ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R08-OAR-2011-0114; FRL-9751-6

Approval, Disapproval and Promulgation of State Implementation Plans; State of Utah; Regional Haze Rule Requirements for Mandatory Class I Areas under 40 CFR 51.309

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving a State Implementation Plan (SIP) revision submitted by the State of Utah on May 26, 2011 that addresses regional haze. EPA is also approving specific sections of a State of Utah SIP revision submitted on September 9, 2008 to address regional haze. These SIP revisions were 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 taking this action pursuant to section 110 of the CAA.

DATES: This final rule is effective [insert date 30 days from the date of publication in the Federal Register]

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0114. All documents in the docket are listed on the www.regulations.gov Web site. Publicly available docket materials are available either electronically through www.regulations.gov, or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 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 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6144, dygowski.laurel@epa.gov

SUPPLEMENTARY INFORMATION:

Definitions

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

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

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

iii. The initials CAC mean or refer to clean air corridors.

iv. The initials CEED mean or refer to the Center for Energy and Economic Development.

v. The initials EGUs mean or refer to electric generating units.

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

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

viii. The initials MRR mean or refer to monitoring, recordkeeping, and reporting.

ix. The initials LNB mean or refer to low NO_x burner.

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

xi. The initials NSR mean or refer to new source review.

xii. The initial OFA mean or refer to overfire air.

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

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

xv. The initials PSD mean or refer to prevention of significant deterioration.

xvi. The initials RHR mean or refer to the Regional Haze Rule.

xvii. The initials SIP mean or refer to State Implementation Plan.

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

xix. The initials SOFA mean or refer to separated overfire air.

xx. The words Utah or State mean or refer to the State of Utah.

xxi. The initials UAR mean or refer to the Utah Administrative Rules.

xxii. The initials WESP mean or refer to wet electrostatic precipitator.

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

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I. Background

The CAA requires each state to develop plans, referred to as SIPs, to meet various air quality requirements. A state must submit its SIPs and SIP revisions to us for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA, also known as being federally enforceable. If a state fails to make a required SIP submittal or if we find that a state's required submittal is incomplete or unapprovable, then we must make a finding to that effect. This action involves the requirement that states have SIPs that address regional haze.

A. Regional Haze

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

Utah submitted SIPs addressing regional haze on September 9, 2008 and May 26, 2011. (These superseded and replaced prior SIP submittals dated December 12, 2003 and August 8, 2004).

B. Lawsuits

In a lawsuit in the U.S. District Court for the District of Colorado, environmental groups sued us for our failure to take timely action with respect to the regional haze requirements of the CAA and our regulations for the State of Utah. As a result of this lawsuit, we entered into a consent decree. The consent decree requires that we sign a notice of final rulemaking addressing the regional haze requirements for Utah by October 31, 2012. We are meeting that requirement with the signing of this notice of final rulemaking.

C. Our Proposal

We published our notice of proposed rulemaking in the federal register on May 16, 2012 (77 FR 28825). In that notice, we provided a detailed description of the various regional haze requirements. We are not repeating that description here; instead, the reader should refer to our notice of proposed rulemaking for further detail.

In our proposal, we proposed to approve all sections of the May 26, 2011 SIP submittal

as meeting the requirements under 40 CFR 51.309, with the exception of the requirements under 40 CFR 51.309(d)(4)(vii) pertaining to nitrogen oxides (NO_x) and particulate matter (PM) best available retrofit technology (BART). EPA proposed to disapprove the State's NO_x and PM BART determinations and limits in section D.6.d of the SIP for the following four subject-to-BART electric generating units (EGUs): PacifiCorp Hunter Unit 1, PacifiCorp Hunter Unit 2, PacifiCorp Huntington Unit 1, and PacifiCorp Huntington Unit 2. EPA proposed to disapprove these BART determinations because they do not comply with our regulations under 40 CFR 51.308(e)(1)[1] pertaining to the factors that need to be considered as part of a BART determination. EPA also proposed to disapprove the State's SIP because it does not contain the provisions necessary to make BART limits practically enforceable as required by section 110(a)(2) of the CAA and Appendix V to part 51.

We proposed to approve specific sections of the State's September 9, 2008 SIP submittal. Specifically, we proposed to approve Utah Administrative Rules (UAR) R307-250 - *Western Backstop Sulfur Dioxide Trading Program* and R307-150 - *Emission Inventories*. R307-250, in conjunction with the SIP, implements the backstop trading program provisions in accordance with the requirements of the regional haze rule (RHR) under 40 CFR 51.309. The purpose of R305-150 is to establish consistent emission inventory reporting requirements for stationary sources in Utah to determine whether sulfur dioxide (SO_2) emissions are below the SO_2 milestones established for the trading program.

D. Public Participation

We requested comments on all aspects of our proposed action and provided a sixty-day comment period, with the comment period closing on July 16, 2012. We received comments on

[1] 40 CFR 51.309(d)(vii) provides that "The implementation plan must contain any necessary long term strategies and BART requirements for stationary source PM and NOX emissions. Any such BART provisions may be submitted pursuant to either § 51.308(e)(1) or §51.308(e)(2)."

our proposed rule that supported our proposed action and that were critical of our proposed action. In this action, we are responding to the comments we have received, taking final rulemaking action, and explaining the bases for our action.

II. Final Action

We are approving all sections of the May 26, 2011 SIP submittal as meeting the requirements under 40 CFR 51.309, with the exception of the requirements under 40 CFR 51.309(d)(4)(vii) pertaining to NO_x and PM BART. EPA is disapproving the State's NO_x and PM BART determinations and limits in section D.6.d of the SIP for the following four subject-to-BART EGUs: PacifiCorp Hunter Unit 1, PacifiCorp Hunter Unit 2, PacifiCorp Huntington Unit 1, and PacifiCorp Huntington Unit 2. EPA is disapproving these BART determinations because they do not comply with our regulations under 40 CFR 51.308(e)(1). EPA is also disapproving the State's SIP because it does not contain the provisions necessary to make BART limits practically enforceable as required by section 110(a)(2) of the CAA and Appendix V to part 51.

We are approving specific sections of the State's September 9, 2008 SIP submittal. Specifically, we are approving UAR R307-250 - *Western Backstop Sulfur Dioxide Trading Program* and R307-150 - *Emission Inventories*. We are taking no action on the rest of the September 9, 2008 submittal as the May 26, 2011 submittal supersedes and replaces the remaining sections of the September 9, 2008 SIP submittal. The State also submitted SIPs on December 12, 2003 and August 8, 2004 to meet the requirements of the RHR. These submittals have been superseded and replaced by the September 9, 2008 and May 26, 2011 submittals. We are taking no action on section G – *Long-Term Strategy for Fire Programs* of the May 26, 2011 submittal as we have proposed approval of this section in a separate notice (76 FR 69217,

November 8, 2011).

III. Basis for Our Final Action

We have fully considered all significant comments on our proposal and have concluded that no changes from our proposal are warranted. Our action is based on an evaluation of Utah's regional haze SIP submittal against the regional haze requirements at 40 CFR 51.300–51.309 and CAA sections 169A and 169B. All general SIP requirements contained in CAA section 110, other provisions of the CAA, and our regulations applicable to this action were also evaluated. The purpose of this action is to ensure compliance with these requirements. Our authority for action on Utah's SIP submittal is based on CAA section 110(k).

We are approving most of the State's regional haze SIP provisions because they meet the relevant RHR requirements and disapproving others because they do not meet the requirements of the RHR or other requirements of the CAA. Most of the adverse comments we received concerning our proposed approval of the regional haze SIP pertained to our proposed approval of the SO_2 backstop trading program and disapproval of the BART determinations for PacifiCorp Hunter Unit 1 and Unit 2, and PacifiCorp Huntington Unit 1 and Unit 2. However, the comments have not convinced us that the State did not meet the requirements of 40 CFR 51.309 that we proposed to approve or that the State met the requirements of the RHR or the CAA for which we proposed disapproval.

IV. Issues Raised by Commenters and EPA's Responses

A. Backstop Trading Program

EPA has proposed to approve the SO_2 backstop trading program components of the RH SIPs for all participating States and has done so through four separate proposals: for the Bernalillo County proposal see 77 FR 24768 (April 25, 2012); for the Utah proposal see 77 FR

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

Comment: The commenter acknowledges that prior case law affirms EPA's regulatory basis for having "better than BART" alternative measures, but nevertheless asserts that it violates Congress' mandate for an alternative trading program to rely on emissions reductions from non-BART sources and electric generating units (EGUs) from compliance with BART.

