6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R07-OAR-2012-0158; FRL-9639-6]

Approval, Disapproval and Promulgation of Implementation Plans; Nebraska; Regional Haze State Implementation Plan; Federal Implementation Plan for Best Available Retrofit Technology Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove a revision to the Nebraska State Implementation Plan (SIP) submitted by the State of Nebraska through the Nebraska Department of Environmental Quality (NDEQ) on July 13, 2011 that addresses regional haze for the first implementation period. This revision was submitted to address the requirements of the Clean Air Act (CAA or Act) and our rules that 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 proposing to approve a

portion of this SIP revision as meeting certain requirements of the regional haze program and to partially approve and partially disapprove those portions addressing the requirements for best available retrofit technology (BART) and the long-term strategy (LTS). EPA is proposing a Federal Implementation Plan (FIP) relying on the Transport Rule to satisfy BART for sulfur dioxide (SO_2) at one source to address these issues.

DATES: *Comments.* Written comments must be received via the methods given in the Instructions for Comment Submittal section on or before [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: *Instructions for Comment Submittal.* Submit your comments, identified by Docket No. EPA-R07-OAR-2012-0158, by one of the following methods:

1. Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

2. Email: wolfersberger.chris@epa.gov.

3. Mail: Ms. Chrissy Wolfersberger, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101.

4. Hand or Courier Delivery: U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; attention: Chrissy Wolfersberger. Such deliveries are accepted only between the hours of 8 a.m. and 5 p.m. weekdays, excluding

Federal holidays. Special arrangements should be made for deliveries of boxed information.

5. Fax: (913) 551-7864 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** section if you are faxing comments).

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *www.regulations.gov* web site is an "anonymous access" system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment due to technical difficulties and

cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 5 p.m. excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Chrissy Wolfersberger, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101,

or by telephone at (913) 551-7864.

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

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I. What is the background for EPA's proposed actions?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., SO_2, nitrogen oxides (NO_x), and in some cases, ammonia (NH_3) and volatile organic compounds (VOCs)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$ (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), which also impair visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ also can cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication[1].

Data from the existing visibility monitoring network, the "Interagency Monitoring of Protected Visual Environments" (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range[2] in many Class I areas (i.e., national parks and memorial parks,

[1] Eutrophication is defined as excessive richness of nutrients in a lake or other body of water, frequently due to runoff from the land, which causes a dense growth of plant life and death of animal life from lack of oxygen.

[2] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

wilderness areas, and international parks meeting certain size criteria) in the western United States is 100-150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. 64 FR 35714, 35715 (July 1, 1999). In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. *Id.*

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas[3] which impairment results from manmade air pollution." CAA § 169A(a)(1). The terms "impairment of visibility" and "visibility impairment" are defined in the Act to include a reduction in visual range and atmospheric discoloration. CAA § 169A(g)(6). In 1980, we promulgated

[3] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. *See* CAA section 162(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122, November 30, 1979. The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. CAA section 162(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager'' (FLM). *See* CAA section 302(i). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal area."

regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, i.e., "reasonably attributable visibility impairment" (RAVI). 45 FR 80084 (December 2, 1980). These regulations represented the first phase in addressing visibility impairment. We deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address 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 regional haze rule (RHR) revised the existing visibility regulations to integrate into the regulations provisions addressing RH impairment and established a comprehensive visibility protection program for Class I areas. 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. Some of the main elements of the regional haze requirements are summarized in section II. 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 the first implementation plan addressing

visibility impairment no later than December 17, 2007. 40 CFR 51.308(b).

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among States, tribal governments and various Federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to address effectively the problem of visibility impairment in Class I areas, States need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to haze can originate from sources located across broad geographic areas, we have encouraged the States and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their States and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of PM and other pollutants that cause haze.

The State of Nebraska participated in the planning efforts of the Central Regional Air Planning Association (CENRAP), which is affiliated with the Central States Air Resource Agencies (CENSARA). CENRAP is an organization of States, tribes, Federal agencies and other interested parties that identifies visibility issues and develops strategies to address them. CENRAP is one of the five RPOs across the U.S. and includes the States and tribal areas of Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, and Louisiana. States were also required by 40 CFR 51.308(i) to coordinate with FLMs during the development of the State's strategies to address haze. FLMs include the U.S. Fish and Wildlife Service, the U.S. Forest Service, and the National Park Service.

II. What are the requirements for regional haze SIPs?

The following is a summary and basic explanation of the regulations covered under the RHR. See 40 CFR 51.308 for a complete listing of the regulations under which this SIP was evaluated.

A. The CAA and the Regional Haze Rule

CAA sections 110(l) and 110(a)(2) require revisions to a SIP to be adopted by a State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR Part 51, subpart F. These requirements include publication of notices by prominent

advertisement in the relevant geographic area of a public hearing on proposed revisions, at least a 30-day public comment period, and the opportunity for a public hearing, and that the State, in accordance with its laws, submit the revision to the EPA for approval. Specific information on Nebraska's rulemaking, regional haze SIP development and public information process is included in Chapter 3, and Appendix 3, of the State of Nebraska regional haze SIP, which is included in the docket of this proposed rulemaking.

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and our implementing regulations require States to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal

metric for measuring visibility. *See* 70 FR 39104. This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithmic function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility of one deciview.[4]

The deciview is used in expressing Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure "reasonable progress" toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

[4] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401-437), and as part of the process for determining reasonable progress, States must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requires States to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired ("best") and 20 percent most impaired ("worst") visibility days over a specified time period at each of their Class I areas. In addition, States must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. We have provided guidance to States regarding how to calculate baseline, natural and current visibility conditions.[5]

For the first regional haze SIPs that were due by December 17, 2007, "baseline visibility conditions" were the starting

[5] *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule*, September 2003, EPA-454/B-03-005, *available* at http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf, (hereinafter referred to as "our 2003 Natural Visibility Guidance"); and *Guidance for Tracking Progress Under the Regional Haze Rule,*(EPA-454/B-03-004, September 2003, *available* at http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf, (hereinafter referred to as our "2003 Tracking Progress Guidance").

points for assessing "current" visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, States are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000 - 2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the States that establish two RPGs (i.e., two distinct goals, one for the "best" and one for the "worst" days) for every Class I area for each (approximately) 10-year implementation period. *See* 70 FR 3915; *see also* 64 FR 35714. The RHR does not mandate specific milestones or rates of progress, but instead calls for States to

establish goals that provide for "reasonable progress" toward achieving natural (i.e., "background") visibility conditions. In setting RPGs, States must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period. *Id.*

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in our RHR at 40 CFR 51.308(d)(1)(i)(A): (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. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in our reasonable progress guidance[6]. In setting the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to hereafter as the "uniform rate of progress" or the "glidepath") and the emission

[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).

reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress, which States are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each State with one or more Class I areas ("Class I State") must also consult with potentially "contributing States," i.e., other nearby States with emission sources that may be affecting visibility impairment at the Class I State's areas. 40 CFR 51.308(d)(1)(iv).

