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EPA-APPROVED TENNESSEE SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
*	*	*	*	*
Eastman Chemical Company	BART Permit 066116H	May 9, 2012	November 27, 2012 ..... [Insert citation of publication]	BART determination.
Eastman Chemical Company—Amendment #1.	BART Permit 066116H, Amendment #1.	May 22, 2012 ...	November 27, 2012 ..... [Insert citation of publication]	Clarifying amendment to BART Determination.

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State effective date	EPA approval date	Explanation
*	*	*	*	*
Regional Haze Plan—Eastman Chemical Company BART determination.	Statewide	May 9, 2012	November 27, 2012 ..... [Insert citation ..... of publication]	Applicable only to the Eastman Chemical BART determination.

§ 52.2234 [Amended]

■ 3. Amend § 52.2234 by removing and reserving paragraph (b).

[FR Doc. 2012–27974 Filed 11–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0050; FRL–9755–6]

Approval and Promulgation of State Implementation Plans; State of New Mexico; Regional Haze Rule Requirements for Mandatory Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving New Mexico State Implementation Plan (SIP) revisions submitted on July 5, 2011, and December 1, 2003, by the Governor of New Mexico addressing the regional haze requirements for the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report and a separate submittal for other Federal mandatory Class I areas. We are taking final approval action on all components of the State's submittals except for the submitted nitrogen oxides (NO_X) Best Available Retrofit Technology (BART) determination for the San Juan Generating Station (SJGS). We are also approving several SIP submissions offered as companion rules to the regional haze plan, including submitted regulations for the Western Backstop Sulfur Dioxide Trading Program, for the inventorying of emissions, for smoke management, and open burning. These SIP revisions were submitted to address the requirements of the Clean Air Act (CAA or Act) which require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is taking this action pursuant to section 110 of the CAA.

DATES: This final rule is effective December 27, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2009–0050. All documents in the docket are listed on the *www.regulations.gov* Web site.

Publicly available docket materials are available either electronically through *www.regulations.gov,* or in hard copy 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 a.m. and 4:30 p.m. 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 our Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Michael Feldman, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–9793; fax number 214–665–7263; email address *feldman.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

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

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

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

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

iv. The initials *FIP* mean or refer to Federal Implementation Plan.

v. The initials *RH* and *RHR* mean or refer to Regional Haze and Regional Haze Rule.

vi. The initials *NMED* mean the New Mexico Environmental Department.

vii. The initials *NM* mean or refer to New Mexico.

viii. The initials *BART* mean or refer to Best Available Retrofit Technology.

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ix. The initials *EGUs* mean or refer to Electric Generating Units.

x. The initials NO_X mean or refer to nitrogen oxides.

xi. The initials SO_2 mean or refer to sulfur dioxide.

xii. The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.

xiii. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic of less than 2.5 micrometers.

xiv. The initials *RPGs* mean or refer to reasonable progress goals.

xv. The initials *LTS* mean or refer to long term strategy.

xvi. The initials *RPOs* mean or refer to regional planning organizations.

xvii. The initials *WRAP* mean or refer to the Western Regional Air Partnership.

xviii. The initials *GCVTC* mean or refer to the Grand Canyon Visibility Transport Commission.

xix. The initials *PNM* mean or refer to the Public Service Company of New Mexico.

xx. The initials *SJGS* mean or refer to the San Juan Generating Station.

xxi. The initials *WESP* mean or refer to Wet Electrostatic Precipitators.

xxii. The initials *PJFF* mean or refer to Pulse Jet Fabric Filters.

Table of Contents

I. Background

The CAA requires each state to develop plans, referred to as SIPs, to meet various air quality requirements. A state must submit its SIPs and SIP revisions to us for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA, also known as being federally enforceable. This action involves the requirement that states have SIPs that address regional haze.

A. Regional Haze

In 1990, Congress added section 169B to the CAA to address regional haze issues, and we promulgated regulations addressing regional haze in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. States were required to submit a SIP addressing regional haze visibility impairment no later than December 17, 2007. 40 CFR 51.308(b).

New Mexico submitted its regional haze (RH) SIP to EPA on July 5, 2011, and it adds to earlier RH SIP planning components that were submitted by the state on December 1, 2003.[1]

B. Lawsuits

In a lawsuit in the U.S. District Court for the District of Columbia, environmental groups sued us for our failure to timely take action with respect to the regional haze requirements of the CAA and our regulations. In particular, the lawsuits alleged that we had failed to promulgate federal implementation plans (FIPs) for these requirements within the two-year period allowed by CAA section 110(c) or, in the alternative, fully approve SIPs addressing these requirements.

As a result of these lawsuits, we entered into a consent decree. The consent decree requires that we sign a notice of final rulemaking addressing the remaining regional haze requirements for New Mexico by November 15, 2012. We are meeting that requirement with the signing of this notice of final rulemaking.

C. Our Proposal

We signed our notice of proposed rulemaking on May 31, 2012, and it was published in the **Federal Register** on June 15, 2012 (77 FR 36044). In that notice, we provided a detailed description of the various regional haze requirements. We are not repeating that description here; instead, the reader should refer to our notice of proposed rulemaking for further detail. In our proposal, we proposed to approve New Mexico SIP revisions submitted on July 5, 2011, and December 1, 2003, that address the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. We proposed to find that all reviewed components of the SIP meet the requirements of 40 CFR 51.309. We note that we did not propose action on the submitted NO_X BART determination for the San Juan Generating Station. The NO_X BART requirement for the source is presently satisfied by the BART determination that has been promulgated under the federal implementation plan at 40 CFR 52.1628.

D. Public Participation

We requested comments on all aspects of our proposed action and provided a thirty-day comment period, with the comment period closing on July 16, 2012. We received comments on our proposed rule that supported our proposed action and that were critical of our proposed action. In this action, we are responding to the comments we have received, taking final rulemaking action, and explaining the bases for our action.

II. Final Action

In this action, EPA is approving New Mexico SIP revisions submitted on July 5, 2011, and December 1, 2003, that address the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. We find that all reviewed components of the SIP meet the requirements of 40 CFR 51.309. We note that we have yet to propose action on the submitted NO_X BART determination for the San Juan Generating Station; it remains a submitted pending SIP revision at this time. The NO_X BART requirement for the source is presently satisfied by the BART determination that is effective under the federal implementation plan at 40 CFR 52.1628.

We note that EPA issued a temporary stay of the effectiveness of the NM FIP Rule for 90 days on July 16, 2012 (77 FR 41697) and this temporary stay was extended an additional 45 days to November 29, 2012 (October 24, 2012, 77 FR 64908). The temporary stays were issued to allow for additional time to discuss new and potentially different methods for complying with the NO_X BART requirements for the SJGS and to receive additional information from the state of New Mexico required for EPA to consider the state's different method and for further discussion among the stakeholders. If this approach leads to an additional regulatory proposal, it will be the subject of a separate, future rule making. Because today's action does not include any action on the State's NO_X BART determination for the SJGS, this final action is not affected by the ongoing discussions to consider replacing the NM FIP Rule.

III. Basis for Our Final Action

We have fully considered all significant comments on our proposal and have concluded that no changes from our proposal are warranted. Our action is based on an evaluation of New Mexico's regional haze SIP submittals against the regional haze rule (RHR) requirements at 40 CFR 51.300–51.309

[1] Portions of the 2003 NM 309 RH SIP submittal were resubmitted without revision on January 13, 2009. (New Mexico State Regional Haze SIP Clarification Letter submitted to EPA January 13, 2009)

and CAA sections 169A and 169B. A detailed explanation of how the NM SIP submittals meet these requirements is contained in the proposal (June 15, 2012, 77 FR 36044). All general SIP requirements contained in CAA section 110, other provisions of the CAA, and our regulations applicable to this action were also evaluated. The purpose of this action is to ensure compliance with these requirements. Our authority for action on New Mexico's SIP submittals is based on CAA section 110(k).

We are approving the State's regional haze SIP provisions outlined in our proposal because they meet the relevant regional haze requirements. Most of the adverse comments we received concerning our proposed approval of the regional haze SIP pertained to our proposed approval of the SO_2 backstop trading program.

IV. Issues Raised by Commenters and EPA's Responses

A. Comments and Responses Common to Participating States Regarding Proposed Approval of the SO_2 Backstop Trading Program Components of the RH SIPs

EPA has proposed to approve the SO_2 backstop trading program components of the RH SIPs for all participating States and has done so through four separate proposals: For the Bernalillo County proposal see 77 FR 24768 (April 25, 2012); for the Utah proposal see 77 FR 28825 (May 15, 2012); for the Wyoming proposal see 77 FR 30953 (May 24, 2012); finally, for the New Mexico proposal see 77 FR 36043 (June 15, 2012). National conservation organizations paired with organizations local to each state have together submitted very similar, if not identical, comments on various aspects of EPA's proposed approval of these common program components. These comment letters may be found in the docket for each proposal and are dated as follows: May 25, 2012 for Bernalillo County; July 16, 2012 for Utah; July 23, 2012 for Wyoming; and July 16, 2012 for New Mexico. Each of the comment letters has attached a consultant's report dated May 25, 2012, and titled: ''Evaluation of Whether the SO_2 Backstop Trading Program Proposed by the States of New Mexico, Utah and Wyoming and Albuquerque-Bernalillo County Will Result in Lower SO_2 Emissions than Source-Specific BART.'' In this section, we address and respond to those comments we identified as being consistently submitted and specifically directed to the component of the published proposals dealing with the submitted SO_2 backstop trading program. For our organizational purposes, any additional or unique comments found in the conservation organization letter that is applicable to this proposal (i.e., for the state of New Mexico) will be addressed in the next section where we also address all other comments received.