Response: The CAA requires BART "as may be necessary to make reasonable progress toward meeting the national goal" of remedying existing impairment and preventing future impairment at mandatory Class I areas. See CAA Section 169A(b)(2) (emphasis added). In 1999, EPA

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

Comment: The submitted 309 trading program is defective because only three of nine transport states remain in the program. The Grand Canyon Visibility Transport Commission (GCVTC) Report clearly stated that the program must be "comprehensive." The program fails to include the other western states that account for the majority of sulfate contribution in the Class I areas

of participating states, and therefore Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participation by other transport region states compounds the program's deficiencies.

Response: We disagree that the 309 trading program is defective because only three States remain in the program. EPA's regulations do not require a minimum number of Transport Region States to participate in the 309 trading program, and there is no reason to believe that the limited participation by the nine Transport States will limit the effectiveness of the program in the three States that have submitted 309 SIPs. The commenter's argument is not supported by the regional haze regulations and is demonstrably inconsistent with the resource commitments of the Transport Region States that have worked for many years in the WRAP to develop and submit SIPs to satisfy 40 CFR 51.309. At the outset, our regulations affirm that "certain States…may choose" to comply with the 40 CFR 51.309 requirements and conversely that "[a]ny Transport Region State [may] elect not to submit an implementation plan" to meet the optional requirements. 40 CFR 51.309(a); see also 40 CFR 51.309(f). We have also previously observed how the WRAP, in the course of developing its technical analyses as the framework for a trading program, "understood that some States and Tribes may choose not to participate in the optional program provided by 40 CFR 51.309." 68 FR 33769 (June 5, 2003). Only five of nine Transport Region States initially opted to participate in the backstop trading program in 2003, and of those initial participants only Oregon and Arizona later elected not to submit 309 SIPs.

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

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

Finally, we do not agree with the commenter's characterization of the GCVTC Report, which used the term "comprehensive" only in stating the following: "It is the intent of [the recommendation for an incentive-based trading program] that [it] include as many source categories and species of pollutants as is feasible and technically defensible. This preference for a 'comprehensive' market is based upon the expectation that a comprehensive program would be more effective at improving visibility and would yield more cost-effective emission reduction strategies for the region as a whole."[2]

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

Comment: The submitted 309 trading program is defective because the pollutant reductions from participating states have little visibility benefit in each other's Class I areas. The states that

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

have submitted 309 SIPs are "largely non-contiguous" in terms of their physical borders and their air shed impacts. Sulfate emissions from each of the participating states have little effect on Class I areas in other participating states.

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

approvability inquiry center on the location or contiguousness of state borders.

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

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

on an analysis of what BART is likely to be for similar types of sources within a source category." 71 FR 60619 (October 13, 2006).

We also previously stated that "we believe that the presumptions for EGUs in the BART guidelines should be used for comparisons to a trading program or other alternative measure, unless the State determines that such presumptions are not appropriate." Id. Our reasoning for this has also long been clear. While EPA recognizes that a case-by-case BART analysis may result in emission limits more stringent than the presumptive limits, the presumptive limits are reasonable and appropriate for use in assessing regional emissions reductions for the better than BART demonstration. See 71 FR 60619 ("the presumptions represent a reasonable estimate of a stringent case BART because they would be applied across the board to a wide variety of units with varying impacts on visibility, at power plants of varying size and distance from Class I areas"). The submitted SIP revisions from the 309 states have accordingly and appropriately, followed our advice that the presumptions for EGUs in the BART guidelines, generally "should" be used for comparisons to the trading program unless the state determines otherwise.

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

how the use of presumptive limits as a simplifying assumption at that time, or even now, would be flawed merely because EPA expects that scrubber technology and costs will continue to improve.

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

Response: The BART benchmark calculation does not overstate emissions because it was not intended to assess actual emissions at BART subject sources nor was it intended to assess the control capabilities of later installed controls. Instead, the presumptive SO_2 emission rate served as a necessary simplifying assumption. When the states worked to develop the 309 trading program, they could not be expected to anticipate the future elements of case-by-case BART determinations made by other states (or EPA, in the case of a BART determination through any federal implementation plan), nor could they be expected to anticipate the details of later-installed SO2 controls or the future application of enforceable emission limits to those controls. The emissions projections by the WRAP incorporated the best available information at the time

from the states, and utilized the appropriate methods and models to provide a prediction of emissions from all source categories in this planning period. In developing a profile of planning period emissions to support each state's reasonable progress goals, as well as the submitted trading program, it was recognized that the final control decisions by all of the states were not yet complete, as decisions as they may pertain to emissions from BART eligible sources. Therefore, we believe it is appropriate that the analysis and demonstration is based on data that was available to the states at the time they worked to construct the SO_2 trading program. The states did make appropriate adjustments based on information that was available to them at the time. Notably, the WRAP appropriately adjusted its use of the presumptive limits in the case of Huntington Units 1 and 2 in Utah, because those units were already subject to federally enforceable SO_2 emission rates that were lower than the presumptive rate. The use of actual emissions data after the 2006 baseline is not relevant to the demonstration that has been submitted.

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

Response: We recognize that the 2018 SO_2 milestone equals the BART benchmark and that the benchmark generally utilized the presumptive limits for EGUs, as was deemed appropriate by the states who worked together to develop the trading program. If the SO_2 milestone is exceeded,

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

milestone, as this comment suggests. We note the 2018 milestone constitutes an emissions cap that persists after 2018 unless the trading program can be replaced via future SIP revisions submitted for EPA approval that will meet the BART and reasonable progress requirements of 40 CFR 51.308. See 40 CFR 51.309(d)(4)(vi)(A).

Comment: In proposing to find that the SO_2 trading program achieves greater reasonable progress than BART, EPA's reliance on the following features of the 309 trading program is flawed: non-BART emission reductions, a cap on new growth, and a mass-based cap on emissions. The reliance on non-BART emission reductions is "a hollow promise" because there is no evidence that the trading program will be triggered for other particular emission sources, and if the program is never triggered there will be no emission reductions from smaller non-BART sources. The reliance on a cap on future source emissions is also faulty because there is no evidence the trading program will be triggered, and thus the cap may never be implemented. Existing programs that apply to new sources will already ensure that SO_2 emissions from new sources are reduced to the maximum extent. EPA's discussion of the advantages of a mass-based cap is unsupported and cannot be justified. EPA wrongly states that a mass-based cap based on actual emissions is more stringent than BART. There should not be a meaningful gap between actual and allowable emissions under a proper BART determination. A mass-based cap does not effectively limit emissions when operating at lower loads and, as an annual cap, does not have restrictive compliance averaging. EPA's argument implies that BART limits do not apply during startup, shutdown or malfunction events, which is not correct. The established mass-based cap would allow sources to operate their SO_2 controls less efficiently, because some BART-subject EGUs already operate with lower emissions than the presumptive SO_2 emission rate of 0.15 lb/MMBtu and because some EGUs were assumed to be operating at 85% capacity

when their capacity factor (and consequently their SO_2 emissions in tpy) was lower.

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

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

that the SIP, consistent with the well-considered 309 program requirements, functions to the contrary. Sources will be operating their controls in consideration of the milestone and they also remain subject to any other existing or future requirements for operation of SO_2controls.

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

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

Response: We disagree with the issues discussed in this comment. As discussed in other response to comments, we have found that the state's SIP submitted under the 309 program will

achieve greater reasonable progress than source-by-source BART. As the regulations housed within section 309 make clear, states have an opportunity to submit regional haze SIPs that provide an alternative to source-by-source BART requirements. Therefore, the commenter's assertion that we should require BART on all eligible air pollution sources in the state is fundamentally misplaced. The commenter's use of the URP as a test that should apparently be applied to the adequacy of the 309 trading program as a BART alternative is also misplaced, as there is no requirement in the regional haze rule to do so.

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

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

Comment: The WRAP attempts to justify the SO_2 trading program because SO_2 emissions have decreased in the three transport region states relying on the alternative program by 33% between 1990-2000. The justification fails because the reductions were made prior to the regional haze

rule. The reliance on reductions that predate the regional haze rule violates the requirement of 40 CFR 51.308(e)(2)(iv) that BART alternatives provide emission reductions that are "surplus" to those resulting from programs implemented to meet other CAA requirements.

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

Comment: EPA must correct discrepancies between the data presented in the 309 SIPs.[3] There are discrepancies in what has been presented as the results of WRAP photochemical modeling. The New Mexico regional haze SIP proposal shows, for example, that the 20% worst days at Grand Canyon National Park have visibility impairment of 11.1 deciviews, while the other

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

proposals show 11.3 deciviews. The discrepancy appears to be due to the submittals being based on different modeling scenarios developed by the WRAP. EPA must explain and correct the discrepancies and "re-notice" a new proposed rule containing the correct information.

