evidence rule. On October 20, 1999, EPA Region 8 issued a SIP call to Wyoming. In a letter from EPA Regional Administrator William P. Yellowtail notifying Wyoming of the SIP call, EPA stated that the Wyoming SIP did not comply with sections 110(a)(2)(A) and (C) of the CAA because the SIP could be interpreted to limit the types of credible evidence or information that could be used for determining compliance and establishing violations.

On October 23, 2000, the Environmental Quality Council of the Wyoming Department of Environmental Quality approved revisions to the Wyoming Air Quality Standards and Regulations, including the addition of a provision (Chapter 1, Common Provisions, Section 6, *Credible evidence*) allowing for the use of credible evidence in enforcement actions. The added provision became State-effective December 8, 2000. On September 11, 2008, the Governor of the State of Wyoming submitted the revision to Region 8.

III. EPA's Review of Wyoming's Submissions

To determine if Wyoming's submissions should be approved by EPA, EPA must evaluate the submissions for consistency with the CAA and EPA regulations.

A. Revision to Chapter 1, Common Provisions, Section 5, Unavoidable Equipment Malfunction

EPA's interpretations of the Act regarding excess emissions caused by equipment malfunctions are contained in several documents. Most relevant to this action are the following documents: A memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled "Policy on Excess Emissions During Startup,

Shutdown, Maintenance, and Malfunctions"; a clarification to that memorandum from Kathleen M. Bennett issued on February 15, 1983; and a memorandum entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, dated September 20, 1999.¹

As explained in these memoranda, excess emissions are those air emission levels that exceed any applicable emission limitation. Because excess emissions might aggravate air quality so as to prevent attainment and maintenance of the NAAQS or jeopardize the PSD increments, EPA views all periods of excess emissions as violations of the applicable emission limitation. Therefore, EPA will disapprove all SIP revisions that automatically exempt from enforcement excess emissions claimed to result from an equipment malfunction. In addition, EPA will disapprove SIP revisions that give discretion to a state director to determine whether an instance of excess emissions is a violation of an emission limitation, because such a determination could bar EPA and citizens from enforcing applicable requirements.

Instead, under EPA's interpretations, if a state chooses to address violations for excess emissions that occur as a result of claimed malfunctions, the state may take two approaches. The first, the "enforcement discretion" approach, allows a state director to refrain from taking enforcement action for a violation if certain criteria are met. The second, the "affirmative defense" approach, allows a source to avoid penalties if it can prove that certain conditions are met.

Wyoming has selected the enforcement discretion approach. Under this approach, the state director, in evaluating whether to exercise discretion to decline enforcement for a violation caused by an unavoidable malfunction, should consider whether the following criteria have been satisfied:

1. To the maximum extent practicable the air pollution control equipment,

process equipment, or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;

2. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;

3. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and

5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

We have evaluated Wyoming's enforcement discretion provisions for excess emissions caused by unavoidable equipment malfunctions. The provisions are consistent with EPA's interpretations of the CAA as described in the memoranda above. Specifically, Chapter 1, Common Provisions, section 5(b) gives the Wyoming Air Quality Division discretion when deciding whether to "pursue enforcement after considering whether excess emissions resulted from an unavoidable equipment malfunction." The Division is to make this decision by evaluating, on a case-by-case basis, information to be submitted by the source after an incident. The information submitted by the source and considered by the Division is defined in section 5(a)(i)(A) and generally parallels the criteria outlined in the Kathleen Bennett memoranda discussed above. The source has the burden to provide sufficient information to demonstrate that the Division should use its discretion.

EPA's memoranda also discuss a point not explicitly addressed in Wyoming's new rule. There is no language in the new rule explicitly stating that, even when the Division exercises its discretion and declines enforcement, that exercise of discretion does not bar EPA or any citizen from taking an enforcement action for the violation. However, there is also no language in the new rule explicitly creating such a bar. EPA therefore interprets the rule, consistent with EPA's interpretations of the CAA, as not barring EPA and citizen enforcement for violation of applicable requirements when the Division declines

¹ The relevant interpretations were not affected by a subsequent memorandum titled "Reissuance of Clarification—State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," dated December 5, 2001, from Eric Schaeffer, Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation.

enforcement. Under this interpretation, the new rule is consistent with the CAA. EPA is therefore approving the revisions to Chapter 1, Common Provisions, Section 5.

