

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–142 to read as follows:

### § 165.T09–142 Safety Zone; Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Location.* The following is a safety zone: All waters, bank-to-bank, from the Romeo Road Bridge at Mile Marker 296.1 to the aerial pipeline arch at Mile Marker 296.7 on Chicago Sanitary and Ship Canal.

(b) *Effective time and date.* This rule is in effect from 7 a.m. (local) on January 30, 2006 until 7 a.m. (local) on February 28, 2006. Enforcement periods will be announced via Broadcast Notice to Mariners. Captain of the Port Lake Michigan or the on scene representative may terminate this operation at anytime.

(c) *Regulations.* In accordance with § 165.23, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Lake Michigan, or the designated on-scene representative. Section 165.23 also contains other general requirements.

Dated: January 11, 2006.

**S.P. LaRochelle,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 06–768 Filed 1–26–06; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2005–IN–0007; FRL–8025–6]

### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Removal of Direct Final Rule

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

**ACTION:** Removal of direct final rule.

**SUMMARY:** Due to the receipt of an adverse comment, the EPA is removing the November 25, 2005 (70 FR 70999), direct final rule approving revisions to Indiana's sulfur dioxide (SO<sub>2</sub>) state implementation plan (SIP) for sources located in Dearborn County. These revisions to the SIP include: Revising SO<sub>2</sub> emission limits for existing sources,

making minor corrections by removing obsolete rule language, and updating information for sources listed in the rule. In the direct final rule, EPA stated that if adverse comments were submitted by December 27, 2005, the rule would be withdrawn and not take effect. On December 2, 2005, EPA received a comment. EPA believes this comment is adverse and, therefore, EPA is removing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed action also published on November 25, 2005 (70 FR 71071). EPA will not institute a second comment period on this action.

**DATES:** This rule is effective on January 27, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, [hatten.charles@epa.gov](mailto:hatten.charles@epa.gov).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxides.

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

Dated: January 18, 2006.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

■ Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended 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 P—Indiana

##### § 52.770 [Amended]

■ 2. Section 52.770 is amended by removing paragraph (c)(171).

[FR Doc. 06–757 Filed 1–26–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[NM–4–1–5208a; FRL–8025–5]

### Approval and Promulgation of Implementation Plans; New Mexico, Visibility

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the New Mexico State Implementation Plan (SIP). This revision satisfies the New Source Review (NSR) and monitoring plan requirements for visibility, otherwise known as the “Phase I, Part I Visibility SIP.” In addition, this revision includes the implementation control strategies, integral vistas protection, and long term strategies, otherwise known as the “Phase I, Part II Visibility SIP.” Lastly, EPA is removing the SIP disapprovals associated Phase I, Parts I and II, and the resultant Federal Implementation Plans (FIPs).

**DATES:** This rule is effective on March 28, 2006 without further notice, unless EPA receives adverse comment by February 27, 2006. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by File ID No. NM–4–1–5208, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 “Contact Us”

Web site: <http://epa.gov/region6/r6comment.htm>. Please click on “6PD” (Multimedia) and select “Air” before submitting comments.

- E-mail: Mr. Thomas Diggs at [diggs.thomas@epa.gov](mailto:diggs.thomas@epa.gov). Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Please include the text “Public comment on File ID No. NM–4–1–5208” in the subject line of the first page of your comments. EPA’s policy is that all comments received will be included in the public file without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information

(CBI) or other information the disclosure of which is restricted by statute. Do not submit information through regulations.gov or e-mail if you believe that it is CBI or otherwise protected from disclosure. Regulations.gov 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is special in the public file 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.

**Official File:** Copies of the documents relevant to this action are in the official file which is available at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals and EPA's TSD are also available for public inspection at the State Air Agency listed below during official business hours by appointment:

New Mexico Environment Depart, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

**FOR FURTHER INFORMATION CONTACT:** Joe Kordzi, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7186; fax number 214-665-

7263; e-mail address [kordzi.joe@epa.gov](mailto:kordzi.joe@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

**Outline**

- I. What Is the Background for This Action?
- II. What Did the State Submit and How Did We Evaluate It?
  - A. Phase I, Part I
  - B. Phase I, Part II
- III. What Is Our Final Action?
- IV. Why Is This a "Final Action?"
- V. Statutory and Executive Order Reviews