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

Class I Area	State	2018 Preliminary Reasonable Progress PRP18a	2018 Preliminary Reasonable Progress PRP18b

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

We are not re-noticing our proposed rulemaking as the discrepancies do not change our proposed conclusion that the SIP submitted by Utah contains reasonable projections of the visibility improvements expected at the 16 Class I areas at issue. The PRP18a modeling results show projected visibility improvement for the 20 percent worst days from the baseline period to

2018. The PRP18b modeling results show either the same or additional visibility improvement on the 20 percent worst days beyond the PRP18a modeling results. We also note there are two discrepancies in New Mexico's Table 1, column four compared to the other participating States' notices. The 2018 base case visibility projection in the New Mexico proposed notice for Black Canyon of the Gunnison National Park Wilderness and Weminuche Wilderness should be corrected to read 10.1 deciview rather than 10.0. Notwithstanding the discrepancies described above, we believe that Utah's SIP adequately project the improvement in visibility for purposes of Section 309.

B. Legal Issues

Comment: EPA informally announced in the section 114 request letter that it had already decided, before publishing the partial disapproval, to reject certain parts of the Utah regional haze SIP.[4] EPA also concluded, before publishing the partial disapproval that Utah had improperly failed to submit a five-factor BART analysis for the PacifiCorp units as part of the Utah SIP. PacifiCorp believes that EPA's actions have prejudiced the process for properly considering the issues that EPA raised in the partial disapproval.

Response: We disagree with this comment. Contrary to commenter's assertions, EPA's October 20, 2011 letter to PacifiCorp "noted that the SIP did not contain analyses for the sources determined by the state to be subject-to-BART". Therefore, the letter did not contain EPA conclusions, we requested the information from PacifiCorp, as explained in the letter relying on our authority under section 114(a) of the CAA to assist in "the development of, or in reviewing, a regional haze SIP," in developing a Federal Implementation Plan (FIP), or "in carrying out the other responsibilities or actions under the CAA".

[4] See letter dated October 20, 2011 from Stephen Tuber, Assistant Regional Administrator, EPA Region 8, to Cathy Woollums, MidAmerican Energy Holdings Company included in the docket.

1. EPA Authority

Comment: We received comments that courts have consistently held that states are primarily responsible for SIP development and that EPA's role is ministerial. One commenter went on to point out that recently, the Fifth Circuit Court of Appeals described the federal and state roles: "The [Clean Air] Act assigns responsibility to the EPA for identifying air pollutants and establishing National Ambient Air Quality Standards (NAAQS). 42 U.S.C. §§ 7408-7409. The states, by contrast, bear the primary responsibility for implementing those standards. . . .To implement the NAAQS, the states must adopt and administer State Implementation Plans (SIPs) that meet certain statutory criteria. § 7410. The states have wide discretion in formulating their plans." *Luminant Generation Co. v. EPA*, 675 F.3d 917, 921 (5th Cir. 2012)(*citations and quotations omitted*); *see also Train v. Natural Resources Defense Council*, 421 U.S. 60, 78 ("Congress intended the States to retain [a] significant degree of control over the manner in which they attain and maintain national standards.")

Commenters asserted that EPA's partial disapproval fails to account for the significant discretion granted to Utah under the CAA. Commenters pointed out that based on the language in the CAA, the RHR, EPA's own guidance, and case law; the states have significant discretion when creating their regional haze SIPs, and EPA failed to properly account for that discretion in analyzing the Utah regional haze SIP.

Response: Congress crafted the CAA to provide for states to take the lead in developing implementation plans, but balanced that decision by requiring EPA to review the plans to determine whether a SIP meets the requirements of the CAA. EPA has the authority to disapprove a SIP if it doesn't meet with minimum requirements. Our action today is consistent with the statute.

Our action does not contradict the Supreme Court's decision in *Train*. States have significant responsibilities in implementation of the CAA and meeting the requirements of the RHR. We recognize that states have the primary responsibility of drafting an implementation plan to address the requirements of the CAA Visibility Program. We also recognize that we have the responsibility of ensuring that the state plans, including RH SIPs, conform to the CAA requirements. We cannot approve a RH SIP that fails to address the BART requirements.

Our action in large part approves the RH SIP submitted by Utah. The disapproval is not intended to encroach on state authority. This action is only intended to ensure that CAA requirements are satisfied using our authority under the CAA.

2. Presumptive Limits

Comment: We received numerous comments that EPA's proposed disapproval of Utah's BART determinations and "EPA's RH FIP" is improper because the BART units are meeting the presumptive limits in the BART guidelines based on the installation of combustion controls. Commenters went to assert that the BART Guidelines only require the installation of low NO_x burners (LNBs) with overfire air (OFA) and that EPA determined in the guidelines that SCR was generally not cost-effective for BART. One commenter noted that EPA has completely ignored the presumptive BART limits in our proposed action and that this is contrary to the express requirements in both the RHR and the BART Rule. The commenter goes on to say that EPA's attempt to completely ignore the presumptive BART limits makes the presumptive BART limits meaningless and this is contrary to the requirements of the CAA and the clear intent of the BART Rule. Commenters asserted that the BART rule on its face, shows that an alternative analysis is required only when a source cannot meet the presumptive limits, and that while a state may choose to establish a limit that is more stringent than the BART limit, there is nothing in the

BART rule that would require a state to do so.

Commenters asserted that EPA adopted the presumptive BART limits to establish the specific control levels required for EGUs. Commenters point out that EPA has not repealed the presumptive limits from the promulgated BART rule, but in this action EPA does not acknowledge the existence of the presumptive limits, as if the presumptive BART limits were no longer a binding regulation. Instead, commenters pointed out that EPA focused on the five-factor analysis and ignores the presumptive limits. Commenters argued that unless and until EPA goes through notice and comment rulemaking to remove the presumptive emissions limits and establish other requirements consistent with the CAA, then EPA must approve a state's BART determination that meets the presumptive regulatory limits.

One commenter went on to say that as the Utah 2008 regional haze SIP explains, "[t]he technical analysis conducted by EPA to determine presumptive BART limits for SO_2 and NO_x is in effect a BART determination analysis for 419 EGUs including Hunter Units 1 and 2 and Huntington Units 1 and 2." The commenter asserted that Utah then followed what EPA had done in developing Appendix Y and thus did a five-factor analysis. Because EPA found presumptive BART controls for PacifiCorp's Units to be "cost effective" and to provide a "substantial degree of visibility improvement," the commenter stated it is evident that two key elements of the five-factor test are met.

Response: We disagree with the commenters. First, for each source subject to BART, the RHR, at 40 CFR 51.308(e)(1)(ii)(A), requires that states identify the level of control representing BART after considering the factors set out in CAA section 169A(g), as follows: “States must identify the best system of continuous emission control technology for each source subject to BART taking into account the technology available, the costs of compliance, the energy and non-

air quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of visibility improvement that may be expected from available control technology." 70 FR 39158. In other words, the presumptive BART limits do not obviate the need to identify the best system of continuous emission control technology on a case-by-case basis considering the five factors. A state may not simply "stop" its evaluation of potential control levels at a slightly lower limit than the presumptive level of control if more stringent control technologies or limits are technically feasible. We do not read the BART guidelines in appendix Y to contradict the requirement in our regulations to determine "the degree of reduction achievable through the application of the best system of continuous emission reduction" "on a case-by-case basis," considering the five factors. 40 CFR 51.301 (definition of Best Available Retrofit Technology); 40 CFR 51.308(e).

Also, our position is supported by the following language in our BART guidelines: "While these levels may represent current control capabilities, we expect that scrubber technology will continue to improve and control costs continue to decline. You should be sure to consider the level of control that is currently best achievable at the time that you are conducting your BART analysis." 70 FR 39171.

While the presumptive limits are meaningful as indicating a level of control that EPA generally considered achievable and cost effective at the time it adopted the BART guidelines in 2005, mere consideration of the presumptive limits does not eliminate the state's obligation to consider each of the five statutory factors in section 169A. As we wrote in our proposal, "[t]he presumptive limits accordingly are the starting point in a BART determination … unless the state determines that the general assumptions underlying EPA's analysis are not applicable in a particular case." 77 FR 28841. Nothing in the State's record supports such a conclusion.

Finally, our proposed notice did not contain a FIP.

3. Compliance with the Requirements of 40 CFR 51.308

Comment: In its proposed partial disapproval, EPA stated that "neither the State nor PacifiCorp have completed a BART analysis that considers the statutory factors under 40 CFR 51.308(e)(1)(ii)(A)," and that the requirement to conduct this analysis "is found in section 51.308(e)(1)(ii)(A) of the RHR," However, as set forth below, EPA's reliance upon section 51.308 is misplaced.

EPA's RHR provides two regulatory paths to address regional haze. By meeting the requirements under 40 CFR 51.309, states are making reasonable progress toward the national goal of achieving natural visibility conditions for the 16 Class I areas on the Colorado Plateau. Utah submitted its regional haze SIP under section 51.309. Therefore, the requirements of section 51.308 only apply to the extent required by section 51.309.