States without Class I areas are required to submit regional haze SIPs to address their contribution to visibility impairment. As per the previous discussion in this proposed rulemaking, the ability of the long range transport of pollutants to affect visibility conditions in areas makes it imperative that each State evaluate how emissions from within its borders affect visibility impairment in Class I areas in other States.

D. Best Available Retrofit Technology

Section 169A of the CAA directs States to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources with the potential to emit greater than 250 tons or more of any pollutant in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A)

of the Act requires States to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources[7] built between 1962 and 1977 procure, install, and operate the "best available retrofit technology" as determined by the State or us in the case of a plan promulgated under section 110(c) of the CAA. Under the RHR, States are directed to conduct BART determinations for such "BART-eligible" sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, States also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

We promulgated regulations addressing regional haze in 1999, 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P.[8] These regulations require all States to submit implementation plans that, among other measures, contain either emission limits representing BART for certain sources constructed between 1962 and 1977, or alternative measures that

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[7] The set of "major stationary sources" potentially subject to BART are listed in CAA section 169A(g)(7).

[8] In *American Corn Growers Ass'n v. EPA*, 291 F.3d 1 (D.C. Cir. 2002), the U.S Court of Appeals for the District of Columbia Circuit issued a ruling vacating and remanding the BART provisions of the regional haze rule. In 2005, we issued BART guidelines to address the court's ruling in that case. *See* 70 FR 39104 (July 6, 2005).

provide for greater reasonable progress than BART. 40 CFR 51.308(e).

On July 6, 2005, we published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 ("BART Guidelines") to assist States in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. 70 FR 39104. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a State must use the approach set forth in the BART Guidelines. A State is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

The process of establishing BART emission limitations can be logically broken down into three steps: first, States identify those sources which meet the definition of "BART-eligible source" set forth in 40 CFR 51.301[9]; second, States determine whether such sources "emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area" (a source which fits this description is "subject to BART,") and; third, for each

[9] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were put in place between August 7, 1962 and August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories.

source subject to BART, States then identify the appropriate type and the level of control for reducing emissions.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_x, and PM. States should use their best judgment in determining whether volatile organic compounds (VOC) or ammonia compounds impair visibility in Class I areas.

Under the BART Guidelines, States may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The State must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the State should not be higher than 0.5 dv (70 FR 39161).

In their SIPs, States must identify potential BART sources, described as "BART-eligible sources" in the RHR, and document their BART control determination analyses. The term "BART-

eligible source" used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. In making BART determinations, section 169A(g)(2) of the CAA requires that States consider the following factors: (1) the costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor. *See* 40 CFR 51.308(e)(1)(ii).

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a State has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of our approval of the regional haze SIP. *See* CAA section 169(g)(4) and 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. *See* CAA section 110(a).

As noted above, the RHR allows States to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for the Clean Air Interstate Rule (CAIR). *See* 70 FR 39104 (July 6, 2005). EPA's regulations provide that States participating in the CAIR cap-and trade program under 40 CFR Part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR FIP in 40 CFR Part 97 need not require affected BART-eligible electric generating units (EGUs) to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See* 40 CFR 51.308(e)(4). Because CAIR did not address direct emissions of PM, States were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. Challenges to CAIR, however, resulted in the remand of the rule to EPA. *See North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008). EPA issued a new rule in 2011 to address the interstate transport of NO_x and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) ("the Transport Rule," also known as the Cross-State Air Pollution Rule). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would

BART in the States in which the Transport Rule applies. 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow States to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA has not taken final action on that rule. Also on December 30, 2011, the Circuit Court of Appeals for the District of Columbia issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the D.C. Circuit stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P. v. EPA* (No. 11-1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer the CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

E. Long-term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that States include in their regional haze SIP a ten to fifteen year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that States include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a State will use during the implementation period of the specific SIP submittal to meet any applicable

RPGs. The LTS must include "enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals" for all Class I areas within, or affected by emissions from, the State. 40 CFR 51.308(d)(3).

When a State's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another State, the RHR requires the impacted State to coordinate with the contributing States in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing State must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between States may be required to sufficiently address interstate visibility issues. This is especially true where two States belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, States must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) emission reductions due to ongoing air pollution control programs; (2) measures to mitigate the impacts of construction

activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment Long-term Strategy

As part of the RHR, EPA revised 40 CFR 51.306(c), regarding the LTS for RAVI, to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the State's first plan addressing regional haze visibility impairment in accordance with 40 CFR 51.308(b) and (c). The State must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze on or before this date. It must also submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTSs, and periodic progress reports evaluating progress toward RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and

51.308(g), respectively. The periodic review of a State's LTS must be submitted to EPA as a SIP revision and report on both regional haze and RAVI impairment.

G. Monitoring Strategy and Other SIP Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of visibility impairment that is representative of all Class I areas within the State. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through "participation" in the Interagency Monitoring of Protected Visual Environments (IMPROVE) network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five (5) years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a State with mandatory Class I areas to determine the contribution of emissions from within the State to haze visibility impairment at Class I areas both within and outside the State;

- For a State with no mandatory Class I areas, procedures for using monitoring data and other information to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas in other States;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions, along with a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every ten years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART

applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation with States and Federal Land Managers

The RHR requires that States consult with other States and FLMs before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least sixty days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a State must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the State and FLMs regarding the State's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

III. Our Analysis of Nebraska's Regional Haze SIP

The State of Nebraska submitted a regional haze SIP revision to EPA on July 13, 2011 for approval into the Nebraska SIP. The following is an evaluation of that submission. See the Technical Support Document (TSD) for this proposal for a more comprehensive technical analysis.

A. Public Notice

EPA is proposing to find that the State of Nebraska has met the requirements of the CAA which require that the State adopt a SIP after reasonable notice and public hearing. EPA also believes that the State has met the specific procedural requirements for SIP revisions promulgated at 40 CFR part 51, subpart F and appendix V. The State met these requirements by publishing notices of the public hearing, an opportunity for a public hearing, and at least a thirty-day public comment period by prominent advertisement, and Nebraska, in accordance with its laws, submitted the revisions on July 13, 2011, to EPA for approval. Specific information on Nebraska's rulemaking, regional haze SIP development and public information process is included in Chapter 3, and Appendix 3, of the State of Nebraska's regional haze SIP, which is included in the docket of this proposed rulemaking.

B. Affected Class I Areas

Although there are no Class I areas within the State of Nebraska, the State is still required to identify those Class I areas which may be affected by emissions from Nebraska sources. Nebraska participated in the planning efforts of CENRAP, an RPO including nine States - Nebraska, Iowa, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, and Louisiana. CENRAP and its contractors provided air quality modeling to the States to help them determine whether sources located within the State can be reasonably expected to cause or contribute to visibility impairment in Class I areas. The modeling conducted relied on baseline year (2002) and future planning year (2018) emissions inventories that were prepared with participation from each of the CENRAP States. The modeling was based on PM Source Apportionment Technology (PSAT) for the Comprehensive Air Quality Model with extensions (CAMx) photochemical model.

