



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0005; FRL- 9907-09-Region-3]

Approval and Promulgation of Implementation Plans; Delaware; Regional Haze Five-Year Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a revision to the Delaware State Implementation Plan (SIP) submitted by the State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC). Delaware's SIP revision addresses requirements of the Clean Air Act (CAA) and EPA's rules that require states to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the State's existing implementation plan addressing regional haze (regional haze SIP). EPA is proposing approval of Delaware's SIP revision on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

DATES: Comments must be received on or before [insert 30 days from the date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2014-0005, by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: fernandez.cristina@epa.gov.
- C. Mail: EPA-R03-OAR-2014-0005, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2014-0005. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

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I. Background

States are required to submit a progress report in the form of a SIP revision every five years that evaluates progress towards the RPGs for each mandatory Class I Federal area within the state and in each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). In addition, the provisions under 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of the adequacy of the state's existing regional haze SIP. The first progress report SIP is due five years after submittal of the initial regional haze SIP. On September 25, 2008, Delaware DNREC submitted the State's first regional haze SIP in accordance with 40 CFR 51.308(b).¹

¹ On July 19, 2011, EPA finalized an approval of Delaware's September 25, 2008 regional haze SIP to address the first implementation period for regional haze. *See* 76 FR 42557.

On September 24, 2013, DNREC submitted, as a SIP revision (progress report SIP) a report on progress made in the first implementation period towards RPGs for the Class I area outside the State that is affected by emissions from Delaware's sources. This progress report SIP and accompanying cover letter also included a determination that Delaware's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018. EPA is proposing to approve Delaware's September 24, 2013 SIP revision on the basis that it satisfies the requirements of 40 CFR 51.308(g) and 308(h).

II. Requirements for the Regional Haze Progress Report SIPs and Adequacy

Determinations

Under 40 CFR 51.308(g), states must submit a regional haze progress report as a SIP revision every five years and must address, at a minimum, the seven elements found in 40 CFR 51.308(g). As described in further detail in section III of this rulemaking action, 40 CFR 51.308(g) requires: (1) a description of the status of measures in the approved regional haze SIP; (2) a summary of emissions reductions achieved; (3) an assessment of visibility conditions for each Class I area in the state; (4) an analysis of changes in emissions from sources and activities within the state; (5) an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded progress in Class I areas impacted by the state's sources; (6) an assessment of the sufficiency of the approved regional haze SIP; and (7) a review of the state's visibility monitoring strategy.

Under 40 CFR 51.308(h), states are required to submit, at the same time as the progress report SIP, a determination of the adequacy of their existing regional haze SIP and to take one of four possible actions based on information in the progress report. As described in further detail in section III of this rulemaking action, 40 CFR 51.308(h) requires states to either: (1) Submit a negative declaration to EPA that no further substantive revision to the state's existing regional haze SIP is needed; (2) provide notification to EPA (and other state(s) that participated in the regional planning process) if the state determines that its existing regional haze SIP is or may be inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in other state(s) that participated in the regional planning process, and collaborate with these other state(s) to develop additional strategies to address deficiencies; (3) provide notification with supporting information to EPA if the state determines that its existing regional haze SIP is or may be inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in another country; or (4) revise its regional haze SIP to address deficiencies within one year if the state determines that its existing regional haze SIP is or may be inadequate to ensure reasonable progress in one or more Class I areas due to emissions from sources within the state.

III. EPA's Analysis of Delaware's Regional Haze Progress Report and Adequacy

Determination

On September 24, 2013, DNREC submitted a revision to Delaware's regional haze SIP to

address progress made towards RPGs of the Class I area outside the State that is affected by emissions from Delaware's sources. This progress report SIP also includes a determination of the adequacy of the State's existing regional haze SIP. Delaware does not have any Class I areas within its borders. However, in Delaware's September 25, 2008 Regional Haze submittal, DNREC had identified, through an area of influence modeling analysis based on back trajectories in consultation with the regional planning organization, Mid-Atlantic/Northeast Visibility Union (MANE-VU), only one Class I area, Edwin B. Forsythe National Wildlife Refuge (Brigantine Wilderness Area), in the neighboring State of New Jersey, that can be potentially impacted by Delaware sources. *See* 76 FR 42557.

