

pertaining to the Commonwealth of Virginia's adoption of the revised NO<sub>2</sub> standard of 100 ppb may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: June 6, 2011.  
**W.C. Early,**  
*Acting, Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

**Subpart VV—Virginia**

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entry for Section 5–30–70. The table in paragraph (e) is amended by adding an entry for “Documents Incorporated by Reference” after the tenth existing entry for “Documents Incorporated by Reference.” The amendments read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*

**EPA—APPROVED VIRGINIA REGULATIONS AND STATUTES**

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * *	* * *	* * *	* * *	* * *
<b>9 VAC 5, Chapter 30 Ambient Air Quality Standards [Part III]</b>				
5-30-70	Oxides of nitrogen dioxide as the indicator.	8/18/10	6/22/11 [Insert page number where the document begins].	Sections A., D., and E. are modified. Sections B., C., F., and G. are added.
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\* \* \* \* \* (e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Documents Incorporated by Reference (9 VAC 5-20-21, Section E.1.a.(1)(s)).	Statewide	3/14/11	6/22/11 [Insert page number where the document begins].	Added section.
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[FR Doc. 2011–15455 Filed 6–21–11; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R10–OAR–2010–1072; FRL–9321–4]

**Approval and Promulgation of Implementation Plans; State of Idaho; Regional Haze State Implementation Plan and Interstate Transport Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving portions of a State Implementation Plan (SIP)

revision submitted by the State of Idaho on October 25, 2010, as meeting the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i)(II) as it applies to visibility for the 1997 8-hour ozone and 1997 particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). EPA is also approving portions of the revision as meeting certain requirements of the regional haze program, including the requirements for best available retrofit technology (BART).

**DATES:** *Effective Date:* This final rule is effective July 22, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2010–1072. All documents in the docket are listed on the <http://www.regulations.gov> Web

site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 through <http://www.regulations.gov> or in hard copy at the State and Tribal Air Programs Unit, Office of Air Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101. 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:** Steve Body, EPA Region 10, Suite 900, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, WA 98101.

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

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

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

(iv) The words *Idaho* and *State* mean the State of Idaho.

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**I. Background Information**

On July 18, 1997, EPA promulgated new NAAQS for 8-hour ozone and for fine particulate matter (PM<sub>2.5</sub>). This action is being taken, in part, in response to the promulgation of the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS. Section 110(a)(1) of the CAA requires states to submit a SIP revision to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions.

Section 110(a)(2)(D)(i) of the CAA requires that a SIP must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will: (1) contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS by any other state; (3) interfere with any other state's required measures to prevent significant deterioration of air quality; or (4) interfere with any other state's required measures to protect visibility. This action addresses the fourth prong, section 110(a)(2)(D)(i)(III).

In the CAA Amendments of 1977, Congress established a program to protect and improve visibility in the

national parks and wilderness areas. See CAA section 169(A). Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. See CAA section 169(B). EPA promulgated regulations in 1999 to implement sections 169A and 169B of the Act. These regulations require states to develop and implement plans to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas<sup>1</sup> (Class I areas). 64 FR 35714 (July 1, 1999); see also 70 FR 39104 (July 6, 2005) and 71 FR 60612 (October 13, 2006).

On October 25, 2010, the State of Idaho submitted to EPA a State Implementation Plan (SIP) revision addressing the interstate transport requirements for visibility for the 1997 ozone and PM<sub>2.5</sub> NAAQS, [see CAA § 110(a)(2)(D)(i)(II)], and the requirements of the regional haze program at 40 CFR § 51.308 (Regional Haze SIP submittal). On January 11, 2011, EPA published a notice in which the Agency proposed to approve the Idaho SIP revision as meeting the requirements of both section 110(a)(2)(D)(i)(II) of the CAA and the Regional Haze requirements set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308, with the exception of Chapter 11, Idaho Reasonable Progress Goal Demonstration and Chapter 12, Long Term Strategy. 76 FR 1579 (Notice of Proposed Rulemaking or NPR). For Idaho's Reasonable Progress Goal Determination and Long-Term Strategy, EPA did not propose taking any action.

**II. Response to Comments**

EPA received four comments on the proposed action to approve certain elements of the Idaho Regional Haze SIP submittal. A comment letter was received from the State of Idaho's Department of Environmental Quality

<sup>1</sup> Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the Clean Air Act, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and Tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the Clean Air Act apply only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager." 42 U.S.C. 7602(i). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal area."

(IDEQ). A comment was received from a private citizen. Adverse comments were received by two entities; The Amalgamated Sugar Company (TASCO) and the Wyoming Outdoor Council. The discussion below summarizes and responds to the comments received on EPA's proposed SIP action and explains the basis for EPA's final action.