Importantly, PM and NO_x emissions and controls under section 51.309 are treated differently than PM and NO_x emissions and controls under section 51.308, primarily because these emissions have a significantly smaller impact on visibility on the Colorado Plateau. WRAP has estimated "that stationary source emissions of PM probably cause less than 2 percent of the region's visibility impairment, whereas stationary source NO_x emissions result in nitrates that probably cause about 2 to 5 percent of the impairment on the Colorado Plateau." See "Stationary Source NO_x and PM Emissions in the WRAP Region: An Initial Assessment of Emissions, Controls, and Air Quality Impacts," October 1, 2003, at 1_3.13. Several illustrations in the WRAP NO_x report show that nitrate emissions have very little impact on Class I areas in or near Utah and Wyoming. The WRAP report also explains that "controls on point source emissions of NO_x and PM will have a relatively limited effect on visibility in much of the West,

all else being equal."

Section 51.309 understandably is intended to focus on SO_2 due to the greater visibility impact. Indeed, the GCVTC and WRAP focused their efforts primarily on sulfur dioxide emissions because the research indicated this pollutant had the greatest impact on visibility. The partial disapproval acknowledges that Utah has complied with the Section 51.309's SO_2 requirements and made great progress towards improving and protecting visibility as a result. For all of these reasons, section 51.309 takes a different approach to PM and NO_x emissions than does section 51.308, placing much less emphasis on the need for significant reductions in PM and NO_x emissions and instead focusing almost all attention and resources in the western U.S. on reducing SO_2 emissions.

As a result of the lesser emphasis in section 51.309 on PM and NO_x emissions, section 51.309(d)(4)(vii) states that a regional haze SIP "must contain any necessary long- term strategies and BART requirements for stationary source PM and NO_x emissions." Section 51.308, by contrast, does not contain a similar "necessary" threshold for BART. In other words, if a BART requirement is not "necessary" for a section 51.309 state, such as Utah, to make "reasonable progress," then it is not required as part of the regional haze SIP. EPA's partial disapproval fails to acknowledge the importance of the "necessary" threshold in its own rules, and fails to identify how Utah's BART determinations do not meet this "necessary" threshold.

Response: We disagree with the comment. As explained in our proposed rulemaking for Section 51.309(d)(4)(viii) we explained that the provision "is intended to clarify that if EPA determines that the SO2 emission reductions milestones and backstop trading program submitted in the Section 51.309 SIP makes greater reasonable progress than BART for SO2, this will *not* constitute a determination that BART for PM or NO_x is satisfied for any sources which would

otherwise be subject to BART for those pollutants" (emphasis added). 70 FR 44169 (Aug. 1, 2005). EPA does not interpret this statement to mean that there are different BART requirements for Section 308 and 308 RH SIPs. EPA's proposed rulemaking made no finding that BART determinations conducted for a state submitting a RH SIP under Section 51.309 should be conducted any differently than a state submitting a RH FIP under only Section 308. The use of the word "necessary" in Section 51.309(d)(4)(viii) was to explain that some states may have BART NOx emission limitations, while others may not. As already explained elsewhere in our proposal on the Utah SIP and our response to other comments, Utah did not conduct a proper evaluation of the five statutory factors, as required by 40 CFR 51.308(e)(1)(ii)(A) and section 169A(g) of the CAA.

EPA also disagrees with commenter's assertion that a BART submission is discretionary. 30 CFR 51.309(d)(4)(viii) is clear in that the implementation plan "must" contain BART requirements. The proposed regional haze rulemaking explained that the provision that provides that "[a]ny such BART provisions may be submitted pursuant to either § 51.308(e)(1) or 51.308(e)(2)," was included to "allow States the flexibility to address these BART provisions either on a source-by-source basis under Section 51.308(e)(1), or through an alternative strategy under Section 51.308(e)(2)." 70 FR 44169 (August. 1, 2005).

Moreover, EPA's proposed regional haze rule made clear that "[i]n limited circumstances, it may be possible for a State to demonstrate that an alternative program which controls only emissions from SO_2 could achieve greater visibility improvement than application of source-specific BART controls on emissions of SO_2, NO_x and/or PM. We nevertheless believe that such a showing will be quite difficult to make in most geographic areas, given that controls on SO2 emissions alone in most cases will result in increased formation of ammonium

nitrate particles." 70 FR 44169 (Aug. 1, 2005). Utah's RH SIP does *not* include a demonstration that the backstop SO_2 trading program under Section 51.309 achieves greater visibility improvement than application of source-specific PM BART controls. Therefore, Utah's Section 51.309 SIP does not provide the adequate level of visibility improvement to meet the BART requirements.

Comment: Utah was not required to comply with subsection 51.308(e)(1)(ii)(A) because it had complied with subsection 51.308(e)(l)(ii)(B). Subsection 51.308(e)(1) provides, "To address the requirements for BART, the State must submit an implementation plan containing the following plan elements and include documentation for all required analyses." One of these elements is a "determination of BART for each BART-eligible source," which may be "based on an analysis" of the five-factor test, § 51.308(e)(1)(ii)(A), or, in the case of "fossil-fuel fired power plants having a total generating capacity greater than 750 megawatts," "must be made pursuant to the guidelines in appendix Y of this part," § 51..308(e)(l)(ii)(B). Because Utah's regional haze SIP properly relied on Appendix Y, and thus satisfied subsection (B), it was incorrect for EPA to reject Utah's analysis as not complying with subsection (A).

Response: We disagree with this comment. The State must comply at all times with the requirements of 40 CFR 51.308(e)(1)(ii)(A). In addition, the State must comply with the requirements of 40 CFR 51.308(e)(1)(ii)(B) for sources that are greater than 750 MW. As we have stated in our proposed notice and elsewhere in our response to comments, the State did not perform an analysis pursuant to the five factors required by the RHR and BART Guidelines, thus the State's SIP does not meet the requirements of 40 CFR 51.308(e)(1)(ii)(A) or 40 CFR 51.308(e)(1)(ii)(B).

4. Utah's Permitting Process

Comment: EPA is overlooking how Utah's permitting program supports the decisions it made in Utah's regional haze SIP. In this instance, EPA's comment disregards the review that Utah completed through its new source review (NSR) program. That review established the emission limits and monitoring, recordkeeping, and reporting (MRR) requirements for NO_x and PM.

The notice of intent (NOI) for the pollution control project at Huntington Unit 2 was submitted in October 2004 and the approval order (AO) was issued in 2005. Because all four BART eligible units are essentially identical[5], this AO established the requirements that were used for all four units. The NOI for the pollution control projects at Hunter Units 1 and 2 was submitted in June 2006 and the AO was issued in April, 2008. The NOI for the pollution control project at Huntington Unit 1 was submitted in April 2008 and the AO issued in August 2009.

When BART was evaluated for NO_x in the 2008 SIP, Utah relied on the technical review that had been completed through the NSR program to justify the emission limits and MRR requirements in the AO. These limits were then evaluated to determine whether the existing controls satisfied the requirement for BART. Utah, in its regional haze SIP, determined that the existing controls met the BART requirement, and therefore no additional controls were required. It is a complete misrepresentation of the extensive process Utah undertook to say that the State determined the BART limit without any analysis.

Response: We disagree with this comment. While Utah may have considered BART controls through its NSR permitting program, as we have pointed out in our proposed notice and in our responses above, the State did not perform the required five-factor BART analysis pursuant to 40 CFR 51.308(e)(1).

5. Enforceability of BART Emission Limits

Comment: The applicable requirements in the AOs for the Hunter and Huntington plants have

[5] The four units are PacifiCorp Hunter Units 1 and 2 and Huntington Units 1 and 2.

been incorporated into the operating permits for these plants under authority of R307-415. The operating permit program was designed to ensure that applicable requirements are clear and are enforceable. A source that violates one or more enforceable permit conditions is subject to an enforcement action including, but not limited to, penalties and corrective action. Enforcement actions may be initiated by the local permitting authority, EPA or, in many cases, through citizen suits.

Utah's operating permit rule requires detailed monitoring, reporting, and recordkeeping (MRR) (see R307- 415-6a(3)) to ensure that all emission limits are practically enforceable. If MRR provisions are changed in the AO, the operating permit rules provide a backstop to ensure that appropriate MRR occurs for each emission limit. R307-415-8, *Permit Review by EPA and Affected States*, describes the process by which EPA may veto the operating permit: "If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the Executive Secretary shall not issue the permit. If the Executive Secretary fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act. R307-415-8(3)."