A. Regional Haze Progress Report SIPs

This section summarizes each of the seven elements that must be addressed by the progress report under 40 CFR 51.308(g); how Delaware's progress report SIP addressed each element; and EPA's analysis and proposed determination as to whether the State satisfied each element.

The provisions under 40 CFR 51.308(g)(1) require a description of the status of implementation of all measures included in the regional haze SIP for achieving RPGs for Class I areas both within and outside the state. Delaware evaluated the status of all measures included in its 2008 regional haze SIP in accordance with the requirements under 40 CFR 51.308(g)(1). Specifically, in its progress report SIP, Delaware summarizes the status of the emissions reduction measures that were included in the coordinated course of action agreed to by the Mid-Atlantic and Northeast States to assure reasonable progress toward preventing any future, and remedying any existing impairment of visibility in mandatory Class I Federal areas within MANE-VU. Delaware discusses

its implementation of best available retrofit technology (BART) at the BART sources in the State and discusses how Delaware has far exceeded the MANE-VU goal of 90 percent (%) reduction in sulfur dioxide (SO₂) at electricity generating unit (EGU) stacks through implementation of its non-trading emissions control regulation for EGUs, 7 DE Admin. Code 1146, and control requirements on SO₂ emissions at EGUs established in state consent decrees and permits. Delaware discusses its implementation of 7 DE Admin. Code 1144 and 1148 which yielded nitrogen oxide (NO_x) reductions from generators and combustion turbines at EGUs and discusses reductions from the shutdown of coal-fired boilers pursuant to a Federal consent decree with Invista. While Delaware did not include any regulation for low sulfur fuel oil in its regional haze SIP, Delaware has subsequently implemented a low sulfur fuel oil regulation which will be effective in 2016 and will reduce SO₂ emissions further. Delaware also discusses SO₂ and NO_x reductions from a consent decree with the Delaware City Refinery which required installation of controls and discusses emission reductions from the NO_x SIP Call and reasonably available control technology (RACT) requirements within the State. Finally, Delaware discusses its implementation of other measures included in its regional haze SIP including Maximum Achievable Control Technology (MACT) requirements and mobile source and non-road control measures.

The State also discusses the status of those measures that were not included in the MANE-VU coordinated course of action and were not relied upon in the initial regional haze SIP to meet RPGs. The State notes that the emissions reductions from these measures will help ensure the

Class I area impacted by Delaware sources achieves its RPGs. The measures include the Mercury and Air Toxics Standards (MATS) for EGUs and the 2010 SO₂ National Ambient Air Quality Standard (NAAQS) which Delaware expects will yield additional SO₂ reductions. Delaware also discusses Federal and state consent agreements as well as facility shutdowns and fuel conversions which were not included in the regional haze SIP but which have yielded emission reductions within the State.

Delaware's progress report includes a discussion of the benefits associated with each measure and quantified these benefits wherever possible. In instances where implementation of a measure did not occur on schedule, information is provided on the source category and the measure's relative impact on the overall future year emissions inventories. In aggregate, as noted later in section III.A of this rulemaking action, the emissions reductions from the identified measures exceed the original projections in Delaware's regional haze SIP and result in lower emissions than originally projected.

EPA finds that Delaware's analysis adequately addresses the provisions under 40 CFR 51.308(g)(1). The State documents the implementation status of measures from its regional haze SIP in addition to describing additional measures not originally accounted for in the coordinated course of action with MANE-VU states or in Delaware's approved regional haze SIP.

Delaware's progress report also describes significant measures resulting from EPA regulations other than the regional haze program as they pertain to the State's sources. The progress report SIP further highlights the effects of state regulations, such as Delaware's multi-pollutant control

regulation for EGUs (7 DE Admin. Code 1146), as well as several Federal and state consent decrees for various facilities.

The State's progress report adequately discusses the status of key control measures that Delaware relied upon in the first implementation period to make reasonable progress. In its regional haze SIP, Delaware identified SO₂ emissions from coal-fired EGUs as a key contributor to regional haze in the MANE-VU region, with the EGU sector as a major contributor to visibility impairment at the Class I area impacted by Delaware sources. The State's progress report SIP provides additional information on EGU control strategies and the status of existing and future expected controls for Delaware's EGUs, with updated actual SO₂ emissions data for the years 2009 through 2011 reflecting significant reductions of SO₂ in 2009, 2010, and 2011. In its regional haze SIP, Delaware determined that no additional controls of non-EGU sources were reasonable for the first implementation period. Delaware's progress report SIP demonstrates SO₂ reductions from EGUs in 2009-2011 far exceed projected SO₂ reductions by approximately 10,000 tons of SO₂ compared to the MANE-VU request to reduce SO₂ emissions at EGUs.

