patent owner may cross appeal to the U.S. Court of Appeals for the Federal Circuit if also dissatisfied with the decision of the Board of Patent Appeals and Interferences.

(e) A party electing to participate in an appellant's appeal must, within fourteen days of service of the appellant's notice of appeal under paragraph (b) of this section, or notice of cross appeal under paragraphs (c) or (d) of this section, take the following steps:

(1) In the U.S. Patent and Trademark Office, timely file a written notice directed to the Director electing to participate in the appellant's appeal to the U.S. Court of Appeals for the Federal Circuit by mail to, or hand service on, the General Counsel as provided in § 104.2;

(2) In the U.S. Court of Appeals for the Federal Circuit, file a copy of the notice electing to participate in accordance with the rules of the U.S. Court of Appeals for the Federal Circuit; and

(3) Serve a copy of the notice electing to participate on every other party in the reexamination proceeding in the manner provided in § 1.248.

(f) Notwithstanding any provision of the rules, in any reexamination proceeding commenced prior to November 2, 2002, the third party requester is precluded from appealing and cross appealing any decision of the Board of Patent Appeals and Interferences to the U.S. Court of Appeals for the Federal Circuit, and the third party requester is precluded from participating in any appeal taken by the patent owner to the U.S. Court of Appeals for the Federal Circuit.

Dated: December 9, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–31398 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7601–4]

RIN 2060–AL80

Revisions to the Regional Haze Rule To Correct Mobile Source Provisions in Optional Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: The EPA is taking final action to approve a correction to the mobile source provisions of EPA's regional haze rule. This correction is consistent with recommendations of the Western Regional Air Partnership (WRAP). The amendments to the rule are intended to address an emissions projection scenario for mobile sources which was not addressed when EPA published the regional haze rule in 1999.

EFFECTIVE DATE: This final rule is effective February 20, 2004.

ADDRESSES: The EPA has established an official public docket for this action under Docket No. OAR–2002–0076. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying.

Electronic Access. 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 the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select ''search,'' then key in the docket identification number, OAR–2002–0076.

FOR FURTHER INFORMATION CONTACT: If you would like further information about this rule, contact Kathy Kaufman, Integrated Policies and Strategies Group, (919) 541–0102 or by e-mail *kaufman.kathy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are nine States in the Western United States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah and Wyoming) and Indian tribes within that same geographic area. This final action, and an earlier action taken by EPA in 1999, provides these States and tribes with an optional program to protect visibility in federally protected scenic areas. The portion of the program addressed by today's final rule is a program for tracking of mobile source emissions under the 1999 rule.

Outline

The contents of today's preamble are listed in the following outline.

I. Background

A. What Is the Regional Haze Rule?

Section 169(A) of the Clean Air Act (CAA) establishes a national goal for protecting visibility in federally-protected scenic areas. These ''Class I'' areas include national parks and

wilderness areas. The national visibility goal is to remedy existing impairment and prevent future impairment in these Class I areas, consistent with the requirements of sections 169A and 169B of the CAA.

Regional haze is a type of visibility impairment caused by air pollutants emitted by numerous sources across a broad region. The EPA uses the term regional haze to distinguish this type of visibility problem from those which are more local in nature. In 1999, EPA issued a regional haze rule requiring States to develop implementation plans that will make ''reasonable progress'' toward the national visibility goal (64 FR 35714, July 1, 1999). The first State plans for regional haze are due between 2003 and 2008. The regional haze rule provisions appear at 40 CFR 51.308 and 40 CFR 51.309.

B. What Are the Special Provisions for Western States and Eligible Indian Tribes in 40 CFR 51.309 of the Regional Haze Rule?

The regional haze rule at 40 CFR 51.308 sets forth the requirements for State implementation plans (SIPs) under the regional haze program. The rule requires State plans to include visibility progress goals for each Class I area, as well as emissions reductions strategies and other measures needed to meet these goals. The rule also provides an optional approach, described in 40 CFR 51.309, that may be followed by the nine western States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming) that comprise the transport region analyzed by the Grand Canyon Visibility Transport Commission (GCVTC) during the 1990's. This optional approach is also available to eligible Indian Tribes within this geographic region. The regulatory provisions at 40 CFR 51.309 are based on the final report issued by the GCVTC in 1996,[1] which included a number of recommended emissions reductions strategies designed to improve visibility in the 16 Class I areas on the Colorado Plateau.