*Comment from IDEQ*

*Comment:* IDEQ's letter related to a Tier II operating permit IDEQ had issued to The Amalgamated Sugar Company (TASCO) on September 7, 2010, that included the requirement to install and operate BART control technology and comply with the BART emission limitations. See the September 7, 2010, letter from IDEQ to TASCO issuing the Tier II Operating Permit No. T2-2009-0105, that was included in the Idaho Regional Haze SIP submittal. The comment explained that on October 12, 2011, TASCO appealed the Tier II permit and that IDEQ has entered into negotiations with TASCO to discuss alternative control measures that may be required at the TASCO Nampa facility in lieu of the BART conditions as outlined in the SIP submission. IDEQ and TASCO hope these negotiations will result in a revised Tier II permit, agreed to by both parties, that results in emissions controls that can be considered better than the BART currently in the SIP submission.

*Response:* EPA acknowledges the notification.

*Comment from Private Citizen*

*Comment:* The comment supports Idaho's actions to improve visibility in Class I areas.

*Response:* EPA acknowledges the comment.

*Comments from TASCO*

*Comment 1a:* TASCO requests the EPA defer further action of the Regional Haze SIP submittal. TASCO explains that it is actively negotiating with IDEQ to resolve its challenge to IDEQ's Tier II operating permit that was issued on September 7, 2010, imposing BART controls on the Riley Boiler at the TASCO Nampa facility. TASCO is hopeful that the negotiations will result in a revised BART determination and revised Tier II operating permit by May 2, 2011. Thus, in the commenter's view, final action on the TASCO portion of the Regional Haze SIP is premature, would ignore the ongoing negotiations between TASCO and IDEQ, and would cause unnecessary administrative burden for EPA, IDEQ, and TASCO because the company expects that a new/revised Tier II permit will be

negotiated, issued and submitted to EPA. The commenter urges EPA to postpone final action on the Regional Haze SIP submittal pending the outcome of ongoing negotiations between TASCOS and IDEQ and until EPA undertakes a complete reevaluation of the affordability of BART controls.<sup>2</sup>

*Response:* TASCOS suggests that instead of acting on the Regional Haze SIP submittal, EPA defer action until the ongoing negotiations between IDEQ and TASCOS are completed and a revised BART determination for TASCOS is submitted to EPA. Unfortunately, EPA cannot defer action on the Regional Haze SIP submittal. States were required to submit Regional Haze SIPs by December 17, 2007. As Idaho and a number of other states failed to meet this deadline, EPA issued a final rule finding that these states had failed to submit Regional Haze SIPs to EPA. 74 FR 2392 (January 15, 2009). Under the CAA, EPA must issue a Federal implementation plan (FIP) within two years of finding that a state has failed to make a required submission, unless the state submits a SIP and EPA fully approves the plan before promulgating a FIP. CAA section 110(c)(1). In addition, as described above, States are required to submit a SIP revision to address a new or revised NAAQS within three years after promulgation of such standards that contains adequate provisions to prevent emissions from within the state from interfering with other states' measures to protect visibility. Idaho failed to submit a complete SIP revision within 3 years of promulgation of the revised 1997 Ozone and PM<sub>2.5</sub> NAAQS as required by section 110(a)(1) and meeting the requirements of section 110(a)(2)(D)(i). EPA is under a court order to take final action approving the Idaho Regional Haze SIP submittal, or to otherwise take action to meet the requirements of section 110(a)(2)(D)(i)(II) regarding visibility, by June 21, 2011. See 76 FR 1581, fn 5. In addition, IDEQ submitted the Regional Haze SIP revision to EPA on October 25, 2010, and included the Tier II operating permit for TASCOS. EPA is obligated to take action on that submittal unless or until such time as the State of Idaho withdraws that submittal and submits a SIP revision.

TASCOS's suggestion that the Tier II operating permit will change as a result of its challenge or the ongoing negotiations is speculative. If and when a revised permit is issued sometime in

the future, Idaho may submit it for EPA review and action, as appropriate. Such SIP revision must meet Federal requirements and policy on SIP revisions, including the Regional Haze rule requirement that an alternative BART determination must achieve greater reasonable progress than would be achieved through installation and operation of BART. See 40 CFR 51.308(e)(2). TASCOS's comments concerning the affordability analysis are addressed below.

*Comment 1.b.:* TASCOS also requests that EPA postpone action on the SIP for a few additional reasons. First, it states that due to confusion and threatened litigation over EPA's national inaction on the Regional Haze Rule, Idaho may be the first, or one of the first, states to obtain approval. Thus, in their view, postponement of Idaho's plan would not deviate from a national level of inactivity. TASCOS questions the urgency to partially approve Idaho's Regional Haze SIP and suggests that based on the emission inventories from other states, Idaho should be a low priority.