**I. What Is the Background for This Action?**

Section 169A of the Clean Air Act (CAA), 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. "Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in Section 162(a) of the CAA, 42 U.S.C. 7472(a), and 40 CFR 81.400-81.437. Section 169A specifically requires EPA to promulgate regulations requiring certain states to amend their SIPs to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300-51.307. These regulations required States to develop a visibility monitoring and NSR program and to submit SIPs to satisfy those provisions by September 2, 1981 (See 45 FR 80091, codified at 40 CFR 51.302(a)(1)). That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. Please see the Technical Support Document (TSD) for more details concerning the history behind Phase I, Parts I and II.

On February 13, 1986 (51 FR 5504), EPA promulgated Federal Implementation Plans (FIPs) which included a visibility monitoring strategy (40 CFR 52.26) and the appropriate visibility NSR programs (40 CFR 52.21 and 52.28) for the State. This is known as the Phase I, Part I Visibility FIP, and is the subject of the first part of this action.

On November 24, 1987 (52 FR 45132), EPA promulgated FIPs for 29 States, including New Mexico, to incorporate visibility long-term strategies (40 CFR 52.29). EPA also found that Best Available Retrofit Technology (BART) requirements and other control measures were not necessary in 28 of the States because the visibility

impairment could not be attributed to specific sources. This is known as the Phase I, Part II Visibility FIP, and is the subject of the second part of this action.

**II. What Did the State Submit and How Did We Evaluate It?**

*A. Phase I, Part I*

On August 21, 1986, EPA Region 6 received a Phase I, Part I SIP Revision from the Governor of New Mexico for Visibility Protection and State regulations for monitoring and new source review. Please see the accompanying TSD for more details of EPA's review.

New Mexico has nine mandatory Class I areas: (1) Bandelier Wilderness Area, (2) Bosque del Apache Wilderness Area, (3) Carlsbad Caverns National Park, (4) Gila Wilderness, (5) Pecos Wilderness Area, (6) Salt Creek Wilderness Area, (7) San Pedro Parks Wilderness Area, (8) Wheeler Peak Wilderness Area, and (9) White Mountain Wilderness Area. The SIP commits the State to visibility protection, consistent with the CAA, for the Class I areas within its boundaries. The SIP is to be reviewed by New Mexico every three years and revised as necessary.

**Visibility Monitoring Strategy**

40 CFR 51.305 requires each State containing a mandatory Class I Federal area to include in the plan a strategy for evaluating reasonably attributable visibility impairment in any mandatory Class I Federal area by visual observation or other appropriate monitoring techniques. The intent of this requirement is to generate data for evaluating visibility impairment trends, determine potential impacts of new sources, assess the effectiveness of the visibility protection program, and identify major contributing sources. This requirement can be adequately addressed by determining the background visibility conditions in and around visibility protection areas, and documenting the extent of any visibility impairment that can be attributed to a source or small group of sources.

Visibility impairment is the human perception of the effects of natural or man-made conditions which reduce visual range or contrast, or coloration change. Thus, a visibility monitoring program should identify these effects as well as differentiate man-made effects from natural conditions. The program could generate various types of data such as reports from human observers, photographs, and/or automated instruments. The minimum data collection technique that 40 CFR 51.305

requires is visual observation. However, other more objective techniques are available.<sup>1</sup>

The monitoring section of the New Mexico Visibility Protection Plan has been updated since the submission of this SIP Revision for Visibility Protection, and consists of three data collection methods:

(1) Monitoring by the Federal Land Manager (FLM),

(2) Discretionary monitoring by sources proposing to locate or modify in an area where emissions may impact Class I areas, and

(3) Implementation of the state monitoring network.