Comment: The language of the Clean Air Act appears to require BART. The commenter acknowledges that prior case law affirms EPA's regulatory basis for having ''better than BART'' alternative measures, but nevertheless asserts that it violates Congress' mandate for an alternative trading program to rely on emissions reductions from non-BART sources and excuse EGUs from compliance with BART.

Response: The Clean Air Act requires BART ''*as may be necessary* to make reasonable progress toward meeting the national goal'' of remedying existing impairment and preventing future impairment at mandatory Class I areas. See CAA Section 169A(b)(2) (emphasis added). In 1999, EPA issued regulations allowing for alternatives to BART based on a reading of the CAA that focused on the overarching goal of the statute of achieving progress. EPA's regulations provided states with the option of implementing an emissions trading program or other alternative measure in lieu of BART so long as the alternative would result in greater reasonable progress than BART. We note that this interpretation of CAA Section 169A(B)(2) was determined to be reasonable by the DC Circuit in *Center for Energy and Economic Development* v. *EP*A, 398 F.3d 653, 659–660 (DC Cir. 2005) in a challenge to the backstop market trading program under Section 309, and again found to reasonable by the DC Circuit in *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333, 1340 (DC Cir. 2006) (''* * *[W]e have already held in *CEED* that EPA may leave states free to implement BART-alternatives so long as those alternatives also ensure reasonable progress.''). Our regulations for alternatives to BART, including the provisions for a backstop trading program under Section 309, are therefore consistent with the Clean Air Act and not in issue in this action approving a SIP submitted under those regulations. We have reviewed the submitted 309 trading program SIPs to determine whether each has the required backstop trading program (see 40 CFR 51.309(d)(4)(v)), and whether the features of the program satisfy the requirements for trading programs as alternatives to BART (see 40 CFR 51.308(e)(2)). Our regulations make clear that any market trading program as an alternative to BART contemplates market participation from a broader list of sources than merely those sources that are subject to BART. See 40 CFR 51.308(e)(2)(i)(B).

Comment: The submitted 309 Trading Program is defective because only 3 of 9 Transport States remain in the program. The Grand Canyon Visibility Transport Commission Report clearly stated that the program must be ''comprehensive.'' The program fails to include the other Western States that account for the majority of sulfate contribution in the Class I areas of participating States, and therefore Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participation by other Transport Region States compounds the program's deficiencies.

Response: We disagree that the 309 trading program is defective because only 3 States remain in the program. EPA's regulations do not require a minimum number of Transport Region States to participate in the 309 trading program, and there is no reason to believe that the limited participation by the 9 Transport States will limit the effectiveness of the program in the 3 States that have submitted 309 SIPs. The commenter's argument is not supported by the regional haze regulations and is demonstrably inconsistent with the resource commitments of the Transport Region States that have worked for many years in the WRAP to develop and submit SIPs to satisfy 40 CFR 51.309. At the outset, our regulations affirm that ''certain States* * *may choose'' to comply with the 40 CFR 51.309 requirements and conversely that ''[a]ny Transport Region State [may] elect not to submit an implementation plan'' to meet the optional requirements. 40 CFR 51.309(a); see also 40 CFR 51.309(f). We have also previously observed how the WRAP, in the course of developing its technical analyses as the framework for a trading program, ''understood that some States and Tribes may choose not to participate in the optional program provided by 40 CFR 51.309.'' 68 FR 33,769 (June 5, 2003). Only five of nine Transport Region States initially opted to participate in the backstop trading program in 2003, and of those initial participants only Oregon and Arizona later elected not to submit 309 SIPs.

We disagree with the commenter's assertion that Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participating States must account for sulfate contributions to visibility impairment at Class I areas by addressing all requirements that apply under 40 CFR 51.308. To the extent Wyoming, New Mexico and Utah sources ''do not

account for the majority of sulfate contribution'' at the 16 class I areas on Colorado Plateau, there is no legal requirement that they account for SO_2 emissions originating from sources outside these participating States. Aside from this, the modeling results detailed in the proposed rulemaking show projected visibility improvement for the 20 percent worst days in 2018 and no degradation in visibility conditions on the 20 percent best days at all 16 of the mandatory Class I areas under the submitted 309 plan.

Finally, we do not agree with the commenter's characterization of the Grand Canyon Visibility Transport Commission Report, which used the term ''comprehensive'' only in stating the following:

''It is the intent of [the recommendation for an incentive-based trading program] that [it] include as many source categories and species of pollutants as is feasible and technically defensible. This preference for a 'comprehensive' market is based upon the expectation that a comprehensive program would be more effective at improving visibility and would yield more cost-effective emission reduction strategies for the region as a whole.'' [2]

It is apparent that the Grand Canyon Visibility Transport Commission recommended comprehensive source coverage to optimize the market trading program. This does not necessitate or even necessarily correlate with geographic comprehensiveness as contemplated by the comment. We note that the submitted backstop trading program does in fact comprehensively include ''many source categories,'' as may also be expected for any intrastate trading program that any state could choose to develop and submit under 40 CFR 51.308(e)(2). As was stated in our proposal, section 51.309 does not require the participation of a certain number of States to validate its effectiveness.

Comment: The submitted 309 trading program is defective because the pollutant reductions from participating States have little visibility benefit in each other's Class I areas. The States that have submitted 309 SIPs are ''largely non-contiguous'' in terms of their physical borders and their air shed impacts. Sulfate emissions from each of the participating States have little effect on Class I areas in other participating States.

Response: We disagree. The 309 program was designed to address visibility impairment for the sixteen Class I areas on the Colorado Plateau. New Mexico, Wyoming and Utah are identified as Transport Region States because the Grand Canyon Visibility Transport Commission had determined they could impact the Colorado Plateau class I areas. The submitted trading program has been designed by these Transport Region States to satisfy their requirements under 40 CFR 51.309 to address visibility impairment at the sixteen Class I areas. The strategies in these plans are directed toward a designated clean-air corridor that is defined by the placement of the 16 Class I areas, not the placement of state borders. ''Air sheds'' that do not relate to haze at these Class I areas or that relate to other Class I areas are similarly not relevant to whether the requirements for an approvable 309 trading program are met. As applicable, any Transport Region State implementing the provisions of Section 309 must also separately demonstrate reasonable progress for any additional mandatory Class I Federal areas other than the 16 Class I areas located within the state. See 40 CFR 51.309(g). More broadly, the State must submit a long-term strategy to address these additional Class I areas as well as those Class I areas located outside the state which may be affected by emissions from the State. 40 CFR 51.309(g) and 51.308(d)(2). In developing long-term strategies, the Transport Region States may take full credit for visibility improvements that would be achieved through implementation of the strategies required by 51.309(d). A state's satisfaction of the requirements of 51.309(d), and specifically the requirement for a backstop trading program, is evaluated independently from whether a state has satisfied the requirements of 51.309(g). In neither case, however, does the approvability inquiry center on the location or contiguousness of state borders.

Comment: The emission benchmark used in the submitted 309 trading program is inaccurate. The ''better-than-BART'' demonstration needs to analyze BART for each source subject to BART in order to evaluate the alternative program. The submitted 309 trading program has no BART analysis. The ''better-than-BART'' demonstration does not comply with the regional haze regulations when it relies on the presumptive SO_2 emission rate of 0.15 lb/MMBtu for most coal-fired EGUs. The presumptive SO_2 limits are inappropriate because EPA has elsewhere asserted that ''presumptive limits represented control capabilities at the time the BART Rule was promulgated, and that [EPA] expected that scrubber technology would continue to improve and control costs would continue to decline.'' 77 FR 14614 (March 12, 2012).

Response: We disagree that the submitted 309 trading program requires an analysis that determines BART for each source subject to BART. Source specific BART determinations are not required to support the better-than-BART demonstration when the ''alternative measure has been designed to meet a requirement other than BART.'' See 40 CFR 51.308(e)(2)(i)(C). The requirements of Section 309 are meant to implement the recommendations of the Grand Canyon Visibility Transport Commission and are regulatory requirements ''other than BART'' that are part of a long-term strategy to achieve reasonable progress. As such, in its analysis, the State may assume emission reductions ''for similar types of sources within a source category based on both source-specific and category-wide information, as appropriate.'' See id. The 309 States used this approach in developing their emission benchmark, and we view it to be consistent with what we have previously stated regarding the establishment of a BART benchmark. Specifically, we have explained that States designing alternative programs to meet requirements other than BART ''may use simplifying assumptions in establishing a BART benchmark based on an analysis of what BART is likely to be for similar types of sources within a source category.'' 71 FR 60619 (Oct. 13, 2006).