TASCOS also requests an explanation for the decision to only partially approve the Regional Haze SIP and urges EPA to postpone final action on Idaho's plan until other components are ready for EPA action.

Finally, in TASCOS's view, postponement of final action is consistent with an Executive Order dated January 18, 2011 which reaffirms regulatory review principles. TASCOS contends the Regional Haze SIP is out of step with current economic and political realities. Specifically the comment states that the appropriate focus for visibility improvements under the CAA should be emission reductions from significant contributors, such as natural fire and mobile sources. EPA's proposed partial approval, specifically the TASCOS BART determination, "ignores significant contributors and over regulates the minor contribution of the Riley Boiler. The proposal is not consistent with either the substance not the spirit of President Obama's EO."

*Response:* There is no confusion regarding litigation over CAA section 110(a)(2)(D)(i)(II), the visibility prong of interstate transport, which is a separate legal action from litigation over EPA inaction on Regional Haze SIPs under Section 169(A)&(B). Idaho submitted the Regional Haze SIP to meet two provisions in the CAA—sections 110 and 169. As explained above, EPA must take action to meet the requirements of CAA section 110(a)(2)(D)(i)(II) regarding visibility by June 21, 2011. EPA's approval of the BART measures in the

Idaho Regional Haze SIP submittal fulfills this obligation. EPA notes that the existence of any confusion regarding the timeline for EPA action on the Regional Haze SIPs is irrelevant to the question of whether the Regional Haze SIP submittal meets the requirements of the CAA or the regional haze program and has no impact on the statutory deadlines by which EPA must act. EPA intends to propose action on the remaining elements of the Idaho Regional Haze SIP submittal as expeditiously as possible, but finds no reason to delay action on the BART provisions.

Regarding TASCOS's comment that this SIP action should be a low priority based on emission inventories from other states, EPA notes that BART obligations and the deadlines for taking action under the CAA apply regardless of the state-to-state relative emission inventories. Under the Regional Haze Rule, each state is required to address its contribution to visibility impairment in Class I areas. See *e.g.* 40 CFR 51.308(d)(3). In addition, while the Regional Haze Rule requires states to identify all anthropogenic sources of visibility impairment in developing its long-term strategy, Congress placed special emphasis on the use of retrofit controls for certain sources, such as the TASCOS facility's Riley Boiler. IDEQ accordingly carefully considered the use of such controls at TASCOS and determined that controls were cost-effective, would improve visibility, and were an appropriate measure for assuring reasonable progress toward the national goal.

The Executive Order identified by the commenter, EO 13563, provides that "[o]ur regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation \* \* \*. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends \* \* \*." While EPA's compliance with EO 13563 is not subject to judicial review, EPA has complied with the EO in this action approving IDEQ's Regional Haze SIP submittal. First, we note that EPA's Regional Haze Rules provide substantial flexibility to the states in meeting the BART requirements in the CAA while still ensuring that reasonable progress towards the national goal is made. Second, TASCOS's argument that EPA has ignored the contribution of other sources to visibility impairment in approving IDEQ's BART determination misrepresents EPA's role in evaluating a state's BART determination. The CAA provides no basis for EPA to disapprove

<sup>2</sup> At TASCOS's request EPA and IDEQ had a phone conversation with a TASCOS representative on May 16, 2011, followed by a letter to the EPA dated May 25, 2011, in which TASCOS reiterated its request that EPA postpone final action.

a BART determination as overly stringent because a state has ignored other sources of impairment in its SIP.

*Comment 2:* On September 7, 2010, IDEQ issued a Tier II operating permit to TASCOCO that imposed both SO<sub>2</sub> and NO<sub>x</sub> BART controls on the Riley Boiler at the TASCOCO Nampa facility and on October 12, 2010, TASCOCO filed a contested petition with the IDEQ challenging the reasonableness of the SO<sub>2</sub> and NO<sub>x</sub> BART controls selected. In its comments to EPA, TASCOCO summarized the basis for its challenge at the state level to the Tier II operating permits.

*Comment 2a:* IDEQ failed to consider the 5-factors required by the CAA in choosing BART for SO<sub>2</sub> and NO<sub>x</sub> emissions including the degree of improvement in visibility from the use of such technology and the cost of compliance.

*Response:* The Riley Boiler at TASCOCO, Nampa, is a BART-eligible source subject-to-BART. Contrary to the commenter's claim, and as fully described in the **Federal Register** notice, IDEQ did consider the 5-factors in its BART determination for particulate matter, SO<sub>2</sub> and NO<sub>x</sub>. See 76 FR 1586–1589. After determining the available control technologies, the five factors are: 1) Cost of compliance; 2) Energy and non-air environmental impacts; 3) any pollution control equipment in use at the source; 4) the remaining useful life of the facility; 5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

*Comment 2b:* IDEQ solely relied on conservative modeling results and excluded other relevant evidence resulting in an unreasonable BART selection for TASCOCO's Riley Boiler.