In disapproving Utah's regional haze SIP because "EPA does not consider operating permit conditions adequate to meet the MRR and enforceability requirement", EPA is thwarting the purpose of the Title V program, as enacted under the 1990 Amendments to the CAA. Taking EPA's position would require a SIP revision when an individual source desires to make a change to its AO and Title V permit. The drafters of the 1990 Amendments thought otherwise: "The concept behind this new [Title V] permit program is to minimize, if not eliminate, the degree to

which decisions relating to individual major sources require SIP actions. Individual source issues should be resolved in the permit process, consistent with the SIP. EPA must avoid duplication between the SIP and permit processes." Utah's rule is consistent with the purpose of Title V as enacted in the 1990 Amendments to the CAA and with Part 70 rules adopted there under. Moreover, if there are inadequate monitoring requirements in a source's Title V permit, the State, consistent, with 40 CFR 70.6(c)(1), may supplement those requirements to rectify the inadequacy. *Sierra Club v. EPA*, 536 F.3d 675, 680 (D.C.Cir. 2008).

EPA is attempting to do through its partial disapproval of Utah's SIP what the D.C. Court of Appeals struck down in *Sierra Club*. After reversing course numerous times, in 2006 EPA adopted Part 70 rules prohibiting state and local authorities from supplementing inadequate monitoring requirements; instead EPA proposed to remedy such inadequacies by undertaking a "programmatic" strategy. See 71 FR 75422 (Dec. 15, 2006). At the same time as EPA announced its prohibition, it failed to correct monitoring deficiencies in Title V permits through a programmatic fix, which resulted in thousands of Title V permits containing inadequate monitoring requirements. In *Sierra Club*, the Court held "if Congress meant that potentially thousands of permits could be issued without adequate monitoring requirements then it would not have said 'each permit shall set forth monitoring requirements to assure compliance with the permit terms and conditions." *Sierra Club*, 535 F.3d at 678 (citing 42 U.S.C. § 7661c(c). The Court concluded that permitting authorities may supplement inadequate monitoring requirements. Id.

EPA has ample means of federally enforcing whether the four EGUs in Utah either now or in the future abide by adequate MMR requirements through EPA's Title V authority and through Utah's other air permitting program. EPA should not resort to imposing draconian

requirements on the State's SIP program and making the State's permit program practically unworkable by insisting that MRR requirements be contained in the regional haze SIP.

Response: EPA disagrees with this comment. EPA's approach in this action is entirely consistent with section 169A(b)(2) which, as we wrote when we promulgated the BART Guidelines, "provides that *EPA must require SIPs to contain emission limits*, schedules of compliance, and other measures as may be necessary to make reasonable progress towards meeting the goal" (emphasis added). 70 FR 39120 (July 6, 2005). The regulations require that the states "must submit an implementation plan containing emission limitations representing BART." 40 CFR 51.308(e). The Guidelines require that states "must establish an enforceable emission limit for each subject emission unit at the source and for each pollutant subject to review that is emitted from the source." 70 FR 39172 (July 6, 2005). CAA section 110(a)(2) also requires that SIPs shall "include enforceable emission limitations."

Furthermore, Appendix V to 40 CFR part 51 sets forth the minimum criteria for determining whether a state implementation plan submitted for consideration by EPA is an official submission for purposes of review. The Appendix V criteria include "[e]vidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels" and "[c]ompliance/enforcement strategies, including how compliance will be determined in practice". Appendix V, Sections 2.2(g) and (h). Therefore, EPA disagrees that the use of title V permits to implement the MRR necessary to ensure compliance with BART emission limitations is adequate under the Clean Air Act.

While the commenter suggests the title V permit program replaces SIP requirements, this simply is not the case. In fact, the Congressional Report cited by the commenter is clear that

while the title V permit program provides for "harmonization" of the Clean Air Act requirements, "title V does not change, and gives EPA no authority to modify, the substantive provisions of these other titles." CONFERENCE REPORT ON – CLEAN AIR ACT AMENDMENTS, 136 Cong. Rec. E3673-01, 1990 WL 206959.

Finally, the *Sierra Club* case cited by the commenter in support of its contentions did not involve challenges to SIP monitoring requirements and therefore is not applicable here. The commenter's claim that title V permits are adequate to meet SIP and regional haze statutory and regulatory requirements is unfounded and not supported by the case law cited or the CAA. *Comment:* Utah's SIP and the permits that are issued under that plan are enforceable under state law and become federally enforceable when EPA approves the plan and incorporates it into 40 CFR Part 52, Subpart TT.

In addition to a federally enforceable SIP, AOs issued by the State are also federally enforceable. AOs become federally enforceable through R307-401 *Permits: New and Modified Sources*, and R307-405 *Permits: Major Sources in Attainment or Unclassified Areas (PSD)*, when those rules are approved by EPA as part of Utah's SIP and codified in 40 CFR 52.2320 and 40 CFR 52.2346. Region 8's website recognizes the role that state permits play in the SIP process: "SIPs contain state air regulations that, for example, allow states to permit the construction and operation of stationary sources, establish specific requirements for categories of stationary sources, and identify open burning requirements."

AOs issued by the State under authority of R307-401 and R307-405 to the Hunter and Huntington plants, including provisions to make the pollution control projects enforceable, contain enforceable emission limits for NO_x and PM, as well as MRR requirements to ensure that the emission limits are continuously met. EPA has discretion to federally enforce the provisions

of these AOs under authority of the federally approved Utah SIP. There is no doubt that such AOs are federally enforceable, as evidenced by lawsuits brought previously by EPA against other sources in Utah.

Commenters also explain that Utah's NSR program for major and minor sources is part of the federally approved SIP. If PacifiCorp seeks to relax or modify the emission limitations in the AOs for the Hunter or Huntington plants at some point in the future, the company would be required to obtain a new AO and apply BACT under either Utah's major source (R307-405) or minor source (R307-401) rules. A modification may potentially trigger other requirements. As has been evident throughout the federal CAA programs that EPA has delegated to Utah, there are substantial federally enforceable requirements in the broad air program in Utah to ensure that the emission reductions achieved through the pollution control projects are maintained (through state or federal enforcement if necessary) into the future. If the emission limits in the AO were revised in the future, EPA has the opportunity to review the changes and provide comments through the NSR process. EPA could then veto the operating permit in the unlikely circumstance that the emission limits for NO_x or PM became less stringent.

Commenters also suggest that EPA has proposed to disapprove the BART determination for NO_x and PM in part because EPA believes that the emission limits and MRR requirements in the AOs and operating permits are not federally enforceable enough. It is not clear what additional enforcement action EPA would take due to a violation of a SIP condition versus a violation of a permit condition.

Response: We disagree. See our response above. EPA does not have the option of approving a RH SIP where BART emission limits are implemented only through construction or operating permits.

Comment: We received a comment that the BART emission limits must be included in the Utah SIP and be fully enforceable and that the commenter supported EPA's disapproval of the Utah regional haze SIP because it "does not contain provisions necessary to make BART limits practically enforceable as required by section 110(a)(2) of the CAA and Appendix V to part 51." The commenter went on to say that the BART emission limits must be permanent, unalterable, and federally enforceable by both EPA and citizens.

.*Response:* As our proposed notice and responses above indicate, we agree with the commenter on the need for the BART emission limits to be included in the SIP along with appropriate MRR requirements. Although we are not approving any BART determinations in this action, when Utah submits revised BART determinations, the State must include provisions in the SIP to make the emission limits federally enforceable.

C. Applicability of the BART Guidelines

Comment: We received comments that EPA made a mistake when it said in its proposal that because the PacifiCorp units have a 430 MW generating capacity, the State is not required to follow the BART Guidelines in making BART determinations for the units. Commenters went on to say that applicability of the BART guidelines is determined by the total generating capacity of the fossil fuel fired electric generating plant, not the size of the individual units. Commenters went on to say that the total generating capacity of the two units subject to BART at each facility is 960 MW, and as such, the total generating capacity of the Hunter and Huntington power plants both exceed the 750 MW trigger for applicability of the BART guidelines.

Response: We agree with this comment. EPA erred by stating that the State is not required to follow the BART Guidelines in making BART determinations for these units. Because of the generating capacity for the EGUs is above 750 MW, the State must follow the BART Guidelines

when making its BART determinations. 70 FR 39158 (July 6, 2005).

D. PM BART

Comment: We received numerous comments that Utah relied on the BART regulations when making its PM BART determinations for these Units. Commenters pointed out that EPA acknowledges in the proposed rule, "[t]here are no presumptive limits established for PM." With there being no presumptive limit for PM, commenters state that Utah undertook its own analysis and reasonably determined that the PM limit for the Hunter and Huntington Units is the current operating permit level of 0.015.[6]

Commenters asserted that because Utah determined that PM BART for the Hunter and Huntington units is the installation and operation of fabric filter baghouses, which is the most stringent PM control technology for EGUs, the State did not have to complete a comprehensive five-factor analysis.