We also previously stated that ''we believe that the presumptions for EGUs in the BART guidelines should be used for comparisons to a trading program or other alternative measure, unless the State determines that such presumptions are not appropriate.'' Id. Our reasoning for this has also long been clear. While EPA recognizes that a case-by-case BART analysis may result in emission limits more stringent than the presumptive limits, the presumptive limits are reasonable and appropriate for use in assessing *regional* emissions reductions for the better than BART demonstration. See 71 FR 60619 (''the presumptions represent a reasonable estimate of a stringent case BART because they would be applied across the board to a wide variety of units with varying impacts on visibility, at power plants of varying size and distance from Class I areas''). EPA's expectation that scrubber technology would continue to improve and that control costs would continue to decline is a basis for not

[2] The Grand Canyon Visibility Transport Commission, *Recommendations for Improving Western Vistas* at 32 (June 10, 1996).

regarding presumptive limits as a default or safe harbor BART determination when the BART Guidelines otherwise call for a complete, case-by-case analysis. We believe it was reasonable for the developers of the submitted trading program to use the presumptive limits for EGUs in establishing the emission benchmark, particularly since the methodology used to establish the emission benchmark was established near in time to our promulgation of the presumptive limits as well as our guidance that they should be used. We do not think the assumptions used at the time the trading program was developed, including the use of presumptive limits, were unreasonable. Moreover, the commenter has not demonstrated how the use of presumptive limits as a simplifying assumption at that time, or even now, would be flawed merely because EPA expects that scrubber technology and costs will continue to improve.

Comment: The presumptive SO_2 emission rate overstates actual emissions from sources that were included in the BART benchmark calculation. In addition, States in the Grand Canyon Visibility Transport Region have established or proposed significantly more stringent BART limits for SO_2. Using actual SO_2 emission data for EGUs, SO_2 emissions would be 130,601 tpy, not the benchmark of 141,859 tpy submitted in the 309 trading program. Using a combination of actual emissions and unit-specific BART determinations, the SO_2 emissions would be lower still at 123,529 tpy. Finally, the same data EPA relied on to support its determination that reductions under the Cross State Air Pollution Rule are ''better-than-BART'' would translate to SO_2 emissions of 124,740 tpy. These analyses show the BART benchmark is higher than actual SO_2 emissions reductions achievable through BART. It follows that the submitted 309 trading program is flawed because it cannot be deemed to achieve ''greater reasonable progress'' than BART.

Response: The BART benchmark calculation does not overstate emissions because it was not intended to assess actual emissions at BART subject sources nor was it intended to assess the control capabilities of later installed controls. Instead, the presumptive SO_2 emission rate served as a necessary simplifying assumption. When the States worked to develop the 309 trading program, they could not be expected to anticipate the future elements of case-by-case BART determinations made by other States (or EPA, in the case of a BART determination through any federal implementation plan), nor could they be expected to anticipate the details of later-installed SO_2 controls or the future application of enforceable emission limits to those controls. The emissions projections by the WRAP incorporated the best available information at the time from the states, and utilized the appropriate methods and models to provide a prediction of emissions from all source categories in this planning period. In developing a profile of planning period emissions to support each state's reasonable progress goals, as well as the submitted trading program, it was recognized that the final control decisions by all of the states were not yet complete, including decisions as they may pertain to emissions from BART eligible sources. Therefore, we believe it is appropriate that the analysis and demonstration is based on data that was available to the States at the time they worked to construct the SO_2 trading program. The States did make appropriate adjustments based on information that was available to them at the time. Notably, the WRAP appropriately adjusted its use of the presumptive limits in the case of Huntington Units 1 and 2 in Utah, because those units were already subject to federally enforceable SO_2 emission rates that were lower than the presumptive rate. The use of actual emissions data after the 2006 baseline is not relevant to the demonstration that has been submitted.

Comment: SO_2 emissions under the 309 trading program would be equivalent to the SO_2 emissions if presumptive BART were applied to each BART-subject source. Because the reductions are equivalent, the submitted 309 trading program does not show, by ''the clear weight of the evidence,'' that the alternative measure will result in greater reasonable progress than would be achieved by requiring BART. In view of the reductions being equivalent, it is not proper for EPA to rely on ''non-quantitative factors'' in finding that the SO_2 emissions trading program achieves greater reasonable progress.

Response: We recognize that the 2018 SO_2 milestone equals the BART benchmark and that the benchmark generally utilized the presumptive limits for EGUs, as was deemed appropriate by the States who worked together to develop the trading program. If the SO_2 milestone is exceeded, the trading program will be activated. We note, moreover, that the 2018 milestone constitutes an emissions cap on sulfur dioxide emissions that will persist after 2018.[3] Under this framework, sources that would otherwise be subject to the trading program have incentives to make independent reductions to avoid activation of the trading program. We cannot discount that the 2003 309 SIP submittal may have already influenced sources to upgrade their plants before any case-by-case BART determination under Section 308 may have required it. In addition, the trading program was designed to encourage early reductions by providing extra allocations for sources that made reductions prior to the program trigger year. Permitting authorities that would otherwise permit increases in SO_2 emissions for new sources would be equally conscious of the potential impacts on the achievement of the milestone. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. The 309 trading program is designed as a backstop such that sources would work to accomplish emission reductions through 2018 that would be superior to the milestone and the BART benchmark. If instead the backstop trading program is triggered, the sources subject to the program would be expected to make any reductions necessary to achieve the emission levels consistent with each source's allocation. We do not believe that the ''clear weight of the evidence'' determination referenced in 40 CFR 51.308(e)(2)(E)—in short, a determination that the alternative measure of the 309 trading program achieves greater reasonable progress than BART—should be understood to prohibit setting the SO_2 milestone to equal the BART benchmark. Our determination that the 2018 SO_2 milestone and other design features of the 309 SIP will achieve greater reasonable progress than would be achieved through BART is based on our understanding of how the SIP will promote and sustain emission reductions of SO_2 as measured against a milestone. Sources will be actively mindful of the participating states' emissions inventory and operating to avoid exceeding the milestone, not trying to maximize their emissions to be equivalent to the milestone, as this comment suggests.

Comment: In proposing to find that the SO_2 trading program achieves greater reasonable progress than BART, EPA's reliance on the following features of the 309 trading program is flawed:

[3] The trading program can only be replaced via future SIP revisions submitted for EPA approval that will meet the BART and reasonable progress requirements of 51.308. See 40 CFR 51.309(d)(4)(vi)(A).

Non-BART emission reductions, a cap on new growth, and a mass-based cap on emissions. The reliance on non-BART emission reductions is ''a hollow promise'' because there is no evidence that the trading program will be triggered for other particular emission sources, and if the program is never triggered there will be no emission reductions from smaller non-BART sources. The reliance on a cap on future source emissions is also faulty because there is no evidence the trading program will be triggered, and thus the cap may never be implemented. Existing programs that apply to new sources will already ensure that S02 emissions from new sources are reduced to the maximum extent. EPA's discussion of the advantages of a mass-based cap is unsupported and cannot be justified. EPA wrongly states that a mass-based cap based on actual emissions is more stringent than BART. There should not be a meaningful gap between actual and allowable emissions under a proper BART determination. A mass-based cap does not effectively limit emissions when operating at lower loads and, as an annual cap, does not have restrictive compliance averaging. EPA's argument implies that BART limits do not apply during startup, shutdown or malfunction events, which is not correct. The established mass-based cap would allow sources to operate their SO_2 controls less efficiently, because some BART-subject EGUs already operate with lower emissions than the presumptive SO_2 emission rate of 0.15 lb/MMBtu and because some EGUs were assumed to be operating at 85% capacity when their capacity factor (and consequently their $S0_2$ emissions in tpy) was lower.

Response: We disagree that it is flawed to assess the benefits found in the distinguishing features of the trading program. The backstop trading program is not specifically designed so that it *will* be activated. Instead sources that are covered by the program are on notice that it will be triggered if the regulatory milestones are not achieved. Therefore, the backstop trading program would be expected to garner reductions to avoid its activation. It also remains true that if the trading program is activated, all sources subject to the program, including smaller non-BART sources would be expected to secure emission reductions as may be necessary to meet their emission allocation under the program

We also disagree that the features of the 2018 milestone as a cap on future source emissions and as a mass-based cap has no significance. As detailed in our proposal, the submitted SIP is consistent with the requirement that the 2018 milestone does indeed continue as an emission cap for SO_2 unless the milestones are replaced by a different program approved by EPA as meeting the BART and reasonable progress requirements under 51.308. Future visibility impairment is prevented by capping emissions growth from those sources not eligible under the BART requirements, BART sources, and from entirely new sources in the region. The benefits of a milestone are therefore functionally distinct from the control efficiency improvements that could be gained at a limited number of BART subject sources. While BART-subject sources may not be operating at 85% capacity today, we believe the WRAP's use of the capacity assumption in consideration of projected future energy demands in 2018 was reasonable for purposes of the submitted demonstration. While BART requires BART subject sources to operate SO_2 controls efficiently, this does not mean that an alternative to BART thereby allows, encourage, or causes sources to operate their controls less efficiently. On the contrary, we find that the SIP, consistent with the well-considered 309 program requirements, functions to the contrary. Sources will be operating their controls in consideration of the milestone and they also remain subject to any other existing or future requirements for operation of SO_2 controls.

We also disagree with the commenter's contention that existing programs are equivalent in effect to the emissions cap. EPA's new source review programs are designed to permit, not cap, source growth, so long as the national ambient air quality standards and other applicable requirements can be achieved. Moreover, we have not argued that BART does not apply at all times or that emission reductions under the cap are meant to function as emission limitations are made to meet the definition of BART (40 CFR 51.301). The better-than-BART demonstration is not, as the comment would have it, based on issues of compliance averaging or how a BART limit operates in practice at an individual facility. Instead, it is based on whether the submitted SIP follows the regulatory requirements for the demonstration and evidences comparatively superior visibility improvements for the Class I areas it is designed to address.