Monitoring by the FLM is done through the Interagency Monitoring of Protected Visual Environments (IMPROVE) program. The IMPROVE program is a cooperative effort led by a

steering committee of representatives from federal and regional-State organizations. The IMPROVE monitoring network was established in 1985 to aid in the construction of SIPs for the protection of visibility in Class I areas, as stipulated in the CAA. The following table lists the FLMs, the Class I areas each presides over, and the kinds of visibility monitoring instrumentation used at each Class I area in New Mexico:

FEDERAL LAND MANAGERS, CLASS I AREAS, AND MONITORING EQUIPMENT IN NEW MEXICO

Federal land manager	Class I areas	Visibility monitoring instrument
Forest Service	Gila Wilderness Area	Nephelometer. Represented by transmissometer at Bandelier Wilderness Area.
	Pecos Wilderness Area	
	San Pedro Parks Wilderness Area	Modular aerosol sampler.
	Wheeler Peak Wilderness Area	
	White Mountain Wilderness Area	
National Park Service	Bandelier Wilderness Area	Transmissometer. Represented by transmissometer at Guadalupe Mountains National Park.
	Carlsbad Caverns National Park	
Fish and Wildlife Service	Bosque del Apache Wilderness Area	Modular aerosol sampler.
	Salt Creek Wilderness Area	

In addition to the IMPROVE network, the State may require sources proposing to locate or modify in the locale where emissions may impact Class I areas to model or monitor visibility if, at the discretion of the New Mexico Environment Department, the emissions from the facility are such that the facility is predicted to have significant impact on visibility. The purpose of this modeling or monitoring would be to quantify impacts to visibility from the facility at the Class I area.

Lastly, the State itself operates 32 separate monitoring sites across the state, each monitoring one or more of the criteria pollutants. This monitoring network includes twelve ozone monitors, eight nitrogen dioxide monitors, five sulfur dioxide monitors, three carbon monoxide monitors, fourteen PM 2.5 (particles 2.5 microns or less in diameter) monitors, and fifteen PM 10 (particles 10 microns or less in diameter) monitors. Additional details of the air quality monitoring in New Mexico can be found at [http://www.nmenv.state.nm.us/aqb/reg haz/Regional-Haze\\_index.html](http://www.nmenv.state.nm.us/aqb/reg haz/Regional-Haze_index.html).

New Source Review

40 CFR 51.307 requires states to review new major stationary sources and major modifications prior to construction to assess potential impacts on visibility in any visibility protection area, regardless of the air quality status of the area in which the source is

located. These requirements ensure that (1) The visibility impact review is conducted in a timely and consistent manner, (2) the reviewing authority considers any timely FLM analysis demonstrating that a proposed source would have an adverse impact on visibility, and (3) public availability of the permitting authority's conclusion.

40 CFR 51.307 addresses visibility NSR in two parts. The first part addresses major stationary sources or major modifications that would be constructed in an area that is designated attainment or unclassified under section 107(d)(1)(D) or (E) of the CAA. For major stationary sources reviewed under the Prevention of Significant Deterioration (PSD) requirements of 40 CFR 51.166 for visibility protection, the State must comply with certain FLM notification requirements, and must consider any FLM visibility impairment analyses. In order to address this requirement, New Mexico incorporated into the NSR section of its visibility SIP, regulation 20.2.74 NMAC, "Permits—Prevention of Significant Deterioration" (originally submitted as AQCR 707 and since recodified). EPA approved regulation 20.2.74 NMAC on October 15, 1996 (61 FR 53642). The SIP commits to the notification time frame requirements to the FLM. It also commits to provide an explanation of its decision should it disagree with the FLM's assessment on a proposed source's impact on visibility, and to give

notice as to where that explanation can be obtained.

The second part to visibility NSR addresses major stationary sources or major modifications that are proposed in an area classified as nonattainment under section 107(d)(1)(A), (B), or (C) of the CAA. Major sources in nonattainment areas that may impact a visibility protection area must provide a visibility impact analysis, and the State must ensure that the sources' emissions are consistent with the goal of making reasonable progress toward national visibility. In order to address this requirement, New Mexico has incorporated into the NSR section of its visibility SIP, regulation 20.2.79 NMAC, "Permits—Nonattainment Areas" (originally submitted as AQCR 709 and since recodified). EPA approved regulation 20.2.79 NMAC on February 8, 2002 (67 FR 6147). The State must also follow the same FLM notification and visibility impairment analyses requirements for major stationary sources reviewed under the visibility PSD requirements, above, which it commits to do in its SIP.