One commenter asserted that EPA's position is in derogation of Executive Order 13563. In January 2011, President Obama signed Executive Order 13563 - Improving Regulation and Regulatory Review. The commenter went on to say that the President described the goals of this order in an op-ed article published in the Wall Street Journal: "This order requires that federal agencies ensure that regulations protect our safety, health and environment while promoting economic growth…. Where necessary, we won't shy away from addressing obvious gaps: new safety rules for infant formula; procedures to stop preventable infections in hospitals; efforts to target chronic violators of workplace safety laws. But we are also making it our mission to root out regulations that conflict, that are not worth the cost, or that are just plain dumb.…We're also getting rid of absurd and unnecessary paperwork requirements that waste time and money. We're looking at the system as a whole to make sure we avoid excessive, inconsistent and

[6] In comments from the State, the State recognized that the emission rates listed in the SIP for PM for all four BART units of 0.05 lb/MMBtu were incorrect. The correct limits are 0.015 lb/MMBtu (30-day rolling average).

redundant regulation." The commenter concluded that EPA should recognize that any further analysis of PM is "absurd and unnecessary paperwork" that is irrational, as well as a waste of time and money.

Response: The BART Guidelines state "[i]f you find that a BART source has controls already in place which are the most stringent controls available (note that this means that all possible improvements to any control devices have been made), then it is not necessary to comprehensively complete each following step of the BART analysis in this section. As long as these most stringent controls available are made federally enforceable for the purpose of implementing BART for that source, you may skip the remaining analyses in this section, including the visibility analysis in step 5. Likewise, if a source commits to a BART determination that consists of the most stringent controls available, then there is no need to complete the remaining analyses in this section." 70 FR 39165 (July 6, 2005). While we agree that baghouses may well be the most stringent control equipment for controlling PM emissions, the State has not provided a demonstration that the BART PM emission limits at the Utah BART sources represent the most stringent controls. Thus, it may be possible for the State to provide an abbreviated BART determination for PM if it can demonstrate that the emission limits represent the most stringent level of control.

E. General Comments on BART

Comment: EPA is aware that the State of Utah, in cooperation with PacifiCorp, currently is conducting another five-factor BART analysis for the Units identified in EPA's section 114 request dated October 20, 2011 (see footnote 4). Until that BART analysis is completed and the results are incorporated into the Utah regional haze SIP, there is no reason for EPA to continue processing the partial disapproval. Therefore, EPA should "withdraw its FIP".

In that way, EPA can focus its resources on the upcoming Utah regional haze SIP version that Utah has committed will contain the BART analysis information EPA has requested be included. Until then, continuing the administrative review process for the partial disapproval is a waste of taxpayer funds and other resources.

Response: We disagree with this comment. We are under a consent decree with Wild Earth Guardians to take final action on the Utah regional haze SIP by October 31, 2012. Under the consent decree, we must either approve or disapprove all the State's regional haze SIP. The consent decree does not allow us to delay action in determining whether the SIP meets the requirements of the RHR. Furthermore, we had a statutory obligation to act on SIPs within 12 months after they have been determined to be or deemed complete, and that date has passed. Moreover, Utah will not be submitting the additional information referenced above until after October 31, 2012, thus EPA is forced to take action on the SIP in its entirety. Finally, contrary to commenter's assertion, our proposed notice did not contain a FIP.

F. Reasonable Progress

Comment: We received comments that the Utah SIP fails to comply with 40 CFR 51.309(g) or 40 CFR 51.308(d)(1)-(4), which require that SIPs address impacts to Class I areas not located on the Colorado plateau. Commenters went on to point out that sources in Utah have been shown to impact Class I areas outside of the Colorado Plateau.

Commenters pointed out that under both 40 CFR 51.309(g) and 40 CFR 51.308(d)(1)-(4), a long-term strategy must include such emission limits, schedules of compliance and other measures as may be necessary to achieve reasonable progress goals, and that for Class I areas outside a state's borders, the State has an obligation to adopt controls necessary to ensure it achieves its share of the pollution reductions that are required to meet the reasonable progress

goals set for the subject Class I area. Since the requirements of 40 CFR 51.308(d)(1)-(4) apply to Utah, commenters assert that EPA must require Utah to develop a long-term strategy under 40 CFR 51.308(d)(3).

Response: We do not agree with this comment. States adopting the requirements of 40 CFR 51.309 are deemed to have met the requirements for reasonable progress for the Class I areas on the Colorado Plateau. 40 CFR 51.309(a). For such states, the requirements of 40 CFR 51.308(d)(1) and (d)(2) only apply to Class I areas within their state not on the Colorado Plateau. See 40 CFR 51.309(g)(2); 40 CFR 51.308(d)(1), (2). All of the Class I areas in Utah are on the Colorado Plateau. Therefore, the State met all reasonable progress requirements for the Class I areas in Utah.

With regard to Class I areas in other states, the State must satisfy the requirements of 40 CFR 51.308(d)(3). See 40 CFR 51.309(g)(2). In particular, 40 CFR 51.308(d)(3)(ii) requires that if emissions from Utah sources cause or contribute to impairment in another state's Class I area, Utah must demonstrate that it has included in its regional haze SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for that Class I area. Section 51.308(d)(3)(ii) also requires that, since Utah participated in a regional planning process, it must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. As we state in the RHR, Utah's commitments to participate in WRAP bind it to secure emission reductions agreed to as a result of that process.

Under 40 CFR 51.308(d)(3)(iii), a state must document the technical basis on which the state is relying to determine its apportionment of emission reduction obligations necessary to achieve reasonable progress in each mandatory Class I area the state affects. States may rely on

technical analyses developed by regional planning organizations and approved by all state participants. Utah analyzed the WRAP modeling and inventories and determined that emissions from the State do not significantly impact or will not significantly impact other states' Class I areas. The State's analysis is summarized below and included in Section XX.K of the SIP. Inventories developed by the WRAP show a significant decrease in stationary source NO_x and SO_2 emissions. The urban area in northern Utah that may impact Class I areas in Idaho, Nevada and Wyoming will have a significant reduction in NO_x emissions from mobile sources as described in Section XX.F of the State's SIP. The State SIP shows that the contribution to nitrate on the 20% worst days from sources in Utah decreases substantially between 2002 - 2018 at Craters of the Moon in Idaho, Bridger and Fitzpatrick Wilderness Areas in Wyoming, and Jarbidge Wilderness Area in Nevada. The contribution to sulfates is not significant at any of the sites.

As described in Section XX.D.6 of the State's SIP plan, two BART-eligible plants in central Utah are projected to decrease SO_2 emissions by 13,200 tons and NO_x emissions by 6,200 tons between 2002 and 2018. The State also shows that in general the impact from sources in Utah is not significant at La Garita Wilderness Area and Great Sand Dunes National Monument in Colorado, Bandelier National Monument in New Mexico and Mazatal and Pine Mountain Wilderness Areas in Arizona.

Utah accepted and incorporated the WRAP-developed visibility modeling into its regional haze SIP, and the State's regional haze SIP includes the controls assumed in the modeling. Utah satisfied the RHR's requirements and included controls in the SIP sufficient to address the relevant requirements of the RHR related to impacts on Class I areas in other states.

Comment: We received a comment that Utah still must comply with reasonable progress

requirements to address visibility impairment attributable to Utah sources of NO_x and PM with respect to all affected Class I areas including the 16 Class I areas within the Colorado Plateau, and that Utah first must establish reasonable progress goals for all Utah Class I areas.

Response: We do not agree with this comment. Pursuant to 40 CFR 51.309(a), if a state adopts the requirements under 40 CFR 51.309 it will be deemed to comply with the requirements for reasonable progress with respect to the Colorado Plateau Class I areas through 2018. As stated above, all of the Class I areas in Utah are on the Colorado Plateau, so Utah does not have to separately establish reasonable progress goals for them. As explained above, Utah has also met the requirements for Class I areas outside the state.

Comment: We received a comment from the NPS that, under 40 CFR 51.309(g), Utah should have developed a long-term strategy that evaluated NO_x, PM, and SO_2 controls on large non-BART stationary sources of emissions such as PacifiCorp Hunter Unit 3 to meet reasonable progress requirements with respect to non-Colorado Plateau Class I areas. In particular, the NPS cited our notice proposing action on the Utah regional haze SIP. The NPS also referenced modeling results to argue that NOx emissions from certain non-BART stationary sources cause or contribute to visibility impairment at both Capitol Reef NP and at certain Class I areas outside Utah and off the Colorado Plateau. The NPS states that emission controls should be considered for these sources in order to meet reasonable progress requirements.

Response: We do not agree with these comments. As explained above, with respect to in-state Class I areas, our approval of the Utah SIP deems it as meeting reasonable progress requirements for the in-state Class I areas, as they are all on the Colorado Plateau. With respect to non-Colorado Plateau Class I areas, in this case 40 CFR 51.309(g) does not impose any separate obligations on Utah to analyze or impose emissions controls on non-BART sources to

demonstrate reasonable progress at such areas. Instead, at most, Utah must show that it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through the WRAP process. See 40 CFR 51.308(d)(3)(ii). As discussed above, Utah has met that requirement, and the commenter has not provided any information to the contrary.