B. Addition to Chapter 1, Common Provisions, Section 6, Credible Evidence

On February 24, 1997, EPA promulgated regulations under sections 113(a) and 113(e)(1) of the CAA clarifying the use of non-reference test data—“credible evidence”—in enforcement actions and compliance certifications. 62 FR 8314. In particular, the regulations prohibit state implementation plans from precluding the use of credible evidence. The regulations state: “For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, the plan must not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.” 40 CFR 51.212(c).

EPA has reviewed Wyoming’s new credible evidence rule. The new rule mirrors the language in 40 CFR 51.212(c) quoted above and provides for the use of credible evidence in enforcement actions and compliance certifications. Therefore, it is consistent with the CAA and EPA regulations. As a result, EPA is approving the addition of the new credible evidence rule, Chapter 1, Common Provisions, Section 6, *Credible evidence*, into Wyoming’s SIP.

IV. Consideration of Section 110(l) of the CAA

Under section 110(l) of the Clean Air Act, EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. The Wyoming SIP revisions that EPA approves today do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. The first revision removes a provision from the Wyoming SIP that provided an outright exemption from emission limits during malfunctions. In place of the exemption, the SIP now provides—in accordance with the CAA—that the Wyoming Air Quality Division may exercise its enforcement discretion after considering whether excess emissions resulted from an unavoidable equipment malfunction.

In the absence of the previous automatic exemption, sources will now have a greater incentive to comply with their emission limits, which will protect the NAAQS and increments to a greater degree than under the previous rule. The second revision, providing for use of credible evidence, also protects the NAAQS and increments to a greater degree by allowing for enhanced enforcement of emissions limits. Therefore, section 110(l) requirements are satisfied.

V. Final Action

EPA is approving SIP revisions that Wyoming submitted on September 11, 2008. The Environmental Quality Council of the Wyoming Department of Environmental Quality adopted revisions to Chapter 1, Common Provisions, Section 5, *Unavoidable equipment malfunction* on November 16, 2005; these revisions became State-effective on January 30, 2006. The Council added Chapter 1, Common Provisions, Section 6, *Credible evidence*, to the Wyoming Air Quality Standards and Regulations on October 23, 2000; this addition became State-effective on December 8, 2000.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments; we are merely approving changes to Wyoming’s air rules that conform to the CAA and EPA regulations. However, in the “Proposed Rules” section of today’s **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective June 15, 2010 without further notice unless the Agency receives adverse comments by May 17, 2010. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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 approves a State rule implementing a Federal standard.

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. section 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. section 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 June 15, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 1, 2010.

Carol L. Campbell,

Acting Deputy 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 ZZ—Wyoming

■ 2. Section 52.2620 is amended by revising paragraph (b)(3); and the table in paragraph (c)(1) is amended under Chapter 1 by revising the entry for Section 5 and adding an entry for Section 6 to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(b) * * *

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129; the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 1200 Pennsylvania Ave., NW., Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) * * *

(1) * * *

State citation	Title/subject	State adopted and effective date	EPA approval date and citation ¹	Explanation
Chapter 1				
* * * Section 5	Unavoidable Equipment Malfunction.	* * * 11/16/05, 1/30/06	* * * 4/16/10 [Insert FR page number where document begins].	* * *
* * * Section 6	Credible Evidence	* * * 10/23/00, 12/8/00	* * * 4/16/10 [Insert FR page number where document begins].	* * *
* * *	* * *	* * *	* * *	* * *

¹ 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.

* * * * *

[FR Doc. 2010-8405 Filed 4-15-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2010-0003; Internal Agency Docket No. FEMA-8127]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: Effective Dates: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood

Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are

met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

- Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

- 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

- 2. The tables published under the authority of § 64.6 are amended as follows: