

TABLE 52.1525—EPA—APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE—Continued

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
Source specific order.	Order ARD-95-002.	9/12/95	April 9, 1997	62 FR 17093	(c)(50)	Source specific NO _x RACT order for Plymouth Cogeneration Limited Partnership, in Plymouth, NH.
Source specific order.	Order ARD-95-003.	9/19/95	April 9, 1997	62 FR 17093	(c)(50)	Source specific NO _x RACT order for Waterville Valley Ski Area Limited, in Waterville Valley, NH.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT-001-0001a; FRL-5802-2]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Utah; Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves a revision to Utah's State Implementation Plan (SIP) for Visibility Protection, as submitted by the Governor with a letter dated July 25, 1996. The revision was adopted by the State in 1993 to address comments received from the 1992 Utah Legislature's Administrative Rules Review Committee regarding the need to remove a visibility policy statement from a regulation format (since it was not a rule). The State responded by deleting the policy statement from the Utah Air Conservation Regulations and adding the text into the Visibility Protection SIP. This submittal was a necessary "housekeeping" step to bring the federally approved SIP up-to-date with administrative revisions that took place at the State in 1993.

DATES: This action will become effective on June 9, 1997 unless adverse comments are received by May 9, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be addressed to: Richard R. Long, Director, Air Program, EPA Region VIII at the address listed below. Copies of the State's submittal and other information are available for inspection during

normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405; and Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, P.O. Box 144820, Salt Lake City, Utah 84114-4820.

FOR FURTHER INFORMATION CONTACT: Amy Platt, 8P2-A, Environmental Protection Agency, Region VIII, (303) 312-6449.

SUPPLEMENTARY INFORMATION:

I. Background

Section 169A of the Clean Air Act (CAA or Act),¹ 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 areas² (referred to herein as the "National goal" or "National visibility goal"). Section 169A calls 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. CAA section 169A(b)(2). Section 110(a)(2)(J) of the CAA, 42 U.S.C. 7410(a)(2)(J), similarly requires SIPs to

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

² 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).

meet the visibility protection requirements of the CAA.

EPA promulgated regulations that require affected States to, among other things, (1) coordinate development of SIPs with appropriate Federal Land Managers (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).

The Utah Governor submitted a SIP revision for Visibility Protection with a letter dated April 26, 1985. The submittal met the requirements for visibility monitoring (40 CFR 51.305) and visibility New Source Review (40 CFR 51.307). EPA approved the submittal on May 30, 1986 (51 FR 19550).

On November 24, 1987 (52 FR 45132), EPA disapproved the SIPs of states, including Utah, that failed to comply with the requirements of the provisions of 40 CFR 51.302 (visibility general plan requirements) and 51.306 (visibility long-term strategy). EPA 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 Utah submitted a SIP revision for visibility protection with a letter dated December 11, 1987. The submittal satisfied requirements for visibility general plan requirements (40 CFR 51.302) and visibility long-term strategy (40 CFR 51.306). EPA approved this SIP revision on January 17, 1989 (54 FR 1694), and this revision replaced the Federal plans and regulations in the Utah Visibility Protection SIP.

The April 26, 1985 submittal and December 11, 1987 submittal discussed above currently constitute the Utah Visibility Protection SIP.

II. This Action

With a letter dated July 25, 1996, the Governor of Utah submitted a revision to the Utah Visibility Protection SIP. This submittal was a necessary "housekeeping" step to bring the federally approved SIP up-to-date with administrative revisions that took place at the State in 1993.

In 1992, the Utah Legislature reviewed the State's air quality rules and requested that the Utah Air Quality Board's policy on scenic views be removed from the rules, since it was a policy statement and not a rule. The Board responded by deleting the pertinent section of the rules and adding the text to the Visibility Protection SIP. The changes became effective on March 29, 1993.

A. Analysis of State Submission

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing.

To entertain public comment, the Utah Air Quality Board (UAQB), after providing adequate notice, held a public hearing on January 28, 1993 to consider the proposed revisions to the Utah Visibility Protection SIP and Utah Air Conservation Regulations. Subsequent to the public hearing, the UAQB adopted the revisions on March 26, 1993, and the revisions became effective on March 29, 1993. The Governor of Utah submitted the revisions to EPA with a letter dated July 25, 1996.