Comment: The submitted 309 SIP will not achieve greater reasonable progress than would the requirement for BART on individual sources. The BART program ''if adequately implemented'' will promote greater reasonable progress, and EPA should require BART on all eligible air pollution sources in the state. EPA's proposed approval of the 309 trading program is ''particularly problematic'' where the BART sources cause or contribute to impairment at Class I areas which are not on the Uniform Rate of Progress glide-path towards achieving natural conditions. EPA should require revisions to provide for greater SO_2 reductions in the 309 program, or it should require BART reductions on all sources subject to BART for SO_2.

Response: We disagree with the issues discussed in this comment. As discussed in other comments, we have found that the state's SIP submitted under the 309 program will achieve greater reasonable progress than source-by-source BART. As the regulations housed within section 51.309 make clear, States have an opportunity to submit regional haze SIPs that provide an alternative to source-by-source BART requirements. Therefore, the commenter's assertion that we should require BART on all eligible air pollution sources in the state is fundamentally misplaced. The commenter's use of the Uniform Rate of Progress (URP) as a test that should apparently be applied to the adequacy of the 309 trading program as a BART alternative is also misplaced, as there is no requirement in the regional haze rule to do so.

Comment: The 309 trading program must be disapproved because it does not provide for ''steady and continuing emissions reductions through 2018'' as required by 40 CFR 51.309(d)(4)(ii). The program establishes its reductions through milestones that are set at three year intervals. It would be arbitrary and capricious to conclude these reductions are ''steady'' or ''continuous.''

Response: We disagree and find that the reductions required at each milestone demonstrate steady and continuing emissions reductions. The milestones do this by requiring regular decreases. These decreases occur in intervals ranging from one to three years and include administrative evaluation periods with the possibility of downward adjustments of the milestone, if warranted. The interval under which ''steady and continuing emissions reductions through 2018'' must occur is not defined in the regional haze rule. We find the milestone schedule and the remainder of the trading program submitted by New Mexico does in fact reasonably provide for ''steady and continuing emissions reductions through 2018.''

Comment: The WRAP attempts to justify the SO_2 trading program because

SO_2 emissions have decreased in the three Transport Region states relying on the alternative program by 33% between 1990–2000. The justification fails because the reductions were made prior to the regional haze rule. The reliance on reductions that predate the regional haze rule violates the requirement of 40 CFR 51.308(e)(2)(iv) that BART alternatives provide emission reductions that are ''surplus'' to those resulting from programs implemented to meet other Clean Air Act Requirements.

Response: We did not focus on the WRAP's discussion of early emission reductions in our proposal. However, we do not agree with this comment. The WRAP's statements regarding past air quality improvements are not contrary to the requirement that reductions under a trading program be surplus. Instead, the WRAP was noting that forward-planning sources had already pursued emission reductions that could be partially credited to the design of the 309 SIP. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. Sources that make early reductions prior to the program trigger year may acquire extra allocations should the program be triggered. This is an additional characteristic feature of the backstop trading program that suggests benefits that would be realized even without triggering of the program itself. The surplus emission reduction requirement for the trading program is not in issue, because the existence of surplus reductions is studied against other reductions that are realized ''as of baseline date of the SIP.'' The 1990–2000 period plainly falls earlier than the baseline date of the SIP, so we disagree that the WRAP's discussion of that period was problematic or violative of 40 CFR 51.308(e)(2)(iv), regarding surplus reductions.

Comment: EPA must correct discrepancies between the data presented in the 309 SIP submittals.[4] There are discrepancies in what has been presented as the results of WRAP photochemical modeling. The New Mexico RH SIP proposal by EPA shows, for example, that the 20% worst days at Grand Canyon National Park have visibility impairment of 11.1 deciviews, while the other EPA proposals show 11.3 deciviews. The discrepancy appears to be due to the submittals being based on different modeling scenarios developed by the WRAP. EPA must explain and correct the discrepancies and ''re-notice'' a new proposed rule containing the correct information.

Response: We agree that there are discrepancies in the numbers in Table 1 of the proposal notices. The third column of the table below shows the modeling results presented in Table 1 of the Albuquerque, Wyoming and Utah proposals. The modeling results in the New Mexico proposal Table 1 are shown in the fourth column. The discrepancies come from the State's using different preliminary reasonable progress cases developed by the WRAP. The Wyoming, Utah and Albuquerque proposed notices incorrectly identify the Preliminary Reasonable Progress case as the PRP18b emission inventory instead of correctly identifying the presented data as modeled visibility based on the ''prp18a'' emission inventory. The PRP18a emission inventory is a predicted 2018 emission inventory with all known and expected controls as of March 2007. The preliminary reasonable progress case (''PRP18b'') used by New Mexico is the more updated version produced by the WRAP with all known and expected controls as of March 2009. Thus, we are correcting Table 1, column 5 in the Wyoming, Utah and Albuquerque of our proposed notices to include model results from the PRP18b emission inventory, consistent with the New Mexico proposed notice and the fourth column in the table below. We are also correcting the description of the Preliminary Reasonable Progress Case (referred to as the PRP18b emission inventory and modeled projections) to reflect that this emission inventory includes all controls ''on the books'' as of March 2009.

Class I Area	State	2018 Preliminary Reasonable Progress PRP18a Case (deciview)	2018 Preliminary Reasonable Progress PRP18b case (deciview)
Grand Canyon National Park	AZ	11.3	11.1
Mount Baldy Wilderness	AZ	11.4	11.5
Petrified Forest National Park	AZ	12.9	12.8
Sycamore Canyon Wilderness	AZ	15.1	15.0
Black Canyon of the Gunnison National Park Wilderness	CO	9.9	9.8
Flat Tops Wilderness	CO	9.0	9.0
Maroon Bells Wilderness	CO	9.0	9.0
Mesa Verde National Park	CO	12.6	12.5
Weminuche Wilderness	CO	9.9	9.8
West Elk Wilderness	CO	9.0	9.0
San Pedro Parks Wilderness	NM	9.8	9.8
Arches National Park	UT	10.9	10.7
Bryce Canyon National Park	UT	11.2	11.1
Canyonlands National Park	UT	10.9	10.7
Capitol Reef National Park	UT	10.5	10.4
Zion National Park	UT	13.0	12.8

Section 309 requires Transport Region States to include a projection of the improvement in visibility expected through the year 2018 for the most impaired and least impaired days for each of the 16 Class I areas on the Colorado Plateau. 40 CFR 51.309(d)(2). As explained in the preamble to the 1999 regional haze regulations, EPA included this requirement to ensure that the public would be informed on the relationship between chosen emissions

[4] This particular comment was not submitted in response to the proposal to approve Albuquerque's 309 trading program, the earliest published proposal. It was consistently submitted in the comment periods for the proposals to approve the 309 trading programs for NM, WY and UT, which were later in time.

control measures and their effect on visibility. 64 FR at 35751. Given the purpose of this requirement, we do not consider the discrepancies noted above to be significant and are not re-noticing our proposed rulemaking as the discrepancies do not change our proposed conclusion that SIP submitted by New Mexico contains reasonable projections of the visibility improvements expected at the 16 Class I areas at issue. The PRP18a modeling results show projected visibility improvement for the 20 percent worst days from the baseline period to 2018. The PRP18b modeling results show either the same or additional visibility improvement on the 20 percent worst days beyond the PRP18a modeling results. We also note there are two discrepancies in New Mexico's Table 1, column four compared to the other participating States' notices. The 2018 base case visibility projection in the New Mexico proposed notice for Black Canyon of the Gunnison National Park Wilderness and Weminuche Wilderness should be corrected to read 10.1 deciview rather than 10.0. Notwithstanding the discrepancies described above, we believe that the NM SIP adequately projects the improvement in visibility for purposes of Section 309.

B. Comments on PM BART

Comment: EPA failed to identify the cost-effectiveness criteria it used to determine that wet electrostatic precipitators (WESPs) were not cost effective at San Juan Generating Station (SJGS). Public Service of New Mexico's (PNM's) own analysis shows a visibility improvement of 0.62 deciview at Mesa Verde National Park as a result of installation of WESPs on all four units at SJGS at a cost of $145,000–$173,000 per ton of PM removed. EPA remarked that PNM likely overestimated the cost of WESPs, yet failed to present the correct cost calculation in its proposed rule or reject installation of WESP as BART using proper cost numbers. The commenter states that EPA lacks the evidence to make this conclusion and that EPA must properly calculate the cost of WESPs at SJGS, identify the range of costs deemed cost-effective for other PM BART determinations, and identify objective criteria to be used for determining PM cost-effectiveness for PM controls under BART.