In developing the regional haze rule, EPA received a number of comments on the proposed rule encouraging the Agency to recognize explicitly the work of the GCVTC. In addition, in June 1998, Governor Leavitt of Utah provided comments to EPA on behalf of the Western Governors Association (WGA), further emphasizing the commitment of western States to implementing the GCVTC recommendations. The WGA's comments also suggested the translation of the GCVTC's recommendations into specific regulatory language. The EPA issued a Notice of Availability during the fall of 1998 requesting further comment on the WGA's proposal and a draft set of regulatory language based upon the WGA's recommendations. Based on the comments received on this **Federal Register** action, EPA developed the provisions set forth in 40 CFR 51.309 that allow the nine Transport Region States and eligible tribes within that geographic area to implement many of the GCVTC recommendations within the framework of the national regional haze rule.

The provisions in 40 CFR 51.309 comprise a comprehensive long-term strategy for addressing sources that contribute to visibility impairment within this geographic region. The strategy addresses the time period between the year 2003, when the implementation plans are due,[2] and the year 2018. The provisions address emissions from stationary sources, mobile sources, and area sources such as emissions from fires and windblown dust.

II. Changes to the Mobile Source Provisions of Section 309

A. Why Are We Changing the Mobile Source Provisions of 40 CFR 51.309?

1. What Is the Basis for the Old Provisions?

The GCVTC determined that mobile source emissions need to be an essential part of a strategy to reduce haze on the Colorado Plateau. Therefore, one element of the GCVTC's strategy, as reflected in 40 CFR 51.309(d)(5), was to address mobile sources emissions. Section 309 also requires States to establish a mobile source emissions budget for each area that significantly contributes to visibility impairment in any of the 16 Class I areas covered by this section of the regulations. At the time the GCVTC made its recommendations (in 1996), mobile source emissions were projected to be lowest in 2005, and to subsequently rise over the course of the first regional haze planning period (*i.e.*, until 2018). Accordingly, section 309 required mobile source emissions budgets to be set using the lowest projected level as a planning objective and performance indicator for each area.

2. What Is the Basis for the New Provisions?

Since the GCVTC made its recommendations, new developments have caused mobile source emissions projections to change significantly. Over the past few years, we have promulgated a series of new emissions standards for several different engine types, as well as new standards for diesel fuel content.[3] As a result of these new standards, the WRAP, using EPA's latest models,[4] now projects a significant decline in mobile source emissions throughout the region during the 2003–2018 time period covered by the section 309 plans, particularly from on-road mobile sources. Rather than emissions being lowest in 2005, and subsequently rising, mobile source emissions for all pollutants except sulfur dioxide (SO_2) are expected to decline continuously over the course of the first regional haze planning period.

The projected trends for mobile source emissions of SO_2 differ from those of other pollutants. Emissions reductions from pollutants such as nitrogen oxides (NO_X) and particulate matter (PM) are dependent on technological changes to the onroad fleet and to nonroad engines which are implemented gradually. In contrast, SO_2 emissions reductions are immediately realized when the sulfur content of the fuel changes, because emissions from both new and existing engines immediately drop sharply. We have already published stringent fuel sulfur limits for onroad engines and have proposed stringent fuel sulfur limits for nonroad engines.[5] These Federal fuel sulfur regulations, fully implemented, would together result in a substantial reduction in SO_2 emissions over the 2003—2018 planning period.

B. What Are the Specific Changes to the Mobile Source Provisions of 40 CFR 51.309?

These revisions would change 40 CFR 51.309(d)(5)(i) to eliminate the requirement for setting mobile source emissions budgets using the lowest projected level as a planning objective and performance indicator for each area. Instead, the new 40 CFR 51.309(d)(5)(i) would substitute, as the new planning objective and performance indicator, a

[1] *Recommendations for Improving Western Vistas.* GCVTC, June 10, 1996.