Regarding Delaware's implementation of BART, Delaware's progress report SIP reviews the status of the State's BART sources (Edge Moor Unit 4, Edge Moor Unit 5, Indian River Unit 3, and McKee Run Unit 3). Delaware's regional haze SIP included Delaware's multi-pollutant EGU regulation, 7 DE Admin. Code 1146, as an alternative to BART for SO₂ and NO_x emissions control for the BART sources pursuant to 40 CFR 51.308(e)(2)(i). The progress report

SIP indicates that the four BART sources have implemented the stringent control requirements in 7 DE Admin. Code 1146 for NO_x and SO₂ emissions through unit-specific annual NO_x and SO₂ mass emissions caps and short-term (rolling 24-hour) NO_x and SO₂ emissions rate limits (in pounds per million British thermal units (lb/MMBtu)). Delaware has demonstrated that the BART sources complied with 7 DE Admin. Code 1146 by installation of controls, fuel switches, and permit restrictions on operating conditions. Delaware's progress report SIP demonstrates significant SO₂ reductions (and NO_x reductions) from EGUs in 2011 compared to 2002 and 2008 through implementation of 7 DE Admin. Code 1146.

Delaware's regional haze SIP also established BART for particulate matter (PM) for these same four sources through control requirements, and Delaware's progress report SIP adequately demonstrates compliance with and implementation of the PM BART at these sources which has yielded PM reductions in addition to the PM reductions projected in the regional haze SIP.

EPA proposes to conclude that Delaware has adequately addressed the status of control measures in its regional haze SIP as required by the provisions under 40 CFR 51.308(g)(1). The State adequately addressed the status of control measures in its regional haze SIP including BART and the coordinated action measures from MANE-VU, described the status of significant measures resulting from EPA regulations and Federal and state consent decrees other than the regional haze program as they pertain to Delaware sources, and included the status of key control measures that the State relied upon in the first implementation period to make reasonable progress. EPA finds Delaware has demonstrated significant reductions in SO₂, NO_x, and PM

through implementation of measures in its regional haze SIP and other Federal and state measures.

The provisions under 40 CFR 51.308(g)(2) require a summary of the emissions reductions achieved in the state through the measures subject to the requirements under 40 CFR 51.308(g)(1). In its regional haze SIP and progress report SIP, Delaware focuses its assessment on the largest contributor to visibility impairment, SO₂ emissions from EGUs. Delaware made this decision for the first implementation period because of MANE-VU's findings that sulfate accounted for more than 70 percent of the visibility-impairing pollution in the northeast and mid-Atlantic and because SO₂ point source emissions in 2018 were projected to represent the majority of the total SO₂ emissions inventory.

Overall, SO₂ emissions have decreased significantly in Delaware. Delaware states that the large reductions in SO₂ emissions from EGUs resulted from compliance with 7 DE Admin. Code 1146 and from permit conditions and consent decrees which further restricted emissions from EGUs. By 2011, the EGUs subject to 7 DE Admin. Code 1146 had reduced SO₂ mass emissions by 21,905 tons per year (tpy) (approximately 70%) from 2002 and reduced NO_x mass emissions by 5,412 tpy (approximately 66 %) from 2002.² Delaware stated these actual reductions are greater

² Delaware's progress report SIP includes emissions data for SO₂ and NO_x from EGUs from EPA's Clean Air Markets Division (CAMD) for the years 2002-2011.

than the 8,681 tons of SO₂ reductions and zero tons of NO_x reductions estimated from presumptive BART for Delaware's BART sources.

Delaware also identifies specific additional SO₂ and NO_x emissions reductions since the submittal in 2008 of its regional haze SIP. Delaware identified reductions of 1,158 tpy NO_x, 290 tpy fine particulate matter (PM_{2.5}), and 4,694 tpy of SO₂ which resulted from unit shutdowns at several facilities and imposition of a NO_x permit limit on the Delaware City refinery. Delaware also includes in its progress report SIP additional projected reductions of SO₂ emissions of 2,605 tpy (as calculated from the 2002 base year) upon full implementation of its low-sulfur fuel regulation in 2016. Delaware states that these additional emissions reductions will further help to ensure that the Brigantine Wilderness Area will achieve its RPGs for visibility improvement by 2018.