Response: EPA is approving the state's determination that BART for PM is no additional controls, and is not purporting to make or conduct an independent BART analysis. We hold to our original observation that the cost estimations presented for WESPs were likely overstated, but we cannot conclude these costs were radically overstated such that New Mexico, having more refined cost estimates, would have reached a different conclusion. We note that no commenters questioned New Mexico's PM BART determination or its underlying technical analysis during the state's public comment period. In reviewing the submitted BART determination, we do not agree that EPA is presently responsible for generating its own cost analysis or stating a range of cost-effectiveness for PM BART controls at SJGS. No commenters responding to our proposal have provided a basis to conclude that the addition of WESPs would achieve their objective of improving visibility in Class I areas in an economical way. The estimated average cost effectiveness of WESP that has been quoted by PNM is more than an order of magnitude larger (i.e., >cost/ton*10) than what other BART determining authorities have found to be cost effective in other case-by-case determinations. We have no record basis for assuming that the errors in the developed cost estimations are flawed to such a great degree. Nor do we have a reason to find that New Mexico's record support was inadequate such that it arrived at an unreasonable determination. In other words, the cost estimations for WESP were not so flawed as to throw into question the conclusion that the incremental visibility benefit anticipated from additional controls could not justify the high cost to achieve a more stringent emission limit.

The addition of WESP would result in an exorbitant incremental cost effectiveness value because the existing pulse jet fabric filters (PJFF) are removing much of the PM. The addition of WESP is estimated to only reduce PM emissions by an additional 69 tons per year (tpy) each at units 1 and 2, and approximately 100 tpy each at units 3 and 4. Therefore, the addition would result in a high anticipated cost on a $/ton removed basis for WESP at SJGS, even if we corrected the cost estimate to be consistent with EPA guidance; we believe the cost of installation and operation of WESP would not be cost effective. We are therefore approving the submitted PM BART determination.

Comment: EPA failed to propose a PM BART emission limit that is achievable with the operation of baghouses such as those currently installed at SJGS. Much lower PM emission rates are achievable even with SJGS's existing technology. The commenter notes that the EPA is proposing a BART PM limit of 0.012 lb/MMBtu at the nearby Four Corners Power Plant (FCPP) and a 10% opacity limit at each unit at FCPP to control PM emissions. Moreover, there have been several recent permits issued with best available control technology (''BACT'') limits at 0.010 lb/MMBtu based on operation of a fabric filter baghouse. The commenter asserts even lower levels are achievable based on source test data at some facilities. An EPA Region 9 employee concluded back in 2002 that BACT for filterable PM at two existing pulverized coal boilers firing Powder River Basin coal and equipped with a baghouse was 0.006 lb/MMBtu based on a 3-hour average and monitored via EPA Method 5 and continuously using triboelectric broken bag detectors; there is no reason that the SJGS units could not achieve similar PM emission rates as new units.

The filtration media determines the control efficiency of a baghouse for very small particles. There is a wide range of media that can be used, most of which are much more efficient for larger particles than smaller particles. Thus, PNM and EPA should have assumed lower filterable PM emissions than 0.015 lb/MMBtu for a baghouse in their evaluation of PM controls. Had they done so, the cost of control on a dollar per ton of pollution removed basis would be lower.

Response: The commenter is incorrect in summarizing the proposed PM emission limit for the Four Corners Power Plant. The proposed rule sought comment on an emission limit of 0.015 lb/MMBtu on units 4 and 5 achievable with the existing baghouses consistent with our proposal for the SJGS and also includes a proposed 10% opacity limit. The proposed rule also proposed to require an upgrade in PM controls to meet an emission limit of 0.012 lb/MMBtu and 10% opacity on Units 1–3, which is achievable either through installing baghouses or ESPs for these units. The proposal noted that because of the high incremental cost of both of these options, however, EPA was also asking for comment on whether the facility can satisfy BART by operating the existing venturi scrubbers to meet an emissions limit of 0.03 lb/MMBtu with a 20% opacity limit to demonstrate continuous compliance. The final rule (77 FR 51620) published on August 24, 2012 (after the publication of our proposed notice) requires Units 4 and 5 at FCPP to meet an emission limit of 0.015 lb/MMBtu, and retains the existing 20 percent opacity limit. These PM limits are achievable through the proper operation of the existing baghouses. EPA has determined that it is not necessary or appropriate at this

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time to set new PM limits for Units 1–3 at the FCPP.

As stated in a BART analysis [5] developed by PNM and incorporated for technical support by New Mexico in the submitted PM BART determination, ''While the control effectiveness of the PJFF is usually defined by vendors at the outlet ductwork of the PJFF, the BART determination is based on the control effectiveness for particulate matter at the stack outlet. Therefore, the particulate matter emission rate has to take into account both the removal efficiency of the PJFF and the impacts of the wet FGD operation, where there is a potential for additional re-entrainment of scrubber solids into the flue gas, which increases the stack outlet particulate matter emission concentration.'' Therefore, direct comparison to performance of baghouses at other facilities or BACT analyses for new facilities is not necessarily appropriate. The PM emission limit at the SJGS represents the vendor guarantee for the performance of the fabric filters recently installed in response to the 2005 consent decree to address PM and for enhanced mercury control and includes the additional contribution of PM emissions from operation of the wet FGD downstream of the PJFF.

Comment: EPA's proposed PM BART emission limit for SJGS is improper because it appears to only apply to filterable PM. The commenter asserts that EPA's BART guidelines specify that BART should be evaluated and defined for both PM_{10} and $PM_{2.5}$. Since EPA has found that the SJGS is subject to BART for particulate matter, EPA must evaluate and define BART limits for both PM_{10} and $PM_{2.5}$.

Response: We disagree that we must promulgate any limits or disapprove the PM BART determination because the State did not make a BART determination for $PM_{2.5}$. The BART Guidelines do not specify that States must establish a BART limit for both PM_{10} and $PM_{2.5}$. The BART Guidelines provide the following:

''You must look at SO_2, NO_X, and direct particulate matter (PM) emissions in determining whether sources cause or contribute to visibility impairment, including both PM_{10} and $PM_{2.5}$.'' [Appendix Y to Part 51, section III.A.2.]

This language in the BART Guidelines was intended to clarify to States that when determining whether a source is subject to BART, the modeling evaluation to determine the source's impact on visibility has to account for both PM_{10} and $PM_{2.5}$ emissions. There are several instances in which we state in both the preamble to the RHR, and in the BART Guidelines that PM_{10} may be used as indicator for $PM_{2.5}$ in determining whether a source is subject to BART. Neither the RHR nor the BART Guidelines specify that States must make separate BART determinations for PM_{10} and $PM_{2.5}$. Therefore, we disagree that we must evaluate separate limits or disapprove the PM BART determination for SJGS on the basis that a BART determination for $PM_{2.5}$ was not made.

Furthermore, we expect that H_2SO_4 will be a main component of condensable PM emissions from the facility and anticipate that emissions of H_2SO_4 will be low given the type of coal used and the existing control equipment. We have imposed a limit on H_2SO_4 in the FIP of 2.6×10^{-4} lb/MMBtu (76 FR 52388) to limit the increase in emissions of H_2SO_4 expected from operating SCR at the SJGS units.

C. Comments on Reasonable Progress

Comment: EPA proposes no additional emission reductions from New Mexico's stationary sources to make further progress toward achieving natural visibility conditions. EPA's determination that this approach is ''reasonable,'' 77 FR 36073, is counter to the very purpose of the Regional Haze program. An implementation plan must identify and analyze the measures aimed at achieving the uniform rate of progress (URP) and determine whether these measures are reasonable. If a state establishes an RPG that does not meet the URP, the state must demonstrate, on the basis of the four factors, that (1) meeting the URP isn't reasonable; and (2) the RPG adopted by the state is reasonable. The reasonableness of measures that are necessary to achieve the uniform rate of progress is evaluated based on four factors: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources.

While EPA has established a target of 2064 for achieving natural visibility conditions, under its proposed approval of the New Mexico SIP, natural visibility conditions will not be restored in Class I areas affected by New Mexico sources until much later, in some cases *hundreds of years* beyond 2064. EPA failed to impose any emission reductions from New Mexico's largest anthropogenic sources of haze-causing pollutants beyond BART. The commenter supports EPA's NO_X BART determination at the San Juan Generating Station, but states that greater emissions reductions are necessary across all New Mexico sources of haze-causing pollution to achieve reasonable progress. The commenter states EPA's approach in the NM RH SIP proposal guarantees that Congress' goal of achieving natural visibility conditions at Class I areas will never be reached. EPA must require additional reductions of visibility-impairing pollutants from New Mexico's largest air pollution sources to meet reasonable progress requirements.

Response: EPA's Reasonable Progress Guidance states that the URP is not a presumptive target for the RPG.[6] The state followed the proper approach in setting its RPGs through 2018. New Mexico considered the four factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A). The factors are considered when selecting the RPGs for the best and worst days for each Class I area. New Mexico considered the costs of compliance, the time needed for compliance, the energy and non-air quality environmental impacts, and the remaining useful life of the facility for a wide variety of source categories. New Mexico also investigated additional control options on three refineries. The NMED reasonably concluded that the cost of additional controls was not warranted and concluded that the RPGs are reasonable given projected emissions reductions from anthropogenic sources and the fact that natural and out-of-state sources contribute significantly to haze. Because the State has limited ability to control naturally occurring wildfires and windblown dust, these sources of visibility impairment will continue to impact visibility at New Mexico's Class I areas and limit the visibility improvement achievable during the planning period.

The visibility improvement at issue here is the rate of visibility improvement for the first implementation period, which extends until July 31, 2018. New control programs in the future that reduce emissions may be implemented, which would hasten visibility improvement and possibly yield an earlier year to achieve natural conditions. Similarly, emission reductions in place or anticipated to be in place before 2018 that were not included in the projected

[5] Public Service Company of New Mexico, San Juan Generating Station Final particulate matter BART analysis, PNM (August 28, 2008).