*Response:* While its not clear if TASCOCO is suggesting that EPA should disapprove IDEQ's BART determination on these grounds, we disagree that IDEQ relied solely on conservative modeling results. Air quality dispersion modeling was used by Idaho for two purposes: to identify sources subject to BART and to estimate visibility improvement resulting from implementation of technically feasible BART control options. In the context of this comment, TASCOCO does not appear to contest IDEQ's identification of sources subject to BART, but rather the projection of improvement in visibility from implementation of BART.

To provide a consistent determination of baseline to future conditions of source specific visibility impacts, Idaho correctly used dispersion modeling. See 76 FR 1585 and EPA's evaluation of WRAP modeling in EPA's WRAP TSD,

Section 6.A. The model Idaho used is consistent with BART Guidelines Appendix Y, (III)(3) which recommends use of modeling for individual source attribution with the CALPUFF model. See Appendix F, BART Modeling Protocol of the SIP submittal, (p. 30) for the application of the CALPUFF model.

EPA approved the BART-subject Modeling Protocol that was used by Idaho, Oregon and Washington in their determinations of which BART eligible sources are subject to BART. EPA's evaluation of BART modeling can be found in the WRAP TSD, Section 7 (p. 51) and Appendix F of the Idaho Regional Haze SIP submittal, (p. F–30).

*Comment 2c:* Evidence overlooked by IDEQ to support a more reasonable outcome for TASCOCO BART: The Riley Boiler is located over 100 miles and in the opposite prevailing west to east wind direction from Hells Canyon, Eagle Cap, and Strawberry Mountain Wilderness Areas.

*Response:* Prevailing winds and distance do not necessarily determine the maximum visibility impact of a specific source. Many meteorological factors need to be considered in determining visibility impact, thus the use of dispersion modeling for determining impact. See 40 CFR 51, Appendix Y (BART Guidelines, Section III and Section IV.D, 5).

Dispersion modeling demonstrates maximum impact of TASCOCO Nampa emissions are in the Eagle Cap Wilderness Area. Commenter has not provided any additional information or evidence to refute that determination.

*Comment 2d:* The Riley Boiler is a small industrial boiler not subject to the mandatory approach of Appendix Y BART Guidelines.

*Response:* The commenter is correct that IDEQ was not required to follow the EPA BART Guidelines at 40 CFR part 51, Appendix Y in making its BART determination. However, as explained in the BART Guidelines, the Guidelines establish an approach to implementing the BART requirements in the Regional Haze Rule, and that EPA believes the procedures in the guidelines should be useful to the States in all BART determinations.

*Comment 2e:* The Riley Boiler is the only sugar beet processing factory subject to BART.

*Response:* Whether or not the Riley Boiler is the only U.S. sugar beet processing factory subject-to-BART is not relevant to the question of whether IDEQ reasonably concluded that the boiler met the definition of a BART-eligible source and that the boiler could reasonably be anticipated to cause or contribute to any visibility impairment

at a Class I area. Fossil-fuel boilers of more than 250 MBtu/hr heat input are potentially subject to BART, regardless of the type of industrial facility at which they are located. As explained in the notice of proposed rulemaking, IDEQ followed the BART evaluation process to identify the BART-eligible sources within the state boundaries, and determined, based on its modeled impacts, that TASCOCO could be reasonably anticipated to contribute to visibility impairment at the Eagle Cap Wilderness Area. 76 FR 1586.

*Comment 2f:* TASCOCO states that the overall contribution of Idaho stationary sources to visibility impairment from SO<sub>2</sub> and NO<sub>x</sub> is small. Most impairment in Idaho Class I areas originates from outside the State. The commenter also notes that the Riley Boiler accounts for only a very small fraction of SO<sub>2</sub> and NO<sub>x</sub> emissions in Idaho.

*Response:* By definition, regional haze means visibility impairment that is caused by the emissions of air pollutants from numerous sources located over a wide geographic area. 40 CFR 51.301. As a result, to make reasonable progress towards the national goal, states may be required to control emissions from sources that account individually for only a small fraction of the total emissions contributing to visibility impairment. As required by the CAA and EPA's regulations, the state must undertake a BART determination for certain sources such as TASCOCO that are reasonably anticipated to cause or contribute to any visibility impairment. The percent contribution of a specific BART eligible source to total Statewide or region-wide emissions is not a factor in determining whether that source can be considered to contribute to visibility impairment. See 40 CFR 51.308(e). To assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at any Class I area, Idaho selected a contribution threshold of 0.5dv, the upper bound for such a threshold. See 70 FR 39104, 39161 (July 6, 2005). Given this, IDEQ determined that TASCOCO Nampa exceeded the 0.5dv threshold and therefore correctly determined that the facility is subject-to-BART. The Riley Boiler's relative percent contribution of SO<sub>2</sub> and NO<sub>x</sub> emissions in Idaho is not a factor in determining whether it is exempt from meeting the BART obligations of 40 CFR 51.308(e).