G. Clean Air Corridors (CACs)

Comment: Approximately 75% of Utah is located in a CAC. Utah has a legal duty to protect that CAC from new sources of air pollution both inside and outside of CACs. Specifically, Utah must identify significant emissions growth that "could begin" to impair visibility within any CAC and include "an analysis of the effects of increased emissions, including provisions for the identification of the need for additional emission reductions measures, and implementation of the additional measures where necessary."

Utah's regional haze SIP fails to identify several new and proposed significant air pollution sources that "could begin" to adversely impact visibility in the Utah CAC and nearby Class I areas. For example, the Alton coal mine in southern Utah is located within the CAC and may adversely impact visibility in the corridor and in nearby Class I areas, such as Zion National Park. The Alton coal mine will emit visibility-impairing emissions, including SO_2, NO_x and PM. In addition, the Viresco coal gasification facility has been proposed for the City of Kanab. The Viresco coal gasification plant will burn coal from the Alton coal mine. Kanab is very close to Zion National Park and is also located inside Utah's CAC. A local citizen organization has requested that the State require an approval order regulating emissions from the Viresco coal plant. To date, the State has refused to regulate the Viresco coal gasification plant and failed to impose any air pollution limitations or controls on the plant. The EPA should require Utah to

regulate the Viresco coal plant to limit emissions from the plant in order to protect CACs in Utah, as well as Class I areas.

Finally, the Deseret Power Electric Cooperative has proposed to add an additional coal-fired electric generating unit to the Bonanza plant in northeast Utah. This plant would be located outside of Utah's CAC, but has the potential to adversely impact visibility in the corridor and in neighboring Class I areas.

EPA may not approve the Utah regional haze SIP until the State identifies all potential sources of pollution; assesses the impact of these sources on visibility in CACs; and imposes air pollution control equipment and emission limitations on such sources consistent with 40 CFR 51.309(d)(3)(iii)-(iv).

Response: We disagree with this comment. Utah relied on the *WRAP's Policy on Clean Air Corridors* to determine if emissions within or outside of the CAC that could impair visibility within the CAC. The report concluded: "[p]]ursuant to 40 CFR 51.309(d)(3)(ii), the WRAP has examined patterns of growth in the corridor and finds that they are not causing significant emission increases that could have or are having visibility impacts at one or more of the 16 Class I areas. Nor, at this time, are such emission increases expected during the first planning period (2003-2018). Analyses performed by the Grand Canyon Visibility Transport Commission found that an increase of 25% in weighted emissions would result in a 0.7 dv reduction in visibility, whereas the weighted emission increase expected by 2018 is only 4%. Pursuant to 40 CFR 51.309(d)(3)(iii), the WRAP has examined emissions growth in areas outside the corridor and finds that significant emissions growth is not occurring that could begin or is beginning to impair the quality of the air in the corridor and thereby lead to visibility degradation for the least impaired days in one or more of the 16 Class I areas."

In addition, Utah is using a comprehensive emissions tracking system established by WRAP to track emissions within portions of Oregon, Idaho, Nevada and Utah that have been identified as part of the CAC. The emission tracking system ensures that visibility does not degrade on the least-impaired days in any of the 16 Class I areas of the Colorado Plateau. If the emissions tracking system identifies emissions in or outside of the CAC that are causing visibility impairment, the State will be required to address these emissions in accordance with 40 CFR 51.309(d)(3) in the periodic plan revisions that the State is required to submit in 2013 and 2018. Therefore, should any of the project emissions highlighted in the comment degrade visibility on the least-impaired days in any of the 16 Class I areas, the State will be required to address those impacts.

H. General SIP Comments

Comment: Utah's technical arguments supporting a weak regional haze program should be rejected. The State has prepared a Powerpoint presentation arguing that its weak and illegal regional haze program should be approved by EPA. In support of Utah's weak BART determinations the State argues: 1) that NO_x reductions are not creating expected visibility improvements; and, 2) that wintertime visibility problems should be ignored due to lower tourist visits in Utah's national parks.

Response: We note the commenter's concerns regarding consideration of these two factors. These two factors are outside the scope of the RH regulation and were not considered by EPA in its proposed partial approval and partial disapproval of the State's BART determinations. As discussed in detail elsewhere in this action, EPA finds that the State's trading program meets the regulatory requirements.

Comment: The State supports EPA's proposed approval of the projected visibility improvement

in Part K of the Utah SIP. 77 FR 28833-34. As EPA has noted, the modeling results show projected visibility improvement for the best 20% days and no degradation for the 20% best days at the 16 Class I areas on the Colorado Plateau. In fact, the projected improvement is greater than described in EPA's proposed approval. The visibility results in Table 24 of Utah's SIP were adopted in 2008 based on the PRP18a modeling that was the most current modeling available at the time, not PRP18b as described in EPA's proposal. Table 1 shows the additional improvement shown by the WRAP's PRP18b modeling.

Response: We recognize the commenter's support of our proposed approval of the projected visibility improvement.

Comment: The GCVTC evaluated haze at Class I Areas on the Colorado Plateau, and determined that stationary source reductions should be focused on sulfur dioxide because this is the pollutant that has the most significant impact on haze. Utah's BART determination was developed within the context of the overall SIP and reflected this focus on SO_2. The sulfate impact is much more significant than the nitrate impact, especially on the middle and best 20% days. Fire (organic carbon) is the second most significant component on the worst days). In addition, sulfate is a problem year round, while the nitrate impact is most significant during the winter months when visitation is low at Utah's national parks. PacifiCorp has already made significant reductions in NO_x at the Hunter and Huntington plants. The nitrate component of haze in Class I areas on the Colorado Plateau does not justify going beyond the presumptive BART level for NO_x established in EPA's BART rule.

Response: We do not agree with this comment. States are required to meet the requirements of 40 CFR 51.308(e)(1) and do a BART determination on a source-by-source basis in accordance with the BART Guidelines for EGUs over 750 MW. A regional scale modeling exercise does

not obviate the requirement that the state perform such an analysis and that "States must identify the best system of continuous emission control technology for each source subject to BART…" 70 FR 39158.

Comment: We received 1,873 comments from members of National Parks and Conservation Association generally supportive of our disapproval and encouraging strict controls on the BART units. We also received comments from the general public and medical community generally in support of our action.

Response: We note the commenters' support of our proposed action.

I. Additional Comments Pertaining to BART

We are not responding to the following comments on BART that pertain to cost effectiveness, control effectiveness, visibility improvement, and other factors. We are not responding because we are disapproving the State's BART determinations and will consider such comments when we take proposed action on BART determinations for the four Utah subject to BART EGUs. The following is a summary of the comments:

1) Numerous retrofit technologies are available for the control of NO_x from Hunter and Huntington Units 1 and 2. The suite of available retrofit control technologies for NO_x control from coal boilers similar to these units is well known, and includes: selective catalytic reduction (SCR), LNBs, and separated overfire air (SOFA).

2) SCR is technically feasible for all the units.

3) SCR is a highly effective control technology that can achieve 90% reductions or higher and meet limits of 0.05 lbs/MMBtu or lower.

4) The costs of SCR along with upgraded LNBs and SOFA at Hunter Units 1 and 2 and Huntington Units 1 and 2 are reasonable. The commenter estimated that costs for LNBs with

SOFA and SCR at a NO_x rate of 0.05 lb/MMBtu range from $1,700 - $2,000/ton in 2010 dollars.

5) The commenter went on to describe the methodology that they used to come to their cost effectiveness conclusions: "[t]oo [sic] summarize, we calculated cost effectiveness of NO_x controls at Hunter Units 1 and 2 and Huntington Units 1 and 2 as follows. Based on the Sargent & Lundy SCR IPM Cost Module modified to be consistent with the Control Cost Manual methodology and to be more realistic of the costs for these units, as discussed above, we estimated the capital and O&M costs of SCR at Hunter Units 1 and 2 and Huntington Units 1 and 2. Costs were estimated in 2010 dollars. We estimated the capital and O&M costs of new LNBs and SOFA based on the cost estimates for the same controls provided by PacifiCorp to Wyoming DEQ for the similar but somewhat larger Jim Bridger Unit 1. We converted those costs to 2010 dollars so that these NO_x controls could be readily compared to the SCR controls and so we could evaluate the cost effectiveness of the combination of LNBs/SOFA plus SCR at the Hunter and Huntington BART units. Annualized capital costs were based on the real cost of capital to PacifiCorp and a 20-year life of the pollution controls. Cost effectiveness was based on the total annual costs (annualized capital + annual O&M) divided by the tons per year NO_x emissions reductions expected from the average baseline emissions over 2002-2004. The assumed controlled NO_x emission rates were 0.26 lb/MMBtu for LNBs/SOFA and 0.05 lb/MMBtu for LNBs/SOFA plus SCR."