Delaware also submitted data for the other states identified as significant contributors of SO₂ to Brigantine Wilderness Area showing similar trends in SO₂ reductions from EGUs in those states between 2002 and 2011. Because sulfates have been shown to be the predominant species of concern to visibility impairment at Brigantine Wilderness Area during the first round of regional haze planning and SO₂ EGU emissions are trending downward, Delaware concludes in its progress report SIP that visibility improvements should continue into the future from the reduced sulfate contribution.

EPA proposes to conclude that Delaware has adequately addressed the provisions under 40 CFR 51.308(g)(2). The State provides estimates, and where available, actual emissions reductions of SO₂ and NO_x from EGUs in Delaware since the State submitted its regional haze SIP. Although Delaware appropriately focused on SO₂ emissions from its EGUs in its progress report SIP because the State had previously identified these emissions as the most significant contributors to visibility impairment at Brigantine Wilderness Area, the State also provided NO_x emissions from its EGUs as well. Delaware also adequately provided estimates and where available, actual emissions reductions for certain non-EQU control measures discussed in its regional haze SIP. Delaware's progress report SIP has shown that Delaware has exceeded expected emissions reductions and is expected to continue to do so in order to meet reasonable progress goals by 2018.

The provisions under 40 CFR 51.308(g)(3) require that states with Class I areas within their borders provide the following information for the most impaired and least impaired days for each area, with values expressed in terms of five-year averages of these annual values:³ (1) Current visibility conditions; (2) the difference between current visibility conditions and baseline visibility conditions; and (3) the change in visibility impairment over the past five years.

Because Delaware does not have any Class I areas within its borders, EPA therefore proposes to

³ The "most impaired days" and "least impaired days" in the regional haze rule refers to the average visibility impairment (measured in deciviews) for the twenty percent of monitored days in a calendar year with the highest and lowest amount of visibility impairment, respectively, averaged over a five-year period. *See* 40 CFR 51.301.

conclude that Delaware's progress report SIP was not required to address 40 CFR 51.308(g)(3).

The provisions under 40 CFR 51.308(g)(4) require an analysis tracking emissions changes of visibility-impairing pollutants from the state's sources by type or category over the past five years based on the most recent updated emissions inventory. In its progress report SIP to address the requirements of 40 CFR 51.308(g)(4), Delaware presents data from statewide emissions inventories developed for the years 2002 and 2008 and compares the 2002 and 2008 data for SO₂, NO_x, and PM_{2.5} to two sets of data for the same pollutants, including the projected emissions inventory for 2018 (from its 2008 regional haze SIP) and a "hybrid" emissions inventory created using 2011 EGU emissions data from EPA's CAMD database combined with 2008 emissions inventory data from non-EGU sources. Delaware's hybrid emissions inventory also includes adjusted mobile source emissions data for NO_x, and PM_{2.5} from a 2012 model run using EPA's Motor Vehicle Emission Simulator (MOVES) model.⁴ Delaware states this hybrid inventory reflects the latest data available to the State for comparison for 40 CFR 51.308(g)(4). Delaware claims its inventory data in its progress report SIP captures the majority of SO₂ emissions (as of 2011) because EGUs are the largest emitters of SO₂ and states the inventory is adequate to show Delaware's significant progress in reducing SO₂ emissions in comparison to future year projections. Delaware's emissions inventories include the following source classifications: Stationary point sources, area sources, and off-road and on-road mobile sources. As noted in section III.A.2 of this action, Delaware's overall EGU SO₂ emissions exceeded the reductions projected in the State's regional haze SIP for 2018 due to compliance with 7 DE

⁴ Delaware's progress report SIP focused on inventories of SO₂, NO_x and PM_{2.5} because Delaware states these pollutants are reasonably anticipated to cause or contribute to visibility impairment.

Admin. Code 1146, additional fuel switches to natural gas, shutdowns, and other measures implemented for EGUs not previously projected.

