

NPS has certified visibility impairment at Mt. Rainier National Park. The State of Washington has not determined that this visibility impairment is reasonably attributable to the CPP.

The SIP must contain emission limitations representing BART and schedules for compliance with BART for each existing stationary facility identified according to 40 CFR 51.302(c)(4). The state needs to identify each existing facility which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I Federal areas where the impairment in the mandatory Class I Federal area is reasonably attributable to that existing stationary facility. The State has not identified CPP, or any other source or group of small sources as an existing facility that may reasonably be expected to contribute to visibility impairment to mandatory Class I Federal areas. Therefore, under 40 CFR 51.302(c)(4), a BART analysis is not required for CPP. In the future regional haze SIP, a BART analysis may be required for the CPP under 40 CFR 51.308(e).

In a separate activity, the State, SWAPCA, the NPS and U.S. Forest Service, owners of the CPP, and EPA entered into a negotiated agreement to establish emission limits for SO₂, oxides of nitrogen (NO_x), and particulate matter with an aerodynamic diameter of less than 10 micrometers (PM-10) for the CPP. The SWAPCA, who has regulatory authority over the CPP, issued the CPP a Reasonably Available Control Technology (RACT) order under state law that contain the negotiated emission limitations. This RACT Order is included in the proposed 1999 Visibility SIP revision.

Both SWAPCA in their Technical Support Document for the RACT Order and EPA Region 10 have independently conducted an analysis of the emission limits in the RACT Order comparing them against what would have been required using the Clean Air Act definition of BART and EPA BART guidelines. Additional details on this analyses can be found in the Technical Support Document in the docket of this action. The conclusion of both analyses is that the RACT Order emission limits for SO₂ and PM-10 represent BART. EPA is approving these emissions limitations as meeting the BART requirements of 40 CFR 51.308(c)(4). Additionally, while the NO_x emission limitation may have represented BART when the emission limits in the RACT Order were negotiated, recent technology advancements have been made. EPA cannot now say that the emission limitations in the SWAPCA

RACT Order for NO_x represent BART. However EPA is approving the emission limits for NO_x as a strengthening of the SIP for visibility purposes.

D. Provisions To Revise the State's Best Available Retrofit Technology and New Source Review Rules.

The proposed 1999 SIP revision also included revised BART rules (WAC 173-400-151) and New Source Review (NSR) (WAC 173-400-110, 112, 113, & 141). Subsequent to the submittal in 1999, the State has verbally indicated that new rules are being developed and the rules in this submittal will soon be obsolete. Therefore EPA is taking no action on these rules.

V. Response to Comments

EPA solicited comments on the proposed action in the October 23, 2002, **Federal Register** document (67 FR 65077). EPA received no comments. Therefore, there is no response to comments.

VI. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does