According to the PSAT modeling, contributions from Nebraska sources for the worst 20 percent days were highest at the South Dakota Class I areas. For the 2002 baseline year, Nebraska sources were projected to contribute 7.81 percent of visibility impairment at Badlands, and 7 percent at Wind Cave. In 2018, the projected contribution was reduced to 5.89 percent and 5.24 percent, respectively. However, it is critical to note that the 2018 projections were developed assuming presumptive levels of

SO_2 control on Nebraska BART sources, which ultimately the State did not require. For that reason, it is likely that Nebraska sources will have a somewhat larger contribution to 2018 visibility impairment than what the modeling predicted.

Nebraska's contribution to all other Class I areas was considerably less, and in no case greater than 1.9 percent in 2002 according to the PSAT modeling.[10]

C. Baseline and Natural Visibility Conditions

States that host Class I areas are required to estimate the baseline, natural and current visibility conditions of those Class I areas. Nebraska does not host a Class I area, therefore, it is not required to estimate these metrics.

D. Reasonable Progress Goals

The RHR requires States and tribes to establish a RPG for each Class I area within the State. Nebraska does not have a Class I area within the State and therefore is not required to establish a RPG. States hosting Class I areas are required to establish RPGs, and to make assessments regarding whether emission reductions are needed from sources in Nebraska in order

[10] Other Class I areas examined include Great Sand Dunes National Park and Rocky Mountain National Park in Colorado; Boundary Waters Wilderness Area and Voyagers National Park in Minnesota; Guadalupe Mountains National Park and Big Bend National Park in Texas; Wichita Mountains Wilderness Area in Oklahoma; Hercules-Glades Wilderness Area and Mingo Wilderness Area in Missouri; and Caney Creek Wilderness Area and Upper Buffalo Wilderness Area in Arkansas.

to meet their RPG. Specific State goals and Nebraska's effect on meeting them are described in further detail in the LTS consultation section, below.

E. Long-term Strategy

States must submit a long-term strategy that addresses regional haze visibility impairment for each Class I area within it and for each Class I area located outside it which may be affected by emissions from it. The long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by States having Class I areas.

Nebraska's LTS for the first implementation period addresses the emissions reductions from Federal, State, and local controls that take effect in the State from the end of the baseline period until 2018. As described elsewhere in this notice, the changes in point, area, and mobile source emissions over the first implementation period (through 2018) were taken into account by CENRAP and the State in developing the emission inventory for 2018. Specifically, Nebraska considered the following Federal and State control measures when developing its LTS:

- CAIR. Although the State of Nebraska was not included in the CAIR rulemaking, the rule was a major component in the underlying assumptions used to determine source

apportionment because of the reductions expected in neighboring States.

- Federal mobile source standards
- Tier 2 vehicle standards and low sulfur fuel requirements
- Locomotive and marine engine standards
- Small spark-ignition engine standards
- National Emission Standards for Hazardous Air Pollutants (NESHAP) Maximum Achievable Control Technology (MACT) standards
- Nebraska's Prevention of Significant Deterioration (PSD) construction permitting program. Nebraska notes that the visibility protection provisions of PSD found at 40 CFR 52.21(o) have been incorporated into Title 129 - Nebraska Air Quality Regulations at Chapter 19. Section 40 CFR 52.21(p) requires notification and consultation with FLMs of Class I areas which may be affected by emissions from a new source; these requirements under have been incorporated by reference into Title 129 in Chapter 19.

Nebraska has fugitive dust regulations in Nebraska Title 129 - Chapter 32, which includes a provision applicable to construction activities. The rule requires the use of reasonable measures such as paving, cleaning, application of

water, planting and maintenance of ground cover, and/or application of dust-free surfactants to prevent dust from becoming airborne such that it remains visible beyond the property boundary. Nebraska estimates that construction activities are not expected to cause a significant impact to visibility, and did not require any additional measures to mitigate the impacts of construction activities for purposes of visibility improvement.

Nebraska also has regulations that address smoke management for agricultural and forestry management burns. Title 129 - Chapter 30 is a ban on open burning with some direct exceptions that include agriculture operations, parks management, and fires set for training purposes. Other types of exceptions are subject to approval by the NDEQ and the local fire authority. For purposes of forestry or land management, such burning is allowed provided it is conducted by a limited set of organizations approved by NDEQ. Nebraska contends that, based on the minimal impacts on nearby Class I areas from burning, a more stringent smoke management plan is not needed for purposes of visibility protection at this time.

The above programs are fully enforceable, provide for the mitigation of new source impacts through new source permitting programs, and reflect appropriate consideration of current programs and prospective changes in emissions. Enforceability

of Nebraska's BART control measures are more fully described below in section III.F.

a. Consultation on Other States' RPGs

Where Nebraska has emissions that are reasonably anticipated to contribute to visibility impairment in any Class I area located in another State or States, it must consult with the other State(s) in order to develop coordinated emission management strategies. If Nebraska causes or contributes to impairment in a Class I area, it must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the area.

As mentioned previously, Nebraska participated in the CENRAP planning process, which provided the primary venue for State consultation and coordination on emission management strategies. Nebraska also asserts that it notified the States of South Dakota, Oklahoma, Missouri and Colorado while its draft BART permits were open for public comment, proposing only control for NO_x at the three BART units in the State. It should be noted that although Nebraska participated as a member State in CENRAP, the greatest impacts from Nebraska sources occur in a Western Regional Area Partnership (WRAP) State – South Dakota.

South Dakota

Nebraska asserts that sources in the State have a "minimal" visibility impact on all Class I areas, and points out in its SIP that no State asked Nebraska for specific emission reductions in order to meet its RPGs. We disagree with the characterization of Nebraska's contribution as minimal, as source-specific CALPUFF modeling shows a significant visibility impact from GGS on the South Dakota Class I areas.[11] [12]

Furthermore, we note that South Dakota's reasonable progress goals, which are proposed for approval by EPA at the time of this writing, achieve less visibility improvement than the uniform rate of progress for the first implementation period. The reasonable progress goals for the 20 percent worst days fall short of the uniform rate of progress by 1.28 dv for Badlands and 1.34 dv at Wind Cave.[13] The modeling used to estimate achievement of these goals assumed that the presumptive level of SO_2 BART controls would be installed on Nebraska sources. Nebraska did not go on to require BART-level controls, therefore, South Dakota may be even further away from meeting its RPGs than what the modeling predicted. As described in detail in section III. F. d. of this notice, we propose to

[11] GGS's maximum visibility impact at Badlands was 3.12 dv in 2003, and 2.59 dv at Wind Cave in 2002.
[12] Source-specific CALPUFF modeling for Nebraska City Station and Gerald Gentleman Station is in appendix 10.5 of the SIP.
[13] 76 FR 76646 (December 8, 2011).

disapprove Nebraska's SO_2 BART determination for GGS. We also propose to disapprove Nebraska's LTS insofar as it relied on this deficient BART determination. These issues are addressed through reliance on the Transport Rule as an alternative to BART for SO_2 emissions from the GGS units.