[2] Indian tribes are given the flexibility under EPA regulations to submit implementation plans and opt into the program after the 2003 deadline.

[3] *See* 62 FR 25355, (May 8, 1997); 63 FR 18978, (April 16, 1998); 63 FR 56968, (October 23, 1998); 64 FR 73300, (December 29, 1999); 65 FR 59895, (October 6, 2000); 66 FR 5001, (January 18, 2001); 67 FR 68241, (November 8, 2002); and 68 FR 9745, (February 28, 2003).

[4] MOBILE6 and MOBILE6.2 for on-highway vehicles and the NON–ROAD model for nonroad vehicles.

[5] *See* 68 FR 28327, (May 23, 2003).

requirement for statewide inventories to show a continuous decline in emissions of each pollutant of concern over the planning period. Should mobile source emissions not decline as expected, States would have to revise their SIPs to include any feasible additional strategies. This new requirement conforms to trends that are currently projected.

In addition, in light of the continuous decline in mobile source emissions expected over the entire region, these revisions also eliminate the unneeded requirement in 40 CFR 51.309(d)(5)(ii) and (iii) to determine whether mobile sources emissions constitute a significant contributor to haze in a given State. The revisions retain the requirements for statewide inventories and performance demonstrations.

Finally, the revisions contain a backstop provision, requested by the WRAP, to address any potential concerns regarding SO_2 from nonroad sources in the event that recently proposed Federal standards, referenced above, are not finalized. The backstop provision, contained in the new 40 CFR 51.309(d)(5)(i)(B), requires States to assess the need for any long-term strategies to address SO_2 from nonroad mobile sources by no later than December 31, 2008. In determining whether to revise their SIPs to address SO_2 from mobile sources, States may consider the emissions reductions achieved—or anticipated—by any Federal standards that are in place addressing fuel sulfur content for nonroad engines.

C. What Comments Did We Receive on the Proposed Rule and What Is Our Response?

We received one comment letter on the proposed rule, from the Center for Energy and Economic Development (CEED). We also received three comments at the public hearing—one from CEED, reiterating comments provided in its letter, one from the WRAP in support of this rule, and one from the Colorado Mining Association.

The CEED commented (1) that EPA should fix other flaws in section 309 before making this change; (2) that making this change now may constrain state authority in making ''reasonable progress'' determinations; (3) that it is not clear that all WRAP states and tribes have authorized the request for this change; and (4) that this action circumvents the recent statutory process enacted by Arizona for determining which regional haze path to implement.

In regard to comment (1), EPA believes that we would be remiss in awaiting the outcome of CEED's current lawsuit before bringing the requirements of section 309 in line with the most recent data on mobile sources emission trends. Section 309 is currently in effect, and, as explained earlier in this preamble, this change is needed by States and tribes who must submit section 309 SIPs to EPA by the December 31, 2003, deadline. Without this change, those section 309 SIPs would have to contain extra work by States to determine significance, work that the current data shows is unnecessary.

In regard to comment (2), EPA does not agree that making this change would constrain state authority in making ''reasonable progress'' determinations. We do not agree with CEED that greater public input is needed from western States on this point; we believe by specifically requesting this change, the WRAP has made it quite clear that western States (and tribes) need it. We believe that CEED's claim in comment (3), that it is not ''clear that all WRAP States and tribes authorized such a request'', is disingenuous at best. Representatives of the WRAP have assured us that the WRAP discussed this request at length. The WRAP requested this change, in writing, on behalf of its member States and tribes, and we have not heard of any member State or tribe objecting in any way.

In regard to comment (4), we do not believe that removing an unneeded requirement from a voluntary program circumvents the Arizona legislature in any way.

The Colorado Mining Association asserted that we should make available for public reivew the assumptions and model inputs that support our projections. In regard to this comment, as noted in footnote 4 of the proposed rule, the WRAP used EPA's MOBILE6 and MOBILE6.2 models for on-highway vehicles and the NONROAD model for nonroad vehicles. The assumptions and model inputs for these models have undergone numerous public workshops and reviews, as described in detail on our Web site, *http://www.epa.gov/otaq/models/mobile6/m6wkshop.htm.*

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this direct final rule is not a significant regulatory action.