2. Content of SIP Revision

a. Utah Air Conservation Regulation R307-5 Deleted and Text Added to Visibility Protection SIP

The Utah Legislature's Administrative Rules Review Committee reviewed R307-5 and found it to be a policy statement of the UAQB rather than a rule. In fact, the title of the rule was "Policy of the Air Conservation Committee Concerning the Protection of Scenic Views Associated with the Mandatory Class I Areas from Significant Impairment for Visibility." This rule was deleted and the bulk of it was added to the text of the Utah SIP, Section 15.³ Visibility Protection, in a new subsection 15.10. This policy statement, which had already been approved in rule format, is simply being transferred to the SIP text as follows.

The State recognizes that visibility and the ability to see the great scenic views in Southern Utah is a rare and unique treasure and should be preserved, both for the benefit and pleasure of Utah residents, and to support our large tourist industry. In addition to the distance one can see, the clarity, color, and detail of the visible features are also important.

The [Air Conservation] Committee recommends that the Governor of Utah seek the cooperation of the Western Governors' Association to establish a task force on regional haze. The task force should be composed of state air program directors and would provide a recommendation to the Governor on the management of regional haze. The task force would be expected to hold hearings, create work groups, involve local area governments and federal agencies (EPA and National Park Service) in developing information and formulating recommendations. Based on the recommendations of the task force, the governors would develop a policy on controlling regional haze for the protection of visibility in the western United States where visibility is an important "treasure" and resource.

EPA agrees that the above statement represents policy, not regulation, and therefore, the administrative "housekeeping" action of deleting the language from the Air Conservation Regulations and adding it to the text of the Visibility Protection SIP was appropriate. The revision is approvable.

b. Utah Air Conservation Regulation R307-2 Amended

As a result of revising the Visibility Protection section of the SIP to create a new subsection 15.10 that contains the policy regarding scenic views, R307-2

also was amended. This rule, R307-2, incorporates the entire Utah SIP by reference and was amended to reflect the revised adoption date by the UAQB for subsection 15.10. EPA is not acting on this amendment to R307-2 because EPA's action in this document is specific to the Visibility Protection section of the SIP and not the entire Utah SIP.

III. Final Action

EPA is approving a revision to the Utah Visibility Protection SIP as submitted to EPA with a letter dated July 25, 1996. This revision deletes R307-5, which contained the Utah Air Quality Board's policy statement on scenic views, and transfers the policy statement to the text of the Visibility Protection SIP in a new subsection 15.10. EPA is not acting on the amended R307-2.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 9, 1997 unless, by May 9, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 9, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10,

³ Please note that Utah has renumbered its SIP since the State adoption of these revisions. Visibility protection is now in Section XVII of the SIP. However, the revision for the renumbering has not been acted on yet by EPA.

1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the

private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

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 9, 1997. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 14, 1997.

Max H. Dodson,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

2. Section 52.2320 is amended by adding paragraph (c)(36) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(36) The Governor of Utah submitted a revision to Utah's State

Implementation Plan (SIP) for Visibility Protection with a letter dated July 25, 1996. The revision was made to add a new subsection 15.10 to the SIP to include a policy statement regarding scenic views which was deleted from the Utah Air Conservation Regulations.

(i) Incorporation by reference.

(A) Utah State Implementation Plan, Subsection 15.10, Policy of the Air Conservation Committee Concerning the Protection of Scenic Views Associated with Mandatory Class I Areas from Significant Impairment for Visibility, adopted on March 26, 1993, and effective on March 29, 1993.

(ii) Additional material.

(A) A July 25, 1996 letter from Michael O. Leavitt, Utah Governor, to Jack McGraw, EPA Region VIII Acting Regional Administrator, in which it was communicated, among other things, that the Utah Air Quality Board deleted R307-5 from the Utah Air Conservation Regulations. The deletion was effective March 29, 1993.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN68-2; FRL-5807-8]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule; withdrawal.

SUMMARY: On February 18, 1997 (62 FR 7157), the United States Environmental Protection Agency (USEPA) approved Indiana's October 25, 1994, request to revise the Indiana State Implementation Plan (SIP) to add or revise definitions in the SIP's general provisions, the applicability criteria of the rule for malfunctions and, the applicability criteria for State construction and operating permits. Also approved were revisions to Indiana's construction permit program including its "Permit no defense" provision. The USEPA is withdrawing this final rule because in a letter dated March 18, 1997, Indiana informed USEPA that a portion of the State's submittal—326 Indiana Administrative Code (IAC) 2-1-1(b)(1)(h)—is being considered for removal from the IAC. Further, adverse comments have been received on USEPA's rulemaking action.

EFFECTIVE DATE: April 9, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for