Colorado

In comment letters dated January 21, 2011, and June 23, 2009, the Colorado Department of Public Health and Environment (CDPHE) notes that according to source-specific CALPUFF modeling, GGS has an impact of greater than one deciview on Rocky Mountain National Park (RMNP). CDPHE questioned why Nebraska would propose no SO_2 controls for such a large power plant, and requested that Nebraska take another look at the cost assumptions made for Flue Gas Desulfurization (FGD) controls. They express that $2,700 per ton for control of SO_2 is reasonable, and that the cost is likely even lower.

CDPHE commented that it understands Nebraska's concerns about water availability in western Nebraska, as the State of Colorado is also in an arid region. They state that all large EGUs in Colorado have installed (or are in the process of installing) FGD controls to reduce SO_2 emissions.

CDPHE goes on to note that the most recent WRAP modeling, which used the CMAQ model, predicts that RMNP is far short of its uniform rate of progress. CDPHE asked that Nebraska

reconsider SO_2 controls at GGS under the RHR to help Colorado make progress at RMNP.

Nebraska denies this request in their SIP on the basis that WRAP's modeling did not distinguish Nebraska's impact from the other CENRAP States. Nebraska makes the argument that a wind rose from RMNP indicates that the wind pattern is rarely from the direction of Nebraska.

We share Colorado's concerns about the SO_2 BART determination for GGS, and as described above, we are proposing to disapprove this deficient BART determination and Nebraska's LTS insofar as the State relied on it to meet the LTS requirements. We propose that these issues will be addressed through reliance on the Transport Rule as an alternative to BART for SO_2 emissions from the GGS units.

Minnesota

Boundary Waters, Voyageurs, Seney, and Isle Royale are referred to as the Northern Midwest Class I areas. As identified in the document, "Reasonable Progress for Class I Areas in the Northern Midwest – Factor Analysis,"[14] the Lake Michigan Air Directors Consortium (LADCO) identified the following States contributing to Class I area visibility impairment in the LADCO region: Michigan, Minnesota, and Wisconsin, as well as surrounding States, such as the Dakotas,

[14] Appendix 11.1 of the SIP

Iowa, Missouri, Illinois, and Indiana. Nebraska does not significantly contribute to visibility impairment at the Minnesota Class I areas according to PSAT modeling. Through RPO consultation, Minnesota determined that no additional emissions reductions from Nebraska sources were needed to meet Class I area visibility improvement goals at this point in time. EPA believes that this satisfies the requirement for consultation between these States.

Oklahoma

As identified in the document titled, "Oklahoma's Wichita Mountains Wilderness Area Regional Haze Planning,"[15] Oklahoma identified Nebraska in its area of influence for NO_x. Nebraska was initially invited to participate in the Oklahoma consultation process. Nebraska states that it provided copies of the draft BART permits to the State of Oklahoma while on public notice, which only proposed NO_x controls on OPPD and NPPD. Oklahoma did not provide any comment, or request additional controls for the initial planning period. EPA believes that the consultation requirement between these States has been satisfied.

Missouri and Arkansas

Caney Creek, Upper Buffalo, Hercules Glades, and Mingo are referred to as the central Class I areas. As identified in the

[15] Appendix 11.3 of the SIP

document, "Central Class I Areas Consultation Plan,"[16] CENRAP identified Nebraska in the area of influence for NO_x at the central Class I areas. The central States determined whether a State was a major contributor based on an analysis of four approaches: trajectories, areas of influence, PSAT, and Q/d. If a State was found to be a major contributor in at least 3 of the 4 approaches, the central States concluded it was appropriate to include that State as a major contributor. Nebraska was found to be a contributor based upon the area of influence only, therefore it was excluded as a major contributing State to visibility impairment in Class I areas in Missouri and Arkansas. EPA believes that Nebraska's consultation requirement with these States was satisfied.

F. Best Available Retrofit Technology

States must submit an implementation plan containing emission limitations representing BART and schedules for compliance with BART for each BART-eligible source that may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I area.

a. BART-eligible Sources

States must identify all BART-eligible sources in their SIP. Sources are subject to BART if: one or more emissions units at the facility belong to one of the twenty-six BART

[16] Appendix 11.2 of the SIP

source categories[17]; the unit did not operate before August 7, 1962, but was in existence on August 7, 1977; and the unit has the potential to emit 250 tons per year or more of any visibility-impairing pollutant, which Nebraska determined to be SO_2, NO_x, and PM.

The BART Guidelines direct States to exercise judgment in deciding whether VOCs and ammonia (NH_3) impair visibility in their Class I area(s). 70 FR 391160. CENRAP performed analyses which demonstrated that anthropogenic emissions of VOC and NH_3 do not significantly impair visibility in the CENRAP region. Therefore, Nebraska did not consider NH_3 among visibility-impairing pollutants and did not further evaluate NH_3 and VOC emissions sources for potential controls under BART or reasonable progress.

Nebraska used its database to identify facilities with emission units in one or more of the twenty six BART categories. Nebraska then conducted a survey to identify units within these source categories with potential emissions of 250 tons per year or more for any visibility-impairing pollutant from any unit that was in existence on August 7, 1977, and began operation after August 7, 1962. The sources identified by Nebraska are listed in Table 1. More detailed information regarding each

[17] BART guidelines, 40 CFR Part 51 Appendix Y

facility's BART-eligible units may be found in Appendix 10.2 of the SIP.

EPA proposes to find that Nebraska adequately identified all BART-eligible sources within the State.

Table 1: Facilities with BART-eligible units in Nebraska

Source category	Facility	Location	Number of emission units identified by date	Potential to emit (date-eligible units, tons per year)		
				PM	NO_x	SO_2
Fossil-fuel fired steam electric plants of more than 250 million BTU per hour heat input	NPPD Gerald Gentlemen Station	Sutherland	2	4,460	46,200	79,200
	OPPD Nebraska City	Nebraska City	1	43,792	19,040	45,696
	OPPD North Omaha Station	Omaha	2	910	14,420	34,283
	NPPD Sheldon Station	Hallam	2	908	6,020	15,100
	CW Burdick Generating Station	Grand Island	2	997	1,923	10,304
	Lon D. Wright Power Plant	Fremont	2	97	3,784	3,035
	Don Henry Power Center	Hastings	1	19	1,360	780
	North Denver Station	Hastings	1	14	426	853
Portland cement plant	Ash Grove Cement	Louisville	7	528	2,373	3,182
Chemical process plant; fossil-fuel boilers; hydrofluoric, sulfuric, and nitric acid plant	Beatrice Nitrogen Plant	Beatrice	18	48	924	5

b. BART-subject Sources

Nebraska then screened out some BART-eligible sources from being subject to BART on the basis that they do not cause or contribute to visibility impairment in a Class I area. Nebraska selected a contribution threshold of 0.5 deciviews based on the 98th percentile of daily modeled visibility impact over an annual

period because it is consistent with the Guidelines, no BART-eligible sources are near Class I areas, and there are no significant clusters of BART-eligible sources in the State. Nebraska required the owner of each BART-eligible source to conduct dispersion modeling using the CALPUFF model and submit the results to Nebraska.[18] The CALPUFF modeling protocol is included in Appendix 10.3 of the SIP.