B. Paperwork Reduction Act

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The OMB has approved the information collection requirements contained in the final Regional Haze regulations (64 FR 35714, July 1, 1999) and has assigned OMB control number 2060–0421 (EPA ICR No. 1813.04). A copy of this ICR may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rulemaking on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (as discussed on the SBA Web site at *http://www.sba.gov/size/indextableofsize.html*); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule eliminates certain comprehensive requirements to address mobile source emissions that EPA now considers to be unnecessary. Specifically, as discussed above, this rule eliminates the requirements in 51.309(5)(ii) and (iii) to determine whether mobile sources emissions constitute a significant contributor to haze in a given State, and for those States with areas that meet this significance criterion, to establish mobile source emissions budgets. The rule requires emissions reductions consistent with the downward trend in mobile source emission inventories that is currently projected, based on regulations that have already been promulgated. We have therefore concluded that today's rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

Because the entire program under 40 CFR 51.309, including today's amendments, is an option that each of the States may choose to exercise, these revisions to section 309 do not establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The program is not required and, thus is clearly not a ''mandate.'' Moreover, as explained above, today's rule eliminates certain requirements and will overall reduce any regulatory burdens. Accordingly, this rule will not result in expenditures to State, local, and tribal governments, in the aggregate, or the private sector, of $100 million or more in any given year. Thus EPA is not obligated, under section 203 of UMRA, to develop a small government agency plan.

We believe that this rulemaking is not subject to the requirements of UMRA. For regional haze SIPs overall, it is questionable whether a requirement to submit a SIP revision constitutes a Federal mandate, as discussed in the preamble to the regional haze rule (64 FR 35761, July 1, 1999). However, today's direct final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. In addition, the program contained in 40 CFR 51.309, including today's revisions, is an optional program.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing a regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the regulation.

This rule does not have federalism implications. It will 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. As described above, this rule contains minor revisions to section 309 of the regional haze rule which will reduce any regulatory burden on the States. In addition, section 309 is an optional program for States. The minor revisions to section 309, accordingly, do not directly impose significant new requirements on State and local governments. Moreover, even if today's revisions did have federalism implications, these revisions would not impose substantial direct compliance costs on State or local governments, nor would they preempt State law. Thus, Executive Order 13132 does not apply to this rule.

Consistent with EPA policy, we nonetheless did consult with representatives of State and local governments in developing this rule. This rule directly implements specific recommendations from the WRAP, which includes representatives from all the affected States.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule eliminates certain requirements and will overall reduce any regulatory burden on the tribes. Moreover, the section 309 program is an optional program for tribes within the same geographic region as the WRAP states. Accordingly, this rule will not have tribal implications. In addition, this rule directly implements specific recommendations from the WRAP, which includes representatives of tribal governments. Thus, although the rule does not have tribal implications, representatives of Tribal governments have had the opportunity to provide input into development of the recommendations forming its basis.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This rule is not subject to Executive Order 13211, ''Actions that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The requirements of Executive Order 12898 have been previously addressed to the extent practicable in the Regulatory Impact Analysis (RIA) for the regional haze rule (cited above), particularly in chapters 2 and 9 of the RIA. Today's direct final rule makes no changes that would have a disproportionately high and adverse human health or environmental effect on minorities and low-income populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this 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(a).

IV. Statutory Provisions and Legal Authority

Statutory authority for today's direct final rule comes from sections 169(a) and 169(b) of the CAA (42 U.S.C. 7545(c) and (k)). These sections require EPA to issue regulations that will require States to revise their SIPs to ensure that reasonable progress is made toward the national visibility goals specified in section 169(A).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: December 15, 2003.

Stephen L. Johnson,

Acting Administrator.