*Comment 2g:* By relying on conservative modeling results, IDEQ failed to adjust its conclusions in light of TASCOCO's source apportionment modeling that suggests the IDEQ

modeling greatly overestimates visibility impacts of the Riley boiler.

*Response:* TASC0 did not provide the TASC0 source apportionment modeling results referred to in its comments. Thus, EPA cannot evaluate the credibility of the TASC0 modeling, nor the significance of results.

However, in EPA's view, Idaho appropriately used CALPUFF modeling, as recommended by the BART Guidelines (Appendix Y of the Regional Haze Rule) to determine visibility impacts from TASC0. The modeling was conducted in accord with the BART Modeling Protocol, "Modeling Protocol for Washington, Oregon, and Idaho: Protocol for the Application of the CALPUFF Modeling System Pursuant to the Best Available Retrofit Technology (BART) Regulation." This protocol was developed by Region 10 states and EPA Region 10 to provide consistency in decision making across Idaho, Oregon, and Washington in assessing the absolute and relative contribution of sources of visibility impairment. By providing for consistent estimates, the use of CALPUFF and specific modeling protocols ensures that sources are assessed equitably across a region. See 76 FR 1586. See also response to comment 2.b. above.

*Comment 2.h:* IDEQ failed to consider the shutdown of three coal-fired pulp dryers at the Nampa facility in 2007.

*Response:* Contrary to the comment, IDEQ did consider TASC0's shutdown and replacement of three coal-fired pulp dryers in the Regional Haze SIP submittal. However, the shut-down of other units at a facility is not a consideration to be taken into account in a BART determination. The BART determination for the Riley Boiler must be made independent of other control activities at the TASC0 Nampa facility or other TASC0 facilities located in Idaho.

Idaho did account for the shutdown of the pulp dryers in their assessment of baseline conditions at the Eagle Cap Wilderness Area. Idaho used the CALPUFF model results and applied scenarios with both the pulp dryers operating and not operating. See Table 10-11 of the SIP Submittal which provides the visibility impact of three scenarios: baseline with pulp dryers operating, baseline with pulp dryers shutdown, and BART implementation for NO<sub>x</sub> and SO<sub>2</sub> on the Riley Boiler.

Shutdown of the pulp dryers resulted in a reduction in days over 0.5 dv over a three year period from 127 days to 97 days. Implementation of NO<sub>x</sub> and SO<sub>2</sub>

BART reduced the number of days over 0.5 dv to 3 days. Implementation of BART results in a significantly greater improvement in visibility than just the shutdown of the pulp dryers.

*Comment 2.i:* IDEQ failed to consider the additional emission reductions from TASC0's Nyssa, Oregon, shutdown in 2005.

*Response:* TASC0 Nyssa, Oregon facility is not located in Idaho and not subject to Idaho's jurisdiction. Oregon has recognized the emission reductions associated with the shutdown of the TASC0 Nyssa facility in their Regional Haze SIP. See Oregon Regional Haze SIP, Chapter 10.

*Comment 2.j:* The comment states that the costs of compliance are significant and could adversely affect operations at the Nampa facility. Installation of BART will require \$15 million capital and annual operating expenses of over \$644,000.

*Response:* In the TASC0 BART analysis in the SIP submittal, Appendix F, the capital cost and annual costs for SO<sub>2</sub> and NO<sub>x</sub> level BART control were presented as follows from Table 31 and Table 35 of Appendix F and TASC0 BART Determination, Appendix D:

	Capital cost	Annual costs	Cost effectiveness
Dry FGD for SO <sub>2</sub> .....	\$12,970,000	\$2,521,000	\$2,163/ton
LNB/OFA for NO <sub>x</sub> .....	4,875,000	860,000	1270/ton
<b>Total BART Costs .....</b>	<b>17,845,000</b>	<b>3,381,000</b>	.....

Idaho determined the cost effectiveness of all technically feasible BART control options for SO<sub>2</sub> and NO<sub>x</sub> based on these capital investment and annual operating expenses. See Table 31 and Table 35 of Appendix F, TASC0 BART determination, of the SIP submittal. The final BART determination of Low NO<sub>x</sub> Burners with Over Fire Air (LNB/OFA) for NO<sub>x</sub> at a cost of \$1270/ton is reasonable when compared to other BART determinations across the country. The final BART determination of Dry Flue Gas Desulfurization (Dry FGD) for SO<sub>2</sub> with a cost of \$2163/ton is also reasonable.