Nebraska identified eight sources with impacts less than 0.5 deciviews, and were therefore determined not to be BART-subject: Beatrice Nitrogen Plant; Ash Grove Cement; Don Henry Power Center; Lon D. Wright Power Plant; CW Burdick Generating Station; North Denver Station; NPPD Sheldon Station; and OPPD North Omaha Station.

Two facilities had impacts greater than 0.5 deciviews, and were therefore determined to be BART-subject: OPPD NCS Station Unit 1 and NPPD GGS Units 1 and 2. EPA proposes to find that Nebraska adequately determined which sources in the State were subject to BART.

c. Particulate Matter (PM) Evaluation

Nebraska used source-specific CALPUFF modeling to examine the relative contribution of PM, NOx, and SO_2 emissions to visibility impairment.

[18] One exception - Nebraska conducted modeling for the Lon D. Wright Power Plant.

For NCS Unit 1, direct PM emissions only accounted for 0.32 percent of impairment in the most impaired year, 2001, at the closest Class I area, Hercules Glades. Nebraska concluded that direct PM emissions from NCS do not significantly contribute to visibility impairment, and therefore, a full five factor BART analysis for PM was not needed.

For GGS Units 1 and 2, direct PM emissions only accounted for 0.69 percent of impairment on the most impaired year, 2003, at the closest Class I area, Badlands. Nebraska concluded that direct PM emissions from GGS do not significantly contribute to visibility impairment, and therefore, a full five factor BART analysis for PM was not needed.

EPA agrees with these conclusions.

d. BART Determination for Omaha Public Power District (OPPD) Nebraska City Station (NCS) Unit 1

Nebraska and EPA have reached different conclusions as to whether NCS Unit 1 is located at a power plant with a generating capacity in excess of 750 megawatts (MW), or not. If NCS falls within this category of sources, then the BART Guidelines must be followed in determining BART limits and the presumptive limits in the Guidelines would apply. See CAA section 169A(b). In September 2008, Nebraska asked EPA for clarification on whether recently permitted units, such as NCS Unit 2, should be included in the total plant capacity for purposes of applying

presumptive BART. In a response dated November 7, 2008, we indicated it is reasonable to interpret the RHR to mean that if the plant capacity is greater than 750 MW at the time the BART determination is made by the State (i.e., at the time the State places the BART determination on public notice), then the power plant is a facility "having a total generating capacity in excess of 750 [MW]" and any unit at the plant greater than 200 MW is subject to presumptive BART.

The groundbreaking for construction of NCS Unit 2 was September 13, 2005. Nebraska put the NCS Unit 1 BART permit on public notice on December 12, 2008. Unit 2 was operational on May 1, 2009.[19] Nebraska concluded that because NCS Unit 2 was not *operational* at the time of the BART determination for Unit 1, its capacity did not count towards the 750 MW threshold, and therefore, it was not mandatory for Nebraska to follow 40 CFR 51 Appendix Y in making the BART determination.

We concede that there is some question as to whether the NCS Unit 1 is a presumptive unit, requiring use of the BART Guidelines, or not. Regardless, Nebraska did proceed through a basic step-wise analysis of the costs and visibility impacts of available controls.

[19] http://www.powermag.com/coal/Top-Plants-Nebraska-City-Station-Unit-2-Nebraska-City-Nebraska_2179_p4.html, accessed February 7, 2012.

NCS Unit 1 has existing overfire air (OFA), so in determining BART for NO_x at NCS unit 1, Nebraska considered low NO_x burners (LNB) and selective catalytic reduction (SCR). Selective non-catalytic reduction (SNCR) was determined to be technically infeasible due to high furnace exit temperatures. The cost effectiveness of LNB/OFA at a rate of 0.23 lbs/MMBtu was $166 per ton; the cost effectiveness of LNB/OFA plus SCR at a rate of 0.08 lbs/MMBtu was $2,611 per ton.

NCS Unit 1 impacts Hercules Glades in Missouri and Wichita Mountains in Oklahoma an average of 0.65 dv and 0.46 dv, respectively[20]. Installing LNB with OFA offers an average improvement of 0.22 dv at Hercules Glades and 0.12 dv at Wichita Mountains. The addition of SCR would provide an additional 0.17 dv of improvement at Hercules Glades,[21] but because of the high incremental cost of $8,203 per ton and the level of visibility improvement, it was not chosen as BART. Nebraska determined BART for NO_x at NCS unit 1 to be LNB with OFA at a rate of 0.23 lbs/MMBtu. EPA agrees that the State's determination is reasonable given the relatively insignificant additional visibility improvement associated with SCR for the additional cost.

[20] Our use of the word average in this section means averaging the 98th percentile impact for each of the three baseline years, 2001-2003.

[21] Improvement from the addition of SCR at Wichita Mountains was not provided by NDEQ in the SIP.

For SO_2 control at NCS, Nebraska evaluated both dry and wet FGD. Nebraska concluded that dry FGD (spray dryer absorber (SDA)) has lower capital and operating costs than wet FGD and can achieve a similar control efficiency; it thus focused its cost analysis on dry FGD. We note that Nebraska did not evaluate Dry Sorbent Injection (DSI) as a potential SO_2 control for NCS Unit 1. Since DSI can generally achieve the same control efficiency as FGD, we believe that the State has appropriately evaluated the *level* of controls in its analysis.

The costs per ton for dry FGD were reasonable both at a rate of 0.15 lbs/MMBtu ($1,759 per ton) and 0.10 lbs/MMBtu ($1,636 per ton)[22]. The visibility improvement at Hercules Glades from dry FGD was 0.25 dv and 0.44 dv[23], respectively. The visibility improvement of adding FGD at a rate of 0.15 lb/MMBtu to the LNB/OFA system required as BART for NO_x is 0.25 dv.[24] Nebraska determined that the minimal visibility improvement from installation of FGD at NCS Unit 1 did not warrant the additional cost ($34,770,000 or $1,759 per ton); therefore, no SO_2 controls were proposed as BART for NCS Unit 1. EPA agrees that the State's determination is not unreasonable given the minimal additional visibility improvement.

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[22] Nebraska assumed the same cost regardless of the level of control (0.15 or 0.10 lb/MMBtu); however, a higher level of control would likely have a slightly higher cost.

[23] Nebraska only provided visibility information for the most impacted year for the 0.10 lb/MMBtu rate; therefore, this improvement is maximum, not average.