In addition, the SIP revision includes regulations 20.2.60 NMAC, "Open Burning" (originally submitted as AQCR 301 and since recodified); 20.2.61 NMAC, "Smoke and Visible Emissions" (originally submitted as AQCR 401 and since recodified); and 20.2.10 NMAC, "Wood Waste Burners" (originally submitted as AQCR 402 and since

<sup>1</sup> "Visibility Monitoring Guidance Document", Office of Air Quality Planning and Standards, June

1999 (EPA 454/R-99-003). This is available at:

<http://www.epa.gov/ttn/amt/c/files/ambient/visible/r-99-003.pdf>.

recodified). These regulations, among other things, control particulate matter emissions and visible emissions, and provide for smoke management. These regulations have all been adopted by the New Mexico Environmental Improvement Board, were filed at the State Records Center, and have become effective. EPA approved regulations 20.2.10 NMAC, 20.2.60 NMAC, and 20.2.61 NMAC on September 26, 1997 (62 FR 50518).

#### FLM Coordination

Under Section 165(d) of the CAA, and 40 CFR 51.166(p), the FLM is given an affirmative responsibility to protect air quality related values, including visibility, in lands within a Class I area. The visibility regulations under 40 CFR 51.301 allow the FLM the opportunity to identify visibility impairment and to identify elements for inclusion in monitoring strategies.

The State of New Mexico has accorded the FLM opportunities to participate and comment on its visibility SIP and regulations. Comments by the FLM were considered and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program. Further, the State recognizes the expertise of the FLM in monitoring and new source applicability analyses for visibility and has agreed to notify the FLM of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application.

#### B. Phase I, Part II

On October 8, 1992, EPA Region 6 received a Phase I, Part II SIP from the Governor of New Mexico for implementation control strategies, the identification of integral vistas, and long term strategy requirements. Please see the accompanying TSD for more details of EPA's review.

#### Implementation Control Strategies for Reasonably Attributable Visibility Impairment

Reasonably Attributable Visibility Impairment (RAVI) is visibility impairment that can be traced to one, or a small number of sources. This contrasts with regional haze (the subject of Phase II visibility control), which is widespread, regionally undifferentiated haze due to a multitude of sources. The implementation control strategies for the RAVI portion of 40 CFR 51.302 include requirements addressing plan revision procedures, State and FLM

coordination, and general plan requirements for RAVI.

The plan revision procedures requirements are found in § 51.302(a) and include (1) a deadline for submission of the SIP; (2) a requirement to conduct public hearings prior to adoption of any SIP that address RAVI; and (3) written notification of the hearings to the FLMs and other affected States, and opportunity for the public to inspect the FLM comments. Because EPA promulgated a FIP due to New Mexico's failure to submit a Phase I, Part II SIP, the SIP submission deadline requirement of § 51.302(a) is moot. In addition, as described in the TSD, New Mexico has satisfied the remaining plan revision procedural requirements of § 51.302(a), by conducting a public hearing prior to adoption of the SIP and providing for inspection of the FLM comments.

The State and FLM coordination requirements are found in § 51.302(b) and include requirements that the State identify to the FLMs the person to whom comments should be submitted, and provide an opportunity for consultation prior to, and after adoption of the SIP. New Mexico has demonstrated historic and continuing (through the three year reports, discussed below) communication and cooperation with the FLMs. Additional details regarding how New Mexico satisfied these requirements can be found in the TSD.

The general plan requirements for RAVI are found in § 51.302(c). These requirements provide for the adoption of specific measures designed to control sources that contribute to the RAVI. As the FLMs have not identified RAVI at any Class I areas in New Mexico, the long-term strategy does not require ongoing or additional emission reductions from existing sources. Consequently, the requirements of § 51.302(c) are not applicable.

#### Identification of Integral Vistas

Section 51.304 provided that on or before December 31, 1985, the FLMs had an opportunity to have identified integral vistas in the State. Integral Vistas means a view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area. The visibility protection afforded by the Phase I, Part II SIP extends to any integral vistas the FLMs identified. Since the FLMs did not identify any integral vistas within the State prior to the December 31, 1985 deadline, § 51.304 does not apply, and the integral

vistas protection requirements within 40 CFR 51.302 to 51.307 do not apply.