The cost estimates in the SIP submittal differ (are higher) from the cost estimates provided in TASC0's comment letter. As explained in more detail below, while not required to do so, at IDEQ's request, EPA conducted an evaluation of whether TASC0 could afford the BART controls and determined that it could afford the controls and remain a viable entity. EPA's evaluation of whether TASC0

could afford the BART level control technology was based on the higher cost numbers in the SIP submittal. The lower costs in the TASC0 comment letter would suggest TASC0 could more readily afford the BART controls.

*Comment 2.k:* The degree of visibility improvement anticipated from BART is not measurable and does not justify the significant cost.

*Response:* We disagree that the visibility improvement anticipated from the use of BART at TASC0 is not measurable. As explained in response to Comment 2.g. above, Idaho used the recommended dispersion model, CALPUFF, with a modeling protocol that was developed by EPA, Region 10 and the States of Idaho, Oregon and Washington to determine the improvements in visibility from the installation and operation of BART control technology. That model demonstrates significant improvement in visibility in the Eagle Cap Wilderness Area and other Class I areas as a result of BART controls on the TASC0 Nampa

facility. Implementation of Dry FGD for SO<sub>2</sub> control will reduce the number of days with impairment greater than 0.5 dv in the Eagle Cap Wilderness Area from 97 to 51 days over a 3 year period (with the pulp dryers shutdown). Implementation of LNB/OFA for NO<sub>x</sub> control will reduce the number of days with impairment in the Eagle Cap Wilderness Area from 97 to 56 days over a 3 year period (with the pulp dryers shutdown). See Table 32 and Table 37, Appendix F of the Idaho Regional Haze SIP submittal and 76 FR 1585. Combined SO<sub>2</sub> and NO<sub>x</sub> BART control will reduce the number of days over a 0.5 dv from 97 to 3 days over a 3 year period (with the pulp dryers shutdown). See Table 38 of Appendix F for the Idaho Regional Haze SIP submittal. As explained in response to Comment 2.j. above regarding costs of compliance, the cost associated with installation and operation of BART at TASC0 Nampa, are not excessive and are comparable to the costs for other BART determinations across the country.

*Comment 3:* TASCOCO comments that IDEQ's approach to the BART determination for the Monsanto/P4 facility confirms the flexibility, discretion and streamlining that states are afforded in the BART process. The comment points out that the BART-subject kiln at the Monsanto/P4 facility is a significantly larger emission source than TASCOCO's Riley Boiler and has greater visibility impacts, but that IDEQ determined and EPA proposed to approve a BART determination for Monsanto/P4 that is less rigorous and costly than TASCOCO's. The comment further states that the BART determination that EPA proposed to approve for Monsanto/P4 allows a significant increase in potentially visibility impairing NO<sub>x</sub> emissions while EPA also proposed to approve a BART determination for TASCOCO that reduces emissions overall. The comment also contrasted the visibility improvement days predicted to result from the BART controls at TASCOCO Nampa facility versus the less number of visibility improvement days predicted to result from the required emission controls at Monsanto/P4 facility.

*Response:* EPA does not view TASCOCO's comment as supporting more stringent regulation of Monsanto/P4, but rather as presenting an argument that it should not be required to install BART controls that achieve tighter limits or greater improvements in visibility than other BART facilities in Idaho. EPA disagrees that IDEQ should impose BART controls at TASCOCO based on the results of its BART determination at another facility. A BART determination is made on a case-by-case basis, which by definition is based on facility-specific considerations.

EPA disagrees that IDEQ provided flexibility to Monsanto/P4 in the BART determination for the Rotary Kiln that was not provided TASCOCO. Due to the nature of the process at Monsanto/P4 (*i.e.* limited temperature range) and existing control technology for SO<sub>2</sub> and PM, no technically feasible control technology is available. Thus, BART for the Rotary Kiln is 'no additional control' and no emission limitations were established in the Idaho issued operating permit. In contrast, the TASCOCO Riley Boiler is a traditional coal-fired industrial boiler and technically feasible control options exist and are cost-effective.

EPA does not understand TASCOCO's comment that there would be the potential for a 2198 t/yr increase in NO<sub>x</sub> emissions from the Rotary Kiln based on the Monsanto/P4 BART determination. Since no additional control was

determined to be BART, there is no potential to increase emissions since the existing emission limitations and design parameters at the facility will limit the production of sintered phosphate ore and limit NO<sub>x</sub> emissions to these production levels.