[24] Nebraska did not provide modeling information for FGD at a rate of 0.10 lb/MMBtu combined with LNB/OFA, so that level of control cannot be fully evaluated.

e. BART Determination for Nebraska Public Power District (NPPD) Gerald Gentleman Station (GGS) Units 1 and 2

Nebraska evaluated LNB with OFA and SCR for NO_x control at GGS. In 2006, NPPD installed LNB and OFA at Unit 1, but since this was after the 2001-2003 baseline modeling period, it was still evaluated in the BART analysis. SNCR was determined to be technically infeasible due to high furnace exit temperatures. LNB with OFA (at a rate of 0.23 lbs/MMBtu) had a cost effectiveness of $198 per ton, and LNB with OFA and SCR (at a rate of 0.08 lbs/MMBtu) had a cost effectiveness of $2,297 per ton.

GGS affects six Class I areas greater than 0.5 dv on average: Badlands and Wind Cave in South Dakota; Wichita Mountains in Oklahoma; Rocky Mountain in Colorado; and Hercules Glades and Mingo in Missouri. GGS has a cumulative baseline impact on these six Class I areas of 8.86 dv.

LNB plus OFA offers an improvement at Badlands (the closest and most affected Class I area) of 0.66 dv, and 1.94 dv cumulatively. The addition of SCR offers an incremental improvement of 0.49 dv at Badlands, and 1.27 dv cumulatively. Nebraska concluded that based on the relatively low incremental visibility improvement of adding SCR to the LNB/OFA system for the additional cost ($5,445 incremental cost per ton), requiring SCR as BART was not warranted. NO_x BART for GGS was determined

to be the installation of LNB/OFA with an emission limitation of 0.23 lbs NO_x/MMBtu, averaged across the two units. EPA agrees that the State's NO_x BART determination for GGS is reasonable.

Nebraska evaluated wet and dry FGD and Dry Sorbent Injection (DSI) for SO_2 controls at GGS. All control options were evaluated at the presumptive rate of 0.15 lbs/MMBtu. The cost effectiveness for dry and wet FGD was nearly identical at $2,726 per ton and $2,724 per ton, respectively; the cost effectiveness of DSI was $2,058 per ton. All of these controls were determined by Nebraska to be reasonable on a cost per ton basis.

The visibility improvement from these controls operated at a rate of 0.15 lbs/MMBtu is significant: an average of 0.86 dv from DSI, and an average of 0.78 dv from FGD at Badlands. The cumulative improvement is even greater; FGD control would offer an improvement of 3.17 dv across the six Class I areas that GGS affects. Nebraska only provided visibility information for DSI at Badlands; therefore, the cumulative benefit of DSI is unknown.

Nebraska raises water use of wet and dry FGD as a significant non-air environmental impact. In its SIP, Nebraska presents a description of the over-appropriation of water resources in the western part of Nebraska, where GGS is located. The State described that this over-appropriation means that any

new use of groundwater requires an offset in water consumption in the same area. To do this, NPPD would have to purchase the groundwater rights from surrounding landowners. Nebraska did not include the cost of obtaining these groundwater rights in the original BART analysis costs; however, in the narrative portion of the SIP, Nebraska describes both the costs of obtaining groundwater, and the loss of agricultural revenue due to taking land out of agricultural production. Nebraska concludes that the cost of obtaining water to operate wet FGD would add approximately 8.6 percent to the cost of controls. If these costs were added into the BART analysis, it would only increase the cost of control by $234 per ton. This brings the cost per ton to $2,958, which EPA believes is still a reasonable cost of control over both units.[25]

In the SIP, Nebraska says that it used a $40,000,000/yr/dv threshold for determining what would be considered a reasonable investment for visibility improvement. They concluded that the costs of FGD control were reasonable on a cost per ton basis, but not on a dollars per deciview basis. Furthermore, Nebraska sees the water consumption of FGD controls as significant, and concludes that because of this unique situation, FGD controls are unreasonable for GGS Units 1 and 2. Nebraska concludes that BART is no SO_2 controls at GGS.

[25] EPA is not including any cost of the loss of agricultural revenue in this estimation.

EPA disagrees with this conclusion. Using Nebraska's analysis, we agree that the cost per ton for FGD control is reasonable, and Nebraska's analysis shows significant visibility improvement, both at Badlands and on a cumulative basis. We also believe that Nebraska inappropriately ruled out DSI. Costs for the control are reasonable at $2,058 per ton and visibility improvement at Badlands is significant at 0.86 dv. Furthermore, DSI does not consume as much water as does FGD.

Finally, even though the cost of FGD controls is reasonable, we believe that the costs of FGD control are overestimated. This is described in detail in the TSD to this notice. EPA conducted an independent review of the cost information presented by Nebraska in its BART analysis for dry scrubbers. We found several errors and deviations from EPA's Cost Control Manual.[26] Cost categories in which we found significant errors or deviations include: Engineering Procurement and Construction; Bond Fees; Escalation; Contingency; Allowance for Funds Used During Construction; Capital Recovery Factor; and Operation and Maintenance.

We also found that Nebraska incorrectly calculated the SO_2 emission rates. On page 15 of its BART analysis, NPPD calculates its SO_2 emission baseline based on applying a 24-hour maximum emission rate of 0.749 lbs/MMBtu (2001-2003) to a

[26] EPA Air Pollution Control Cost Manual, Sixth Edition, EPA/452/B-02-001, January 2002

maximum heat input of 15,175.5 MMBtu/hr, based on a 100 percent capacity factor. This results in an emissions baseline of 49,785 tons/year.[27] We believe this calculation does not appropriately represent GGS's SO_2 emission baseline, and is in fact too high. We have downloaded emissions data for GGS from our Clean Air Markets web site,[28] and using the same emissions data from the three year averaging period of 2001-2003, we have calculated the three year average annual SO_2 emissions for units 1 and 2 of the GGS to be 0.565 lbs/MMBtu.[29] Reducing this to a controlled SO_2 emissions level of 0.15 lbs/MMBtu results in a control efficiency of approximately 73.5 percent. Applying this level of control to our adjusted GGS SO_2 emission baseline of 31,513 tons/year would reduce it to 8,366 tons/yr, resulting in a reduction of 23,147 tons of SO_2 annually. Applying the same approximate 80 percent level of reduction GGS assumes to our adjusted GGS SO_2 emission baseline of 31,513 tons/yr would reduce it to 6,311 tons/yr, resulting in a reduction of 25,202 tons of SO_2 annually.[30]

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[27] (0.749 lbs/MMBtu) * (15,175 MMBtu/hr) * (8,760 hrs/yr) * (ton/2,000 lbs) = 49,785 tons/yr.

[28] http://camddataandmaps.epa.gov/gdm/index.cfm?fuseaction=emissions.wizard

[29] See Attachment B to our TSD. Based on adding the station total pounds of SO_2 emissions from 2001-2003 and dividing by the station total heat input from 2001-2003.

[30] (39,815/49,785)*31,513 = 25,202.

However, dry scrubbers are capable of much greater control efficiencies than the 80 percent level that GGS assumes.[31] Therefore, for the purpose of calculating the cost effectiveness of dry scrubbers at the GGS, we also analyzed an SO_2 emission limit of 0.06 lbs/MMBtu, which results in a scrubber efficiency of approximately 89.4%. Applying this level of control to our adjusted GGS baseline of 31,513 tons/yr would reduce it to 3,347 tons/yr, resulting in a reduction of 28,166 tons of SO_2 annually. Table 2 summarizes EPA's adjustments to the Nebraska cost estimates for dry FGD control at GGS.