[6] *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* June 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1).

2018 emission inventory will result in improved visibility improvement over the State's RPGs. As explained in the proposal, the implementation of NO_X BART at SJGS and FCPP, as well as corrections to over-projections of NO_X and SO_2 emissions in Bernalillo County would further lower 2018 emissions projections for both NO_X and SO_2, and result in more visibility improvement than predicted by the WRAP modeling which was the basis for setting the RPGs. In addition, in this action we are approving New Mexico's participation in the SO_2 emissions milestone and backstop trading program that applies to all stationary sources which emit greater than 100 tpy of SO_2 and will result in emission reductions of SO_2 between 2002 and 2018.

New Mexico will include any additional control measures it finds reasonable along with any additional measures implemented by contributing states in the next implementation period. For the first implementation period, EPA finds adequate New Mexico's assessment of reasonable progress goals and reasonable measures for its long term strategy.

Comment: New Mexico and EPA failed to analyze or require any air pollution controls under the reasonable progress program. Instead, EPA's proposal relies on the WRAP's general, non-source specific analysis of potential reasonable progress source categories. See, Docket EPA–R06–2009–0050–0014, Appendix E. The WRAP's general source category analysis fails to identify any specific New Mexico sources that may be subject to reasonable progress controls. Id. The WRAP's general source analysis is also factually incorrect. Table 6–1 of the WRAP's analysis indicates that there are no PM, SO_2, or NO_X emissions from coal fired boilers in New Mexico. Id. at p. 340. To the contrary, coal fired boilers at SJGS, Escalante coal plant, Raton coal plant, and Four Corners all emit significant quantities of these criteria pollutants. Thus, reliance on the WRAP general source report for approval of the New Mexico SIP is arbitrary and capricious due to its factual inaccuracy.

In addition, a supplemental reasonable progress analysis was also performed for the NM RH SIP. See, Docket EPA–R06–2009–0050–0014, Appendix F. This analysis was a New Mexico source specific analysis. However, this source specific analysis only analyzed reasonable progress controls at three refineries in New Mexico. Id. Thus, the commenter asserts that New Mexico has failed to analyze the need for or require source-specific reasonable progress controls at New Mexico's EGU's or other facilities identified in the WRAP general report, such as cement plants, as is mandated under the regional haze rule. The commenter claims EPA's proposal fails to correct this deficiency. As such, EPA's proposal fails to comply with the federal regional haze rules and EPA's proposed approval of the SIP is arbitrary and capricious. Therefore, EPA must evaluate options for limiting NO_X, PM, and SO_2 emissions at all New Mexico EGUs and other large stationary sources.

Response: We disagree with the commenter's assessment of the WRAP's analysis. As the commenter acknowledges, the WRAP analysis (Supplementary Information for Four Factor Analyses by WRAP States, Appendix E of the NM RH 309(g) SIP submittal) is a general, non-source specific analysis of potential controls to be considered in a reasonable progress analysis. As such, the usefulness of the report lies not in any identification of specific sources within each state, but in the identification of available emission control technologies and analysis of the four factors for the candidate control measures identified for priority pollutants for each emission source category. The report provides information on control efficiency, cost effectiveness, time needed for implementation, energy and other impacts, and information on considerations for the impact of remaining useful life on control costs. This source category information was adopted as technical support by New Mexico in their reasonable progress analysis. We disagree with the commenter's claim that Table 6–1 is factually inaccurate because it does not include emissions from New Mexico EGUs. Table 6–1 identifies emissions from industrial boilers meeting the definition described in Subpart Db of 40 CFR Part 60, which does not include the EGU sources identified in the comment.

The supplemental WRAP analysis (Supplementary Information for Four-Factor Analyses for Selected Individual Facilities in New Mexico, Appendix F of the NM RH 309(g) SIP) analyzed reasonable progress controls at three refineries in New Mexico at the request of NMED. NMED identified these three facilities for further site-specific evaluation due to emissions and proximity to Class I areas. For other source types, such as cement kilns, NMED relied on the WRAP general four-factor analysis discussed above to inform their evaluation. New Mexico also relied on other additional sources of information as available. For example, in response to comments NMED received on the four factor analysis, NMED identifies that New Mexico through a separate process (the Four Corners Air Quality Task Force) analyzed oil and gas sources and the power plants in the four corners region. NMED did not identify any additional reductions in their evaluation of the WRAP analyses and other available sources of information.[7]

New Mexico will include any additional control measures it finds reasonable along with any additional measures implemented by contributing states in the next implementation period. For the first implementation period, EPA finds New Mexico's assessment of reasonable measures for its long term strategy to be adequate with a sufficient basis for approval.

Comment: The NM RH SIP also fails to comply with 40 CFR 51.309(g), which requires that SIPs address impacts to Class I areas not located on the Colorado plateau. 40 CFR 51.309(g). States are required to submit air quality modeling or other reliable evidence revealing visibility impacts and establishing that reasonable progress goals will be met. In December 2010 and February 2011, EPA informed Bernalillo County that its SIP failed to comply with 40 CFR 51.309(g)(1) and (2) because it did not submit evidence showing Bernalillo County's effects on visibility in Class I areas in New Mexico, such as Gila Wilderness and Carlsbad Cavern. EPA Docket EPA–R06–OAR–2008–0702–0011 at pages 110–111 and 126–127. EPA determined that SO_2 emissions in New Mexico were projected to increase from 4,966 tpy in 2002 to 14,073 tpy by 2018 with nearly 30% of the 2018 emissions coming from Bernalillo County. Id. EPA also determined that a significant increase in NO_X emissions from Bernalillo County was projected to occur over this same time period. Id. EPA asked Bernalillo County to conduct visibility modeling to determine its impacts to Class I areas and to explain how reasonable progress goals would be met in light of significant emissions increases. Id.

The commenters state that they were unable to identify any visibility modeling or other analysis conducted by Bernalillo County to address EPA's concerns. The undersigned request an opportunity to review any visibility modeling or related analysis and that EPA reject the NM RH SIP until these issues with the Bernalillo County

[7] We note that NO_X emissions from the only subject-to-BART source in New Mexico (evaluated for controls under the BART requirements) are greater than the next 20 largest NO_X sources in the State combined based on evaluation of 2008 National Emission Inventory data.

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component of the SIP are fully addressed.

Response: The Albuquerque/Bernalillo County Air Quality Control Board (AQCB) is the federally delegated air quality authority for the City of Albuquerque and Bernalillo County, New Mexico (BC). The AQCB has submitted a Section 309 regional haze SIP for its geographic area of New Mexico and EPA has proposed approval of this SIP submittal (77 FR 24768). While the regional haze requirements for BC are addressed in their separate SIP submittal and our separate evaluation and proposed action, we recognize that the BC SIP submittal is a necessary component of the regional haze plan for the entire State of New Mexico and is also necessary to ensure the requirements of section 110(a)(2)(D) of the CAA are satisfied for the entire State of New Mexico. As such, we find it is appropriate to respond to the commenter's claims that the NM RH SIP fails to comply with 40 CFR 51.309(g) because of a deficiency in the BC RH SIP.

The letters referred to by the commenter state that the analysis with regard to the requirements of 40 CFR 51.309(g)(1) and (2) in BC's draft SIP revision shared with EPA in 2010 may be incomplete. Specifically, the qualitative analysis provided in ''Appendix 2007–H'' and ''Addendum to Appendix 2007–H'' addressed the impact of BC's emissions on nearby Class I areas but did not include information on the inaccuracy and over-prediction in the 2018 WRAP emission projections for NO_X and SO_2 emissions in BC, or the effect of an accurate emission inventory with respect to modeled visibility degradation at Gila Wilderness and Carlsbad Caverns.

With respect to the above mentioned modeled degradation at Gila Wilderness, an error in data retrieval affected initial results for modeled visibility conditions at Gila Wilderness in 2002 and indicated that visibility would degrade from 2002 to 2018. This error was corrected and the updated submitted data indicates a predicted improvement in visibility conditions on the 20% worst days and no degradation of visibility on the 20% best days.[8] For Carlsbad Caverns, NMED provided modeling data that demonstrates that significant projected growth in emissions by 2018 from Mexico are responsible for the degradation in visibility conditions on the 20% best days at this Class I area (Section 11.3.3 of the NM RH 309(g) SIP submittal). WRAP visibility modeling results with Mexico emissions held constant from 2002 to 2018 show a slight improvement in visibility conditions at Carlsbad Caverns on the 20% best days. Therefore, the initial modeled visibility degradation at both Gila Wilderness and Carlsbad Caverns was addressed without a need to further evaluate the impact of over-estimated NO_X and SO_2 emissions in BC.