*4. Comment:* TASCOCO stated that EPA's review of the costs of compliance and affordability of BART controls for the Riley Boiler was flawed:

*Comment 4.a.* TASCOCO comments that "EPA concluded that since the company could fund the significant expense, the selected BART controls were affordable and indicates that because the EPA focused on the company's "financial status and health," as well as whether the company could afford the controls and "remain viable", EPA applied an inappropriate and arbitrary standard of review under EPA's BART regulations and guidance. TASCOCO also states that "EPA observed in its analysis, for example, that TASCOCO failed to be proactive and set aside funding for BART. EPA commented that TASCOCO should have been aware that "a decision not to proactively address BART costs prior to the issuance of a permit could make funding the BART related costs difficult." TASCOCO also commented that EPA placed 'substantial weight' on the statements of TASCOCO's auditors that EPA's interpretation misconstrued the Auditor's report and "EPA conveniently relied upon the auditor's silence regarding the BART issues to support their flawed conclusion."

*Response:* The EPA BART guidelines, specifically allow, but do not require, affordability to be considered when determining BART. 70 FR 3917. The BART Guidelines indicate that there may be unusual circumstances that justify consideration of the plant and economic effects of requiring the use of a given control technology. The Guidelines suggest that economic effects include the effect on product prices, market shares and profitability of the source and that where there are special circumstances that are determined to affect plant operations, conditions of the plant and economic impacts of requiring controls may be considered. Id. The guidelines do not require that a specific method be used to conduct an affordability analysis nor do they specify a specific standard of review.

Thus, when making a BART determination the State may take into account the economic effects of requiring a particular control technology and may consider any resulting economic effects that are determined to have a severe impact on the plant's or company's operations. In this case, TASCOCO indicated to IDEQ that

affordability was a critical element in the BART determination and IDEQ subsequently requested EPA to conduct an affordability analysis.

After considering a variety of factors, EPA determined that TASCOCO could afford to fund the BART controls and explained its reasoning in a separate report that was provided to IDEQ. See Executive Summary (Exec. Sum.) of the Affordability Analysis of the Amalgamated Sugar Company LLC's Affordability Claim with Respect to the Best Available Retrofit Technology (BART) for the Riley Boiler at the NAMPA, Idaho facility, February 12, 2010. (Affordability Analysis) (The Executive Summary, included in Docket for this rulemaking, is available to the public but the Affordability Analysis itself contains information claimed as Confidential Business Information and is not available for public review.)<sup>3</sup>

Regarding TASCOCO's concerns about EPA's statement that TASCOCO should have been aware that "a decision not to proactively address BART costs prior to the issuance of a permit could make funding the BART related costs difficult", TASCOCO appears to have taken EPA's statements out of context. The discussion in EPA's Affordability Analysis about how TASCOCO appears to have handled its finances as it relates to any prospective funding of BART was historical in context. EPA is aware that TASCOCO had no financial or legal obligation to fund the BART costs prior to issuance of a permit and/or SIP by IDEQ, or a FIP by EPA, as indicated in the Executive Summary (See Affordability Analysis, p.2). Since this issue was historical in context, it provided background for, but did not form a basis to determining whether TASCOCO could afford paying for BART.

TASCOCO is correct in stating "EPA placed 'substantial weight' on the statements of TASCOCO's auditors." (Affordability Analysis, pp. 37–38). As explained in the Affordability Analysis, EPA recognized that the auditor should have considerable knowledge of TASCOCO's operations; TASCOCO, Snake River Sugar Company (SRSC) and grower's relationships; external conditions that could impact TASCOCO; BART cost estimates and TASCOCO's ability to continue as a going concern, and felt that the auditor would be well informed about the companies' financial condition. Affordability Analysis pp. 32–28. However, as is evident throughout the Affordability Analysis,

<sup>3</sup> The BART Guidelines specifically recognize that an affordability review must preserve the confidential nature of sensitive business information. 70 FR 39171.

the auditor's statements are but one piece of the information EPA considered in its affordability analysis. See Affordability Analysis Exec. Sum. P.2; and Part II.

Furthermore, a reading of Part 2, Section F in the Affordability Analysis in its entirety demonstrates that EPA did not rely on the auditor's silence regarding the specific BART costs to support the conclusion that TASCOCO could afford the BART controls, but rather identified specific audit related issues that in the first instance could be relevant in determining whether TASCOCO could, or could not afford the BART related costs. These audit related issues included: the entity continuing as a going concern; subsequent events as they relate to an audit; and the type of opinion (and its contents) expressed by the auditor. (Affordability Analysis, pp. 35–37) The Affordability Analysis demonstrates that EPA was cognizant of the possible implications regarding whether certain issues were, or were not explicitly addressed by the auditor in the company's audited financial statements. As the Affordability Analysis explains, "In addition, even where the audited financial statements and auditor's report do not provide explicit confirmation of the entity's claims, understanding why these issues are absent from the auditor's report and financial statements can also provide important insight with respect to analyzing the entity's claims." (Affordability Analysis p.32)