Table 2: Range of GGS Dry Scrubber Cost Effectiveness

	Dry FGD (original NPPD BART analysis)	**Dry FGD EPA's estimate**		
SO_2 Baseline	49,785	31,513		
Uncontrolled Emission Level (lbs/MMBtu)	0.749	0.565		
Controlled Emission Rate (lbs/MMBtu)	0.15	0.15	0.11	0.06
Percent Reduction	80%	73.5%	80%	89.4%
SO_2 Emission Reduction (tons)	39,815	23,147	25,202	28,166
Total Annualized Cost	$108,535,690	$53,469,570	$54,335,512	$55,543,352
Total Cost Effectiveness ($/ton)	$2,726	$2,310	$2,156	$1,972

In summary, we believe that Nebraska's cost analysis includes errors and deviations from EPA's Cost Control Manual that results in the overestimation of the costs of FGD controls. In addition, the State did not do a full evaluation of the

[31] Response to Technical Comments for Sections E. through H. of the Federal Register Notice for the Oklahoma Regional Haze and Visibility Transport Federal Implementation Plan, Docket No. EPA-R06-OAR-2010-0190, 12/13/2011, Section II., Comments Relating to Our SO2 BART Emission Limit, and elsewhere.

potential visibility benefits from levels of control that FGD is capable of achieving. We believe that the cost per ton of SO_2 controls ranging from $1,972 (our analysis) to $2,958 (Nebraska's analysis, plus water) is reasonable, and that the visibility benefits, whether considered just at Badlands or cumulatively, are significant. Finally, we believe that the State improperly rejected DSI as a potential BART control. Therefore, EPA proposes to disapprove Nebraska's BART determination for SO_2 controls at GGS.

f. BART Summary and Enforceability

Each source subject to BART must install and operate BART as expeditiously as practicable, but in no event later than five years after approval of the SIP revision; and include monitoring, recordkeeping and reporting requirements to ensure the BART limits are enforceable. Nebraska chose to incorporate BART requirements into PSD permits issued pursuant to Title 129 of the Nebraska Air Quality Regulations, Chapter 19. These limits will be incorporated into the facility's Title V permits after SIP approval. The permits require that the limits be met within five years of approval of Nebraska's regional haze SIP. The limits must be met on a thirty-day rolling average basis at all times, including periods of startup, shutdown and malfunction. The permits require the use of a NO_x continuous emission monitoring system (CEMS) on each unit to demonstrate

compliance with the BART NO_x limits. Each CEMS is required to be operated and certified in accordance with 40 CFR Part 75. Recordkeeping and reporting is also required to be in accordance with 40 CFR Part 75. The PSD permits were submitted to the EPA for SIP approval as part of the State's RH SIP submittal. The PSD permits are enforceable by the State, and by EPA. We have reviewed these requirements and propose to find them adequate as they relate to the BART limits we are proposing to approve.

Table 3 is a summary of the BART determinations made by Nebraska and EPA's proposed action on those determinations.

Table 3: Summary of Nebraska BART determinations

Facility, Units	Pollutant	BART controls determined by the State	EPA's proposed action
OPPD Nebraska City Station, Unit 1	NO_x	Install low NO_x burners with over fired air. Meet presumptive level of 0.23 lbs/MMBtu.	Approval
	SO_2	No additional controls. Source currently uses low sulfur coal.	Approval
NPPD Gerald Gentleman Station, Units 1 and 2	NO_x	Install low NO_x Burners with over fired air. Meet presumptive level of 0.23 lbs/MMBtu, averaged over the two units.	Approval
	SO_2	No additional controls. Continue to use low sulfur coal.	Disapproval

G. Federal Implementation Plan (FIP)to Address SO_2 BART for GGS and LTS

As discussed above, we propose to disapprove Nebraska's BART determination for GGS. In addition, as discussed in section III.E. (Long Term Strategy), we propose to disapprove

Nebraska's LTS insofar as it relied on the deficient BART determination for SO_2 at GGS. To address the deficiencies identified in these proposed disapprovals, we are also proposing a FIP.

The RHR allows for use of an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the States in which the Transport Rule applies, including Nebraska. 76 FR 82219. EPA also proposed to revise the RHR to allow States to meet the requirements of an alternative program in lieu of BART by participation in the trading programs under the Transport Rule. EPA has not taken final action on that rule.

We are proposing a partial FIP, relying on the Transport Rule as an alternative to BART for SO_2 emissions from the GGS units. This limited FIP would satisfy the SO_2 BART requirement for these units and remedy the deficiency in Nebraska's LTS.

We noted that on December 30, 2011, the D.C. Circuit Court issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that

order, the D.C. Circuit Court stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P. v. EPA* (No. 11-1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer the CAIR in the interim until the court rules on the petitions for review of the Transport Rule. Under the Regional Haze Rule, an alternative to BART does not need to be fully implemented until 2018. As that is well after we expect the stay to be lifted, EPA believes it may still rely on the Transport Rule as an alternative to BART. Further, our proposed action would not impact the implementation of the Transport Rule or otherwise interfere with the stay.

H. Coordinating Regional Haze and RAVI

EPA's visibility regulations direct States to coordinate their RAVI LTS and monitoring provisions with those for regional haze. Under EPA's RAVI regulations, the RAVI portion of a State SIP must address any integral vistas identified by FLMs pursuant to 40 CFR 51.304. An *integral vista* is defined in 40 CFR 51.301 as a "view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area." Visibility in any Class I area includes any integral vista associated with that area. As mentioned previously, Nebraska does not have any Class I areas and the FLMs have not certified any integral

vistas affected by emissions from Nebraska sources, therefore, the Nebraska regional haze SIP submittal is not required to address the two requirements regarding coordination of the regional haze SIP with the RAVI LTS and monitoring provisions.

I. Monitoring Strategy

Because it does not host a Class I area, Nebraska is not required to develop a monitoring strategy for measuring, characterizing, and reporting regional haze impairment that is representative of Class I areas within the State. However, the State is required to establish procedures by which monitoring data and other information is used to determine the contribution of emissions from within the State to regional haze impairment at Class I areas outside of the State.

Compliance with this requirement is met by participation in the IMPROVE network. [32] Nebraska installed one IMPROVE protocol sampler at Nebraska National Forest County near Halsey, Nebraska in the central part of the State, and another at Crescent Lake National Wild Life Refuge in the panhandle of the State. A third IMPROVE Protocol sampler in Nebraska is operated independently in Thurston County, by the Omaha Tribe of Nebraska; however, EPA notes that this monitor is no longer operating.

[32] http://vista.cira.colostate.edu/improve

EPA believes the State's commitment to utilize data from these sites, or any other EPA- approved monitoring network location, to characterize and model conditions within the State and to compare visibility conditions in the State to visibility impairment at Class I areas hosted by other States, and proposes that Nebraska has satisfied the monitoring requirements of 40 CFR 51.308(d)(4).