EPA proposes to conclude that Delaware has adequately addressed the provisions under 40 CFR 51.308(g)(4). While ideally the five-year period to be analyzed for emissions inventory changes is the time period since the current regional haze SIP was submitted, availability of quality-assured data may not always correspond with this period and there is an inevitable time lag in developing and reporting inventories such that the most recent data may not be available. Therefore, EPA believes that there is some flexibility in the five-year time period states can practically select for tracking emissions changes to meet this requirement. While Delaware used portions of its 2008 emissions inventory for comparison with 2002, Delaware also supplemented this 2008 inventory with emissions data for 2011 for the EGU sector and with additional adjustments for 2012 mobile emissions. EPA believes that Delaware presented an adequate analysis tracking emissions trends for SO₂, NO_x, and PM_{2.5} since the SIP was submitted in 2008 to reflect trends over an approximate five year period using the emissions data available to Delaware. Delaware's hybrid emissions inventory including 2011 EGU emissions data shows significant reductions of approximately 28,000 tons of SO₂, 13,000 tons of NO_x, and 200 tons of PM_{2.5} from 2008. Furthermore, Delaware has demonstrated that these significant emissions reductions particularly of SO₂ are well beyond what was projected for 2018, demonstrating

greater progress than projected in 2008.⁵ EPA has also reviewed SO₂ and NO_x emissions data from CAMD for Delaware's EGUs for 2012 and preliminary data for 2013 and notes similar significantly reduced emissions from these sources in 2012 and 2013. EPA believes this provides sufficient information to support the representativeness of the five-year period evaluated by Delaware given that the State identified SO₂ emissions from the EGU sector as a main contributor to visibility impairment at Brigantine Wilderness Area.

The provisions under 40 CFR 51.308(g)(5) require an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred over the past five years that have limited or impeded progress in reducing pollutant emissions and improving visibility in Class I areas impacted by the state's sources. In its progress report SIP, Delaware states that sulfates continue to be the biggest single contributor to regional haze at Brigantine Wilderness Area. However, while Delaware focused its analysis on addressing large SO₂ emissions from point sources, the State also has addressed NO_x, and PM_{2.5}. In its progress report SIP, Delaware demonstrates that the State's SO₂, NO_x, and PM_{2.5} emissions reductions have by 2012 already significantly exceeded the Delaware 2018 emissions inventory projections for SO₂, NO_x, and PM_{2.5} and demonstrates these reductions have occurred prior to other, additional state and Federal measures not included in the regional haze SIP but which Delaware projects will further reduce SO₂ emissions including the 2010 SO₂ NAAQS, Delaware's new low-sulfur fuel oil regulation, and the shutdown of Indian River Unit 3. Therefore, Delaware states that it has not

⁵ EPA notes that the State included SO₂ and NO_x emissions data for EGUs in Tables 7 and 8 of the progress report SIP using data from EPA's CAMD database, along with trends comparing SO₂, NO_x, and PM_{2.5} actual emissions for 2002, 2008, and 2008 plus 2011 EGU data to projected 2018 emissions in Tables 39-43.

limited nor impeded progress in reducing pollutant emissions and improving visibility at Brigantine Wilderness Area.

EPA proposes to conclude that Delaware has adequately addressed the provisions under 40 CFR 51.308(g)(5). The State adequately demonstrated that there are no significant changes in emissions of SO₂, PM_{2.5}, or NO_x that have impeded progress in reducing emissions and improving visibility in the Class I area impacted by Delaware sources. The State provided data demonstrating present emission reductions of SO₂ from EGUs were greater than originally projected for 2018 in the State's regional haze SIP and show an overall significant downward trend in emissions over the period 2002 to 2011.

The provisions under 40 CFR 51.308(g)(6) require an assessment of whether the current regional haze SIP is sufficient to enable the state, or other states, to meet the RPGs for Class I areas affected by emissions from the state. In its progress report SIP, Delaware states that it believes that the elements and strategies outlined in its original regional haze SIP are sufficient to enable neighboring states to meet all established RPGs. To support this conclusion, Delaware notes that emissions of SO₂ as calculated using the 2008 emissions inventory adjusted with 2011 EGU emissions are significantly less than the 2018 projected emissions of SO₂ (16,304 tpy versus 20,511 tpy, respectively). In addition, Delaware expects even further reduction of SO₂ emissions, particularly for the EGU sector, due to additional reductions not accounted for in the