Furthermore, BC provided additional information in Appendix 2010 B of the BC RH SIP [9] that included an evaluation of emission inventory trends for 2002, 2005, and 2008 for NO_X and SO_2 emissions for Bernalillo County. The analysis in the BC RH SIP submittal identifies some inaccuracies in the emission inventories used by the WRAP to model the 2002 baseline and the 2018 future case. The 2002 and 2018 emission projections are higher than expected when compared to the reduction in SO_2 emissions observed in the actual emissions inventories for 2002, 2005 and 2008. Table 5 of our proposed approval of the BC RH SIP (77 FR 24790) shows a comparison of emission data from Bernalillo County and a trend of decreasing emissions compared to emissions included in the WRAP estimates and photochemical modeling, projecting a large increase of both NO_X and SO_2. Based on the information provided in BC RH SIP submittal, we agree with the determination that visibility impacts at the nearby Class I areas due to area and mobile emission sources in Bernalillo County are overestimated in the WRAP 2002 and 2018 visibility modeling. The emission trends for 2002 through 2008 (BC RH SIP submittal Appendix 2010–B) indicate that emissions of NO_X and SO_2 within Bernalillo County are declining and therefore visibility impairment due to these emissions are also anticipated to decrease from their current low levels presented in Appendix 2007–H and in the addendum to Appendix 2007–H of the BC RH SIP. A separately signed action has found that BC adequately evaluated the Class I areas that may be impacted by sources of air pollution within Bernalillo County and BC adequately determined and demonstrated that, at this time, it is improbable that sources located within the county cause or contribute to visibility impairment in a Class I area located outside of the county. The separately signed action has therefore found that the BC RH SIP submittal complies with 40 CFR 51.309(g)(1) and (2).

D. Comment on Programs Related to Fire

Comment: NMED noted the following inaccuracies in Section H, Programs Related to Fire, of the Proposed Rule, which should be corrected in the final rule: Section H.1.b, Evaluation of Smoke Dispersion, incorrectly states that SMP I burns may only be conducted when the ventilation index category is rated ''Good'' or better, and that the burner must conduct visual monitoring and document the results in writing. In fact, what the New Mexico SIP provides is that SMP I burners have the option of either (1) burning during daylight hours at least 300 feet from an occupied dwelling, workplace, or place where people congregate; or (2) burning only during times when the ventilation is good or better and conducting visual monitoring along with burning. (see Subsection A of 20.2.65.102 NMAC)

In addition, Section H.1.e, Air Quality Monitoring, incorrectly states that SMP I burners are required to conduct visual monitoring. Visual monitoring under SMP I is required whenever the burn is conducted within a one-mile radius of a population.

Response: We agree with this comment. The proposed notice did not identify that Subsection A of 20.2.65.102 NMAC also provides for the option (''option 1'') of burning during the hours from one hour after sunrise until one hour before sunset, at least 300 feet from an occupied dwelling, workplace, or place where people congregate in addition to the option (''option 2'') described in the notice of limiting burning only during times when the ventilation index category is rated ''Good'' or better. In addition, the commenter is correct that SMP I burners are only required to perform visual monitoring if the burn is conducted within a one-mile radius of a population under option 1 described above or if the burn is conducted under option 2.

Thus, we are clarifying that the terms of the submitted SIP under review had included these options and requirements for SMP I burns. The review considerations for this additional option would not change our conclusion that the Smoke Management rule meets the requirements to address air quality monitoring and evaluation of smoke dispersion as described in Section III.F of the proposed notice.

E. Comments on Taking No Action on NO_X BART

Multiple commenters have acknowledged that our proposal did not

[8] Correction of WRAP region Plan02d CMAQ visibility modeling results on TSS for Regional Haze Planning—Final Memorandum, June 30, 2011, available at: *http://vista.cira.colostate.edu/tss/help/plan02d_rev.pdf.*

[9] AQD exhibit#5 EPA Docket EPA–R06–OAR–2008–0702–0013 beginning at page 227.

address NO_X BART at the San Juan Generating Station, but they nonetheless submitted comments concerning the NO_X BART part of New Mexico's 2011 Regional Haze SIP submittal (as well as a pending 2011 Interstate Transport SIP for visibility that relies on the 2011 submitted NO_X BART determination). In brief, several commenters urged EPA to take action to approve the NO_X BART portion of the SIP submittal (leading to withdrawal of the FIP), while another commenter urges EPA ''to hold to its final NO_X BART determination at SJGS.''

The NO_X BART submittal was not evaluated and not in the scope of our original proposal. There has been no supplemental proposal, and the NO_X BART submittal is manifestly not part of today's final action. Judicial review is authorized for today's approval of the various parts of the SIP submittal on which we are taking final action. See CAA 307(b)(1). In contrast, the NO_X BART portion of the SIP submittal is not the subject of a final action ''approving * * * any implementation plan under [CAA Section 110] * * * or any other final action of the Administrator under [the CAA] (including any denial or disapproval by the Administrator under subchapter I of [the CAA]).'' Id. We accordingly regard the various comments received concerning NO_X BART to provide no grounds or jurisdictional basis for judicial review. However, commenters have made various assertions regarding our obligations to act on the NO_X BART portion of the SIP, some aspects of which are factually inaccurate. We believe it is appropriate to respond to some of these remarks for the informational benefit of these stakeholders and the public.

Comment: EPA's proposal does not address the NO_X BART determination for San Juan Generating Station that was submitted by New Mexico in 2011. EPA should act expeditiously to review and approve New Mexico's BART determination.

Response: We acknowledge that New Mexico's submitted NO_X BART determination for SJGS is not addressed by our proposal and final action. We also acknowledge that this part of the SIP submittal, at this time, remains pending review. Unless this part of the SIP submittal is withdrawn by the State before EPA takes final action upon it, the Clean Air Act requires that EPA takes final action to approve or disapprove this part of the SIP submittal by January 5, 2013, i.e., 18 months after its receipt. This requirement follows from the Administrator's nondiscretionary duty to approve or disapprove SIP submittals under the deadlines prescribed at CAA Section 110(k). If EPA misses the deadline found in this section of the CAA, the agency may be subject to a civil suit in a United States District Court that will order and compel the performance of this nondiscretionary duty. See CAA Section 304(a).

Comment: One commenter asserts that we cannot approve New Mexico's reasonable progress goals based on uncertain NO_X BART reductions at SJGS. The commenter takes note that our proposal had stated our expectation that ''future emission reductions will be achieved in compliance with the existing [FIP] or in compliance with the terms of a future-approved BART determination for SJGS determined to consistent with RHR requirements.'' The commenter asserts that EPA cannot relax the 0.05 lb/MMbtu limit in the FIP unless it is judicially overturned.

Response: We do not agree that NO_X BART reductions are uncertain in a way that bars approval of the submitted reasonable progress goals. As detailed in our proposal, the reasonable progress goals submitted to satisfy the requirements of 40 CFR 51.309(g) RHR requirements have utilized visibility improvements projected in WRAP modeling. The WRAP modeling includes some assumptions about future emissions from the SJGS and FCPP based on consultation with the states but does not include the level of NO_X reductions currently anticipated from implementation of BART at FCPP or SJGS. Our reference to the existing FIP or a future-approved BART Determination from a state SIP submittal was offered to merely observe that we expect the additional emission reductions will result in improved future visibility conditions beyond the visibility projections and established reasonable progress goals based on the WRAP modeling. We believe this provides valuable context for our review of the 51.309(g) SIP submittal and to persons who read the proposal. We referenced anticipated emission reductions at Four Corners Power Plant (FCPP) for the same reason, except in that case the emission controls for that emission source are not subject to the jurisdiction of the New Mexico Environment Department. We do not agree that BART emission limits at FCPP had to be finalized as a predicate for our action on the New Mexico Regional Haze SIP. We note that the final rule addressing BART at FCPP (77 FR 51620) published on August 24, 2012 (after the publication of our proposed notice) requires an 80% reduction in NO_X emissions across all five units or for the shutdown of units 1, 2 and 3 and emission reductions at Units 4 and 5 to meet an emission limit of 0.098 lb/MMBtu NO_X, resulting in an 87% reduction in total NO_X emissions. As discussed elsewhere in this notice, we find New Mexico's assessment of RPGs and long term strategy to be adequate, providing sufficient basis for our approval. We expect the state to include any corrections and updates to emission reductions in its next Regional Haze SIP with updated modeling to quantify the visibility improvement that results from all emission reduction measures in place by 2018.

Of course, any references in the proposal to the existing FIP for SJGS or to a future-approved BART determination consistent with the RHR (i.e., from a state SIP submittal or amendment of the existing FIP) would necessarily assume that our past and future actions regarding NO_X BART at SJGS will be upheld against any judicial challenges. Since we consider the FIP to have been validly promulgated and we have not proposed to revise its limits or proposed to approve any state-submitted BART determination with different limits into the New Mexico SIP, the commenter's contention that EPA may not relax the BART limit promulgated in the FIP is not presently in issue. Commenters are not barred from resubmitting this comment as it may, in their view, apply toward future proposals, if any, regarding NO_X BART for SJGS.

Comment: An existing consent decree that requires EPA action on ''all remaining RH SIP elements'' by November 15, 2012 requires EPA to act on the NO_X BART element of New Mexico's 2011 regional haze SIP submittal by that date.

Response: The basis for the lawsuit that led to EPA's entry into the referenced consent decree was EPA's failure to ensure all regional haze requirements for New Mexico were effective on the expiration of a 2 year FIP clock that began when EPA found that New Mexico failed to submit a SIP revision to address all the requirements of the Regional Haze Rule. See CAA Section 110(c). The consent decree does not compel EPA action on any particular RH SIP submittal. NO_X BART, addressed by our earlier FIP, and already addressed by the time of EPA's entry into the consent decree is not a ''remaining'' RH SIP element under the consent decree. We note our compliance with the consent decree is subject to review by the judge who maintains jurisdiction over it. We further note that EPA's original proposal date was also required by this consent decree, and no

parties to the consent decree have suggested that EPA failed to follow its terms, either in comments on the proposal or to the supervising judge.