J. Emissions Inventory

States are required to develop a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year with available data, and future projected emissions.

As mentioned previously, Nebraska worked with CENRAP and its contractors to develop statewide emission inventories for 2002 and 2018. Detailed methodologies are documented in appendices 8.3 and 9.1 of the SIP. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from Federal and State regulations affecting the emissions of the visibility-impairing pollutants NO_x, PM, SO_2, and VOCs. The 2002 emissions were grown to year 2018 primarily using the Economic Growth Analysis System (EGAS6), MOBILE 6.2 vehicle emission modeling software, and the

Integrated Planning Model (IPM) version 2.93 for EGUs. The 2018 emissions for EGUs were based on simulations of the IPM that took into the account the effects of CAIR on emissions.

At the time modeling was conducted, BART decisions had not been made by many States, including Oklahoma and Nebraska. Presumptive levels of BART control were assumed in projections of 2018 emissions. The 2018 Nebraska inventory was then updated to account for Nebraska's BART decisions, specifically, no SO_2 controls on the two BART-subject EGUs in the State.

EPA believes the 2002 and 2018 statewide emissions inventories and the State's method for developing the 2018 emissions inventory for Nebraska meets the requirements of the RHR. Nebraska has also committed to update inventory periodically, therefore, we propose that Nebraska has met the requirements of 40 CFR § 51.308(d)(4)(v).

K. Federal Land Manager (FLM) Consultation

States are required to provide the FLMs an opportunity for consultation, in person and at least sixty days prior to holding any public hearing on the SIP (or its revision). Consultations should include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area; and recommendations on the development of the RPG and on the development and implementation of strategies to address visibility impairment.

Nebraska provided several opportunities for the FLMs to comment on Nebraska's regional haze plan. Nebraska asserts that it sent the draft BART permits for NPPD and OPPD to the FLMs in mid-2008, and again prior to public notice. Nebraska provided the FLMs with a draft of the Nebraska regional haze SIP on November 16, 2010, and received formal comments from the National Park Service (NPS), the US Fish and Wildlife Service (USFWS), and the US Forest Service (USFS) in January 2011.

In developing any SIP (or plan revision), States must include a description of how it addressed any comments provided by the FLMs. The FLM comments and Nebraska's responses are provided in appendix 3 of the SIP, and are summarized in the TSD for this rulemaking.

The main FLM comments centered on concerns that the modeling done by the RPOs assumed a presumptive level of control on Nebraska BART sources, but Nebraska did not go on to require that level of control, and in fact, required no control for SO_2.

The FLMs also commented that DSI should be evaluated for SO_2 control and SNCR for NO_x control at NCS Unit 1; they disagree with Nebraska's decision to not require FGD and SCR, as both controls have a reasonable cost. They strongly disagree with the BART determinations for GGS, pointing out that the visibility impact of these units is significant at more than just the closest Class I area (Badlands), and question several

aspects of the cost estimation, such as escalation, contingencies, allowance for funds during construction, overestimation of direct annual costs.

The USFWS did some interagency consultation regarding water availability as a reason not to require FGD controls. The USFWS Air Branch asked the USFWS's Nebraska Field Office to review Nebraska's draft regional haze SIP and comment on the merits of the arguments on water and endangered species protection. While the Nebraska Field Office agrees that Nebraska's arguments have some merit, they say that the information provided by Nebraska represents a worst-case scenario, and concludes that the water availability concerns do not automatically negate the opportunity to make improvements in air quality.

Finally, regional haze SIPs must provide procedures for continuing consultation between the State and FLMs on the implementation of 40 CFR 51.308, including development and review of SIP revisions and five-year progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. Nebraska has committed to continuing to coordinate and consult with the FLMs during the development of future progress reports and plan revisions, as well as during the implementation of programs having the potential to contribute to visibility impairment in the mandatory Class I Federal areas. We propose

that Nebraska has satisfied the FLM consultation requirements of 40 CFR 51.308(i).

L. Periodic SIP Revisions and Five Year Progress Report

Nebraska acknowledged the requirement under 40 CFR 51.308 (f)-(h) to submit periodic progress reports and regional haze SIP revisions, with the first report due by July 31, 2018, and revisions due every ten years thereafter. Nebraska committed to meeting this requirement.

Nebraska also acknowledged the requirement to submit periodic reports evaluating progress towards the reasonable progress goals established for each mandatory Class I area. Nebraska committed to complete the first five-year progress report by December 31, 2016. The report will evaluate the progress made towards the reasonable progress goal for each mandatory Class I area located outside Nebraska, which may be affected by emissions from within Nebraska. Using the findings of this first report, Nebraska committed to determining whether the adequacy of the plan is sufficient and taking appropriate action to revise the SIP as needed. We propose to find that Nebraska has satisfied the requirements to submit periodic SIP revisions and progress reports as required by 40 CFR 51.308(f)-(h).

IV. Proposed Actions

We propose to partially approve and partially disapprove Nebraska's regional haze SIP submitted on July 13, 2011. We propose to disapprove the SO_2 BART determinations for Units 1 and 2 of GGS because they do not comply with our regulations and guidance. We are also proposing to disapprove Nebraska's long-term strategy insofar as it relied on the deficient SO_2 BART determination at GGS. We propose a FIP relying on the Transport Rule as an alternative to BART for SO_2 emissions from GGS to address these issues.

We propose to approve all other portions of the Nebraska RH SIP. We note that all controls required as part of Nebraska's BART determinations, not included as part of our proposed FIP, must be operational within five years from the effective date of our final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork

Reduction Act, Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to . . . identical reporting or recordkeeping requirements imposed on ten or more persons . . . ." 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less

than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The proposed partial approval of the SIP, if finalized, merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more (adjusted to inflation). Under section 205, EPA

must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves State rules implementing a Federal standard, and does not impose any new mandates on State or local governments. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA

specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned

regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it proposes to approve State-adopted emission limits for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule does not impose any new mandates, because EGUs in Nebraska are subject to the requirements of the Transport Rule independently of this proposed action. *See* 76 FR 82219, for an analysis of the implications of Executive Order 12898 in relation to EPA's proposed rule, "Regional Haze:

Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans" (December 30, 2011).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

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

Dated: February 15, 2012.

Karl Brooks,
Regional Administrator,
Region 7.

Title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 52 – [AMENDED]

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

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

Subpart CC-Nebraska

2. Sections 52.1430 – 52.1434 remain reserved.

3. Section 52.1435 is revised to read as follows:

§ 52.1435 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) for protection of visibility in mandatory Class I Federal areas.

(b) *Best Available Retrofit Technology for SO_2 at Nebraska Public Power District, Gerald Gentleman Units 1 and 2*. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 from Nebraska Public Power District, Gerald Gentleman Units 1 and 2 are satisfied by §52.1429.

[FR Doc. 2012-4991 Filed 03/01/2012 at 8:45 am; Publication Date: 03/02/2012]