original regional haze SIP as discussed in detail previously in this rulemaking action, further supporting the State's conclusion that the regional haze SIP's elements and strategies are sufficient to meet established RPGs. Delaware discusses visibility data from the April 30, 2013 report, *Tracking Visibility Progress, 2004-2011*, prepared by the Northeast States for Coordinated Air Use Management (NESCAUM), which updated the progress at MANE-VU Class I areas during the five year period ending in 2011 including information for Brigantine Wilderness Area between 2000 and 2011 in the context of short- and long-term visibility goals. The report indicates that haze levels on the best and worst days from 2000 through 2011 have dropped at Brigantine Wilderness Area. Delaware notes the NESCAUM report indicates the states continue to be on track to meet their 2018 RPGs for improved visibility and that further progress may occur through recently adopted or proposed regulatory programs. Based upon the NESCAUM report and visibility data within the report for Brigantine Wilderness Area, Delaware states visibility improvement at Brigantine Wilderness Area has occurred for the most impaired days and no degradation of visibility has occurred for the least impaired days. Therefore, Delaware states that New Jersey's RPGs for Brigantine Wilderness Area are on track to be met based on visibility improvement and available data.

EPA proposes to conclude that Delaware has adequately addressed the provisions under 40 CFR 51.308(g)(6). EPA views this requirement as a qualitative assessment that should evaluate emissions and visibility trends and other readily available information, including expected emissions reductions associated with measures with compliance dates that have not yet become effective. Delaware referenced the improving visibility trends detailed in the NESCAUM report

and the downward emissions trends in the State, with a focus on SO₂ emissions from Delaware EGUs, that support the State's determination that the State's regional haze SIP is sufficient for the neighboring state of New Jersey to meet its RPGs for the Class I area impacted by Delaware sources.

The provisions under 40 CFR 51.308(g)(7) require a review of the state's visibility monitoring strategy and an assessment of whether any modifications to the monitoring strategy are necessary. This requirement only applies to states with Class I areas within their borders. EPA proposes to conclude that Delaware has adequately addressed 40 CFR 51.308(g)(7) because Delaware does not have any Class I areas within its borders and Delaware is not required to address the provisions under 40 CFR 51.308(g)(7).

B. Determination of Adequacy of Existing Regional Haze Plan

Under 40 CFR 51.308(h), states are required to take one of four possible actions based on the information gathered and conclusions made in the progress report SIP. The following section summarizes the action taken by Delaware under 40 CFR 51.308(h); Delaware's rationale for the selected action; and EPA's analysis and proposed determination regarding the State's action.

In its progress report SIP, Delaware took the action provided for by the provisions under 40 CFR 51.308(h)(1), which allow a state to submit a negative declaration to EPA if the state determines

that the existing regional haze SIP requires no further substantive revision at this time to achieve the RPGs for Class I areas affected by the state's sources. The basis for the State's negative declaration is the findings from the progress report SIP (as discussed in section III of this rulemaking action), including the findings that: SO₂ emissions from the State's sources have decreased beyond original projections; additional EGU control measures not relied upon in the State's regional haze SIP have occurred or will occur in the implementation period; and the EGU SO₂ emissions in Delaware are already below the levels projected for 2018 in the regional haze SIP and are expected to continue to trend downward for the next five years. EPA and Delaware also expect the downward trend in SO₂ emissions from EGUs in the other MANE-VU states to continue. EPA proposes to conclude that Delaware has adequately addressed the provisions under 40 CFR 51.308(h) because the visibility trends at the Class I area impacted by the State's sources and the emissions trends of the State's largest emitters of visibility-impairing pollutants both indicate that Brigantine Wilderness Area, which is the Class I area impacted by Delaware sources, will be able to meet or exceed the RPGs for 2018.

IV. EPA's Proposed Action

EPA is proposing to approve Delaware's Regional Haze five-year progress report SIP revision, submitted September 24, 2013, as meeting the applicable regional haze requirements as set forth in 40 CFR 51.308(g) and 51.308(h).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve Delaware's regional haze five-year progress report SIP revision does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 11, 2014.

W. C. Early,
Acting Regional Administrator,
Region III.

[FR Doc. 2014-04074 Filed 02/24/2014 at 8:45 am; Publication Date: 02/25/2014]