6) A proper NO_x BART determination for Hunter Units 1 and 2 and Huntington Units 1 and 2 must be based on a baseline period from the 2001 to 2004 timeframe. This timeframe also reflects emissions prior to any NO_x upgrades that have already been completed at the Hunter and Huntington units.

7) According to the Utah regional haze plan, PacifiCorp has received permits to install new

LNBs and two elevations of SOFA. Because these upgrades were intended to meet presumed regional haze requirements, these upgrades should be considered in a NO_x BART analysis as part of the suite of controls to meet NO_x BART requirements.

8) The energy and non-air quality environmental impacts of SCR are standard, limited, and can be mitigated. In addition to monetary costs, SCR typically has several associated impacts that may be noted in a BART analysis, including increased auxiliary power requirements, waste associated with catalyst replacement and disposal, ammonia slip, and the partial conversion of SO_2 to sulfuric acid. The scope of these collateral impacts is nowhere near the scale that would outweigh the benefits provided by SCR. Thus, there are no energy or non-air quality environmental impacts that would preclude the application of SCR at these units.

9) The visibility benefit of applying SCR and LNB/SOFA will likely be significant. A complete BART analysis also evaluates the projected visibility benefits associated with the implementation of the discussed controls. Utah did not provide any modeling analyses in the Utah regional haze plan that evaluated NO_x BART options. Utah did include data on the results of the modeling to determine which units were subject to BART in its regional haze plan, and the results show that each unit has significant impacts in all of the Class I areas located within 300 km of each unit, including Capitol Reef, Canyonlands, Bryce Canyon, Zion, Grand Canyon, and Black Canyon of the Gunnison National Parks as well as Mesa Verde National Monument.

However, the subject-to BART modeling results provided in the Utah regional haze plan very likely understate the true baseline case visibility impacts of these units because the SO_2 emission rates modeled are much lower than the maximum 24-hour pound per hour SO_2 emission rates based on actual emissions data submitted by PacifiCorp to EPA's Clean Air Markets Database.

10) Lower PM limits are achievable and appropriate. EPA must revise PM emission limits for Hunter Units 1 and 2 and Huntington Units 1 and 2 to reflect PM emission rates achievable with BART. We note that Utah's proposed PM BART limits are unclear. Utah's SIP submittal to EPA described (presumably filterable) PM limits of 0.05 lbs/MMBtu, which is echoed by EPA in its proposal. However, the underlying administrative orders appear to require this limit only until the LNBs, baghouse, and wet FGD are installed, at which point it drops to a limit of 0.015 lbs/MMBtu. Further, EPA's proposal states that this is a rolling 30-day limit, where the administrative orders specify stack testing once per year. At a minimum, EPA must establish PM BART limits that reflect the most stringent level of control that the existing and proposed baghouses are capable of, and must account for the different types of particulate matter that are emitted.

Consideration should be given to the following permit limits, which demonstrate achievable limits at or below 0.015 lbs/MMBtu. Three prevention of significant deterioration (PSD) permits have been issued with total PM_{10} limits of 0.010 lb/MMBtu based on installation of a fabric filter baghouse, including for Plant Washington, Longleaf, and Desert Rock. A PSD permit issued to the Intermountain Power Services Corporation sets BACT emissions limits of 0.013 lb/MMBtu for filterable PM and 0.012 lb/MMBtu for filterable PM_{10}. Similarly, a permit issued for the Comanche Generating Station Unit 3 in Colorado included BACT limits of 0.013 lb/MMBtu for filterable PM and 0.012 lb/MMBtu for filterable PM_{10}.

There is no reason that the Utah units could not achieve PM emission rates comparable to a new unit with a properly designed and operated baghouse. Other states have made low PM BART determinations as well. For example, U.S. EPA Region 9 adopted BART filterable particulate limits for the Four Corners power plant, Navajo Nation at Units 1-3 of 0.012

lb/MMBtu for each unit and at Units 4 and 5, 0.015 lb/MMBtu. South Dakota adopted and EPA approved as BART for the Big Stone power plant a PM limit of 0.012 lb/MMBtu, applicable at all times including startup, shutdown, and malfunction.

Further, at the baghouses that are already installed, the limits should also be informed by the existing emissions, as determined by appropriate stack testing or CEMS. According to the available permits, this testing should already be completed and available for at least two units.

For any unit that has not yet installed a baghouse, an important option to consider in BART particulate matter analyses is the selection of filtration media. The filtration media determines the control efficiency of a baghouse for very small particles, which makes the largest contribution visibility. As both PM_{10} and $PM_{2.5}$ are regulated as BART pollutants, it is important to select a filtration media that optimizes the removal of these two fractions. There is a wide range of media that can be used, most of which are much more efficient for larger particles than smaller particles.

Finally, at all units, methods to remove the condensable particulate matter, a major contributor to $PM_{2.5}$ and visibility impairment, should be considered. The primary condensable particulate matter removal devices are SO2 scrubbers and wet electrostatic precipitators (WESPs). These have an achievable level of 99.99% PM control. A WESP could be installed either as a conversion of the outlet field of the existing electrostatic precipitator as a separate housing downstream of the primary electrostatic precipitator, or integrated into the scrubber, if one is present. The WESP would enhance the removal of both filterable $PM_{2.5}$ and condensables.

11) EPA must evaluate BART for all PM. BART requires the evaluation of control technology for filterable PM_{10} and $PM_{2.5}$ as well as condensable particulate matter. Because these sources

are subject to BART for particulate matter, BART limits for both PM_{10} and $PM_{2.5}$, including condensables, should be developed.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b).

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 final 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 today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities because small entities are not subject to the requirements of this rule. We continue to be interested in the potential impacts of the final rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must

have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this final rule does not contain a federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any one year. In addition, this final rule does not contain a significant federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

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 addresses the State not fully meeting its obligation to prohibit emissions from interfering with other states measures to protect visibility established in the CAA. Thus, Executive Order 13132 does not apply to this action.

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

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 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 final 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.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this rule will limit emissions of $NO_{x,}$ $SO_{2,}$

and PM, the rule will have a beneficial effect on children's health by reducing air pollution.

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

This final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (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 final action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection 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.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Incorporation by reference, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 30, 2012

Howard M. Cantor,
Acting Regional Administrator,
Region 8

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52 —APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart TT – Utah

2. Section 52.2320 is amended by adding paragraph (c)(71) to read as follows:

§52.2320 Identification of plan.

* * * * *

(c) * * *

(71) On May 26, 2011 and September 29, 2011, the State of Utah submitted revisions to its State Implementation Plan to incorporate the requirements of the regional haze program.

(i) Incorporation by reference

(A) Title R307 of the Utah Administrative Code - *Environmental Quality, Air Quality,* Rule R307-150 - *Emission Inventories,* sections -1, *Purpose and General Requirements*, -2, *Definitions,* -3, *Applicability,* -5, *Sources Identified in R307-150(3)(2), Large Major Source Inventory Requirements*, -6, *Sources Identified in R307-150-3(3),* -7, *Sources Identified in R307-150-3(4), Other Part 70 Sources*, and -8, *Exempted Hazardous Air Pollutants*. Effective December 31, 2003; as published in the Utah State Bulletin December 1, 2003 and January 15, 2004.

(B) Title R307 of the Utah Administrative Code - *Environmental Quality, Air Quality,* Rule R307-150 - *Emission Inventories,* section -4, *Sulfur Dioxide Milestone Emission Inventory Requirements.* Effective September 4, 2008; as published in the Utah State Bulletin July 1, 2008 and October 1, 2008.

(C) Title R307 of the Utah Administrative Code - *Environmental Quality, Air Quality,* Rule R307-250 – *Western Backstop Sulfur Dioxide Trading Program*, sections -1,

Purpose, -3, *WEB Trading Program Trigger*, -10, *Allowance Transfers*, -11, *Use of Allowances from a Previous Year*, and -13, *Special Penalty Provisions for the 2018 Milestone*. Effective December 31, 2003; as published in the Utah State Bulletin December 1, 2003 and January 15, 2004.

(D) Title R307 of the Utah Administrative Code - *Environmental Quality, Air Quality*, Rule R307-250 – *Western Backstop Sulfur Dioxide Trading Program*, sections -2, *Definitions*, -4, *WEB Trading Program Applicability*, -5, *Account Representative for WEB Sources*, -6, *Registration*, -7, *Allowance Allocations*, -8, *Establishment of Accounts*, -9, *Monitoring, Recordkeeping, and Reporting*, and -12, *Compliance*. Effective November 10, 2008; as published in the Utah State Bulletin October 1, 2008 and December 1, 2008.

(ii) Additional materials

(A) Section XX of the Utah *Regional Haze State Implementation Pan*. Effective April 7, 2011. Published in the Utah State Bulletin February 1, 2011.

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