Comment: Section 110(k)(3) of the CAA requires EPA to take action on the entire 2011 Regional Haze SIP submittal, which includes the NO_X BART portion which was not covered by the proposal. The text of Section 110(k)(3) suggests this is required by its phrasing that a SIP submittal shall be approved ''as a whole.'' EPA cannot break apart a single SIP submittal and take final action only on certain individual components of the SIP.

Response: We disagree, because we find that NO_X BART is a severable component of the New Mexico Regional Haze SIP. We believe it can be reviewed and acted upon separately from the other components of the submitted SIP revision without compromising our approvability analysis or compromising the opportunities of the public to understand and comment on the proposed action. Aside from a comment regarding reasonable progress goals that we have rejected above, no comments have suggested otherwise. Section 110(k)(3) does not require EPA to act on the entirety of a SIP submittal in one proposal and one final action. Instead, unless parts of a submittal are not severable from each other, EPA has the flexibility to propose and finalize action on some components of a submittal while deferring review of other independent parts. EPA's authority to proceed with separate proposal and final actions on self-standing parts of submitted SIP revisions is confirmed, and not at all barred, by 110(k)(3). This is evident from innumerable past EPA actions reviewing submitted SIP revisions from state and local air quality authorities throughout the country; this long implementation history includes past EPA actions on SIP submittals from the state of New Mexico. Given that a State can freely package miscellaneous provisions dealing with different Clean Air Act requirements into one submittal, EPA generally has the discretion to act on severable parts of any submittal at different times. This discretion can allow prioritization of resources, may avoid confusion of issues for commenters, and may promote efficient review and administrative processing of pending submitted SIP revisions. For example, the NO_X BART component of the submitted SIP revision, assuming it were deemed approvable in whole or in part, would potentially entail Administrator action to withdraw or revise the previously promulgated FIP. This action may not be signed by the Regional Administrator (as is the case with this final action), and it may be subject to the procedures and review requirements of CAA Section 307(d) (as is not the case with this final action). As previously discussed, we do acknowledge the statutory obligation to act on the NO_X BART component of the submitted SIP revisions by January 5, 2013. In so doing, our review of the submitted NO_X BART determination will be subject to Section 110(k)(3), which generally requires approval, disapproval, or possible partial approval/partial disapproval, consistent with future findings on whether it meets the requirements of the Clean Air Act.

Because we have not proposed action on the submitted NO_X BART determination of July 2011, we deem this comment (as well as the other comments we have addressed in this section) to be outside the scope of our proposal and to be no bar to today's approval action.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 USC 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Consistent with EPA policy, EPA nonetheless offered consultation to tribes regarding the rulemaking action.

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 action 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 January 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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,

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Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Regional haze, Best available control technology.

Dated: November 15, 2012.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended to read as follows:

PART 52 [AMENDED]

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

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

Subpart GG—New Mexico

■ 2. Section 52.1620 is amended:

■ a. In paragraph (c), under the first table entitled ''EPA Approved New Mexico Regulations'' by revising the entries for Part 60, Part 61, Part 73, and Part 80, and adding new entries in sequential order for ''Part 65'' and ''Part 81'', and

■ b. In paragraph (e), under the second table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in The New Mexico SIP'' by adding to the end of the table a new entry for ''Regional Haze SIP under 40 CFR 51.309''.

The additions and revisions read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

State citation	Title/Subject	State approval/effective date	EPA Approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
* *	* *	*	*	*
Part 60	Open Burning	12/31/2003	11/27/2012 [Insert FR page number where document begins].	
Part 61	Smoke and Visible Emissions	11/30/1995	9/26/1997, 62 FR 50514	
Part 65	Smoke Management	12/31/2003	11/27/2012 [Insert FR page number where document begins].	
* *	* *	*	*	*
Part 73	Notice of Intent and Emissions Inventory Requirements.	7/6/2011	11/27/2012 [Insert FR page number where document begins].	
* *	* *	*	*	*
Part 80	Stack Heights	11/30/1995	9/26/1997, 62 FR 50514	
Part 81	Western Backstop Sulfur Dioxide Trading Program.	7/6/2011	11/27/2012 [Insert FR page number where document begins].	
* *	* *	*	*	*

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(e) * * *

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EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA Approval date	Explanation
* *	* *	*	*	*
Regional Haze SIP under 40 CFR 51.309	Statewide (except Bernalillo County).	6/24/2011	11/27/2012 [Insert FR page number where document begins].	Nitrogen oxides Best Available Retrofit Technology determination for San Juan Generating Station not included in approval action.

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[FR Doc. 2012–28591 Filed 11–26–12; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0589 and EPA–R09–OAR–2011–0622; FRL–9753–3]

Approval of Air Quality Implementation Plans; California; San Joaquin Valley and South Coast; Attainment Plan for the 1997 8-hour Ozone Standards; Technical Amendments

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: EPA is making technical amendments to the Code of Federal Regulations (CFR) to reflect the Agency's March 1, 2012 final approvals of the California State Implementation Plans for attainment of the 1997 8-hour ozone National Ambient Air Quality Standards in the San Joaquin Valley and the South Coast Air Basin. These technical amendments correct the CFR to properly codify the California Air Resources Board's commitments to propose certain defined measures.

DATES: This technical amendment is effective on November 27, 2012.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region 9, (415) 972–3957, *wicher.frances@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'', ''us'' and ''our'' refer to EPA.

On March 1, 2012, EPA fully approved the California State Implementation Plans (SIPs) for attainment of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) in the San Joaquin Valley and South Coast (Los Angeles) Air Basin and included provisions of these SIPs in the Code of Federal Regulations (CFR) at 40 CFR 52.220(c). See 77 FR 12652 (March 1, 2012) and 77 FR 12674 (March 1, 2012). As submitted, these SIPs include commitments by the California Air Resources Board (CARB) to propose certain defined measures. These commitments were included in the *Progress Report on Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions* (''2011 Progress Report''), adopted by CARB on April 28, 2011 and submitted on May 18, 2011 and the *8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins* (''2011 Ozone SIP Revisions''), adopted by CARB on July 21, 2011 and submitted on July 29, 2011.

In the preamble to our final action approving the San Joaquin Valley's 8-Hour Ozone SIP, we stated that we are approving ''CARB's commitments to propose certain defined measures, as listed in Table B–1 on page 1 of Appendix B of the 2011 Progress Report and in Appendix A–3 of the 2011 Ozone SIP Revisions.'' See 77 FR 12652 at 12670. We proposed the same at 76 FR 557846, 57867 (September 16, 2011). EPA did not, however, accurately codify this approval in the final regulatory text. We are issuing this technical amendment to 40 CFR 52.220 to correct this oversight. This technical amendment makes no changes to the substance of our March 1, 2012 approval of the SJV 8-Hour Ozone SIP.

In the preamble to our final action approving the South Coast 8-Hour Ozone SIP, we stated that we are approving ''CARB's commitments to propose certain defined measures, as listed in Appendix B, Table B–1 of the 2011 Ozone SIP Revision.'' [1] See 77 FR 12674, 12693. We proposed this action at 76 FR 57872 at 57895 (September 16, 2011). EPA did not, however, accurately codify this approval in the final regulatory text. We are issuing this technical amendment to 40 CFR 52.220 to correct this oversight. This technical amendment makes no changes to the substance of our March 1, 2012 approval of the South Coast 8-Hour Ozone SIP.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Dioxide, Ozone, Volatile organic compounds.

Dated: November 9, 2012 .

Jared Blumenfeld,

Regional Administrator, Region IX.

For the reasons discussed in the preamble, EPA amends 40 CFR part 52 to read as follows:

[1] ''2011 Ozone SIP Revision'' here should have been ''2011 Progress Report.'' CARB included Table B–1 in Appendix B in the 2011 Ozone SIP Revision for informational purposes only but intended that the commitments to propose defined measures as given on Table B–1 of Appendix B of the 2011 Progress Report be included in the South Coast 8-hour Ozone SIP. See Appendix A–3 of the 2011 Ozone SIP Revisions.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ *2. Section 52.220 is amended* by:

■ a. Adding and reserving paragraph (c)(396)(ii)(A)(*2*)(*ii*); and

■ b. Adding paragraphs (c)(396)(ii)(A)(*2*)(*iii*) and (c)(401)(ii)(A)(*2*)(*ii*).

The added text reads as follows.

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(396) * * *

(ii) * * *

(A) * * *

(*2*) * * *

(*ii*) [Reserved]

(*iii*) Commitments to propose measures as provided in Appendix B, Table B–1 of the *Progress Report on the Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions* (Release Date: March 29, 2011), adopted April 28, 2011, as amended by Appendix A, p. A–7 of the *8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins* (Release Date: June 20, 2011), adopted July 21, 2011.

* * * * *

(401) * * *

(ii) * * *

(A) * * *

(*2*) * * *

(*ii*) Commitment to propose measures as provided in Appendix B Table B–1 of the *Progress Report on the Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions* (Release Date: March 29, 2011), adopted April 28, 2011.

* * * * *

[FR Doc. 2012–28598 Filed 11–26–12; 8:45 am]
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