#### Long-Term Strategy Requirements for RAVI

The long-term strategy requirements for RAVI of § 51.306 are designed to ensure reasonable progress toward the national visibility goal. The national visibility goal includes the prevention of any future, and the remedying of any existing, manmade impairment of visibility in Class I areas. As discussed in the TSD in more detail, because the FLMs have not identified any RAVI, or integral vistas, the State's permitting programs for implementing the visibility NSR and PSD requirements are deemed sufficient to meet the long-term strategy requirements for preventing future impairment from major stationary sources or major modifications. The State is also required under § 51.306(c) to perform periodic review, and revisions as appropriate, of the long-term strategy at least every three years. The State has in fact been submitting these reviews every three years, with the last being submitted in June of 2003. They have all been deemed satisfactory.

#### III. What Is Our Final Action?

The EPA is approving a revision to the New Mexico SIP. This SIP revision and accompanying regulations meet all of the requirements for NSR and visibility monitoring requirements under 40 CFR 51.305 and 51.307 (excluding integral vistas), for a Phase I, Part I Visibility Protection Plan. This SIP revision also meets all of the requirements for implementation control strategies under 40 CFR 51.302, integral vistas protection under 40 CFR 51.302 to 51.307, and long-term strategies under 40 CFR 51.306 for a Phase I, Part II Visibility Protection Plan. In addition, EPA is removing the SIP disapprovals associated Phase I, Parts I and II, and the resultant FIPs.

#### IV. Why Is This a "Final Action?"

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on March 28, 2006 without further notice unless we receive adverse comment by February 27, 2006. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all

public comments in a subsequent final rule based on the proposed rule. We 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 we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. 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 (Public Law 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 CAA. 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 CAA. 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 CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 18, 2006.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended 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.*

#### Subchapter GG—New Mexico

■ 2. The table in § 52.1620(e) entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” is amended by adding one new entry to the end of the table to read as follows:

#### § 52.1620 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

## EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Explanation
New Mexico Visibility Protection Plan for Phase I, Part I of the Federal Visibility Requirements, August 8, 1986.	Statewide .....	08/21/86	01/27/06 [Insert <i>FR</i> page number where document begins].	
New Mexico Visibility Protection Plan for Phase I, Part II of the Federal Visibility Requirements, September 9, 1992.	Statewide .....	10/08/92	01/27/06 [Insert <i>FR</i> page number where document begins].	

**§ 52.1636 [Removed and Reserved]**

■ 3. Section 52.1636 is removed and reserved.

[FR Doc. 06-760 Filed 1-26-06; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 166**

[EPA-HQ-OPP-2004-0038; FRL-7749-3]

RIN 2070-AD36

**Pesticides; Emergency Exemption Process Revisions**

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

**ACTION:** Final rule.

**SUMMARY:** This action revises the regulations governing emergency exemptions that allow unregistered uses of pesticides to address emergency pest conditions for a limited time. One change provides applicants for certain repeat exemptions a simple way to re-certify that the emergency conditions that qualified for an exemption in a previous year continue to exist. Another change revises the criteria for determining when a potential emergency condition is expected to cause a significant economic loss and revises the data requirements for documenting the loss. These revisions streamline and improve the application and review process by reducing the burden to both applicants and the Environmental Protection Agency (EPA, or "the Agency"), allowing for potentially quicker decisions by the Agency, and providing for consistent and equitable determinations of "significant economic loss" as the basis for an emergency. This action also includes several minor revisions to the regulations. None of these various improvements compromise protections for human health and the environment.

**DATES:** This final rule is effective on March 28, 2006.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2004-0038. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>). Follow the on-line instructions. Although listed in the index, some information is not publicly available, i.e., 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 in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Joseph Hogue, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9072; fax number: (703) 305-5884; e-mail address: [hogue.joe@epa.gov](mailto:hogue.joe@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are a federal, State, or territorial government agency that petitions EPA for an emergency use authorization under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected entities may include, but are not limited to:

- Federal Government (NAICS Code 9241), i.e., Federal Agencies that petition EPA for section 18 use authorization.

- State or Territorial governments (NAICS Code 9241), i.e., States, as defined in FIFRA section 2(aa), that petition EPA for section 18 use authorization.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the summary of the applicability provisions as found in Unit III. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. An electronic version of 40 CFR part 166 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

**II. Purpose**

The primary purpose of this rulemaking is to simplify the process of applying for emergency exemptions, and allow for potentially quicker responses to emergency pest conditions, without affecting current protections for human health and the environment. This action revises the regulations at 40 CFR part 166, to make a variety of improvements to the pesticide