■ For the reasons set forth in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart P—Protection of Visibility

■ 2. Section 51.309 is amended by revising paragraphs (b)(6) and (d)(5)(i), removing paragraphs (d)(5)(ii) and (d)(5)(iii), and redesignating paragraph (d)(5)(iv) as (d)(5)(ii), to read as follows:

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

* * * * *

(b) * * *

(6) *Continuous decline in total mobile source emissions* means that the projected level of emissions from mobile sources of each listed pollutant in 2008, 2013, and 2018, are less than the projected level of emissions from mobile sources of each listed pollutant for the previous period (*i.e.,* 2008 less than 2003; 2013 less than 2008; and 2018 less than 2013).

* * * * *

(d) * * *

(5) * * *

(i) Statewide inventories of onroad and nonroad mobile source emissions of VOC, NO_X, SO_2, $PM_{2.5}$, elemental carbon, and organic carbon for the years 2003, 2008, 2013, and 2018.

(A) The inventories must demonstrate a continuous decline in total mobile source emissions (onroad plus nonroad; tailpipe and evaporative) of VOC, NO_X, $PM_{2.5}$, elemental carbon, and organic carbon, evaluated separately. If the inventories show a continuous decline in total mobile source emissions of each of these pollutants over the period 2003–2018, no further action is required as part of this plan to address mobile source emissions of these pollutants. If the inventories do not show a continuous decline in mobile source emissions of one or more of these pollutants over the period 2003–2018, the plan submission must provide for an implementation plan revision by no later than December 31, 2008 containing any necessary long-term strategies to achieve a continuous decline in total mobile source emissions of the pollutant(s), to the extent practicable, considering economic and technological reasonableness and federal preemption of vehicle standards and fuel standards under title II of the CAA.

(B) The plan submission must also provide for an implementation plan revision by no later than December 31, 2008 containing any long-term strategies necessary to reduce emissions of SO_2 from nonroad mobile sources, consistent with the goal of reasonable progress. In assessing the need for such long-term strategies, the State may consider emissions reductions achieved or anticipated from any new Federal standards for sulfur in nonroad diesel fuel.

* * * * *

[FR Doc. 03–31471 Filed 12–19–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 437

[FRL–7601–3]

RIN 2040–AD95

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Centralized Waste Treatment Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending certain provisions of a wastewater discharge regulation for the Centralized Waste Treatment (CWT) Point Source Category. Today's action deletes the selenium limitations and standards from certain sections of Subpart A, the Metals Treatment and Recovery subcategory. In addition, it deletes the barium, molybdenum, antimony, and titanium limitations and standards from Subpart B, the Oils Treatment and Recovery subcategory. Further, this action deletes the molybdenum, antimony, aniline, and 2,3-dichloroaniline limitations and standards from the Organics Treatment and Recovery subcategory. This action also revises all applicable related sections of Subpart D, the Multiple Wastestream subcategory, to reflect the preceding revisions. Finally this action increases the maximum monthly average BOD_5 limitation for directly discharging facilities subject to a section of the Multiple Wastestreams subcategory. EPA originally established wastewater discharge standards for CWT facilities in December 2000. Following publication of that rule, a number of CWT facilities petitioned EPA to reconsider the limitations and standards for certain pollutants. EPA evaluated the technology basis and other analyses and agreed with many of the suggested revisions. Today's action establishes those changes. As a result, facilities will not be required to comply with certain discharge standards that were erroneously included in the earlier regulation or for which EPA had incorrectly assessed the capability of the technology to achieve the removals.

DATES: This regulation shall become effective on December 22, 2003.

ADDRESSES: The administrative record is available for inspection and copying at the Water Docket, located at the EPA Docket Center (EPA/DC) in the basement of the EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The rule and key supporting materials are also electronically available via EPA Dockets (Edocket) at *http://www.epa.gov/edocket/* Edocket number OW–2003–0075 or at *http://www.epa.gov/guide/cwt/.*

FOR FURTHER INFORMATION CONTACT: Elwood H. Forsht, EPA Office of Water by phone at (202) 566–1025 or by e-mail at *forsht.elwood@epa.gov.* For information on how to get copies of this document and other related information see the **SUPPLEMENTARY INFORMATION** section.

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