*Comment 4.b.* TASCOCO comments that EPA ignored information from TASCOCO. More specifically, TASCOCO states "The effects that this expenditure would have on 'profitability', 'market share', 'plant operations' and position relative to 'competing plants' are clearly fundamental to the evaluation. EPA ignored information from TASCOCO on the unusual circumstances within the sugar beet industry and the effects on the Nampa plant operations and costs, including its ability to compete in the U.S. sugar market." TASCOCO further states that to the extent TASCOCO's circumstances were considered, EPA's analysis considered the overall economics of TASCOCO, the company and its related entities, not the conditions at the Nampa facility or the economic effects of requiring controls there. The direct effects on TASCOCO's Nampa plant operations were underestimated or ignored by EPA. TASCOCO also comments that EPA dismissed the localized effects on the specific plant operations at Nampa and instead focused on an assessment of the TASCOCO business structure.

In commenter's view, EPA's notion of spreading cost throughout the Idaho sugar beet farmers is flawed and defies the realities of the sugar beet industry and TASCOCO's operations and underestimates the extent of the adverse impacts [of the BART determination]. TASCOCO states that reduced payments to growers in order to fund BART controls at Nampa will result in decreased acreage planted in sugar beets throughout Idaho. EPA unrealistically assumed that growers will continue to plant sugar beets, and ignored the declining trend in acreage planted in sugar beets."

Referring to EPA's affordability analysis, TASCOCO commented that EPA failed to consider whether competing plants in the same industry are required to install BART controls and asserts that they know of no other plant in the sugar industry in the US that is required to install BART control and ignores information from TASCOCO about the uniqueness of imposing BART on a small industrial boiler relative to competing plants in the sugar beet industry.

Finally, TASCOCO described the closure of TASCOCO's Nyssa factory "as evidence of the vulnerability and actual impact of plant operations from diminished sugar beet acreage. TASCOCO also highlighted the 31% decline in sugar beet harvest between 2007 and 2008 and EPA downplayed these plant specific impacts, and emphasized other information to conclude that TASCOCO, the company, is economically stable."

*Response:* In determining whether TASCOCO could afford the BART level controls, EPA considered a variety of information, including but not limited to information provided by TASCOCO. As explained in the Executive Summary, the analysis considered a number of factors including the estimated capital and operation and maintenance costs, the estimated BART compliance date, TASCOCO's ability to continue as a viable company, the business/financial relationship between TASCOCO and the Snake River Sugar Company (SRSC) and other factors. The analysis specifically included information provided by TASCOCO. (Exec. Sum. p. 2)

EPA encouraged TASCOCO to provide any additional substantive information to substantiate its claims regarding affordability. However, TASCOCO never provided specific documentation or information that substantively demonstrated how the BART costs would adversely impact the Nampa facility specifically or that substantively supported their affordability claim. For example, the company failed to provide information regarding the minimum

annual input of sugar beets needed for each facility or how BART related costs would specifically impact the number of growers. The Analysis explained that "based on the available information, it appeared that TASCOCO's conclusion that less growers necessarily equals less revenue is not supported." Affordability Analysis p. 25–26. The comments also failed to provide substantiated information regarding these items. Additionally, as mentioned in the Affordability Analysis, when making its initial affordability claim TASCOCO stated that "[a] very large consideration of this [BART determination] analysis is the ongoing viability of the Nampa facility and TASCOCO as a whole." (Affordability Analysis p. 15) Thus, TASCOCO itself recognized the economic status of the company as a whole was relevant.

TASCOCO's comment also expressed concern with EPA's observation that TASCOCO could spread the cost of controls among sugar beet growers throughout Idaho. The comment stated that EPA unrealistically assumed that growers will continue to plant sugar beets, and ignored the declining trend in acreage planted in sugar beets. However the comment fails to substantiate its claims that reduced payments to growers would necessarily result in decreased acreage planted in sugar beets in Idaho or to refute EPA's assumptions. The Affordability Analysis indicated EPA's perspective on this issue and explained that a sugar beet grower faces a number of choices in deciding whether or not to grow sugar beets. EPA considered how charging the capital cost for BART controls to the growers could affect their decision to continue growing sugar beets. But, as explained, EPA cannot make any determination as to whether any capital cost charged to a grower will determine whether that grower decides not to grow sugar beets (e.g., move from sugar beets to an alternative crop). EPA also refers to the Patterson study (2009) which compared sugar beets, at different price and yield levels, to alternative crops. Affordability Analysis, p. 27. Furthermore, the analysis also recognized that an additional factor a grower must take into consideration in deciding not to grow sugar beets is that "member grower who decides not to grow, i.e., to withdraw from the Cooperative (SRSC), would face a significant monetary charge from SRSC." Id. Another implication is that the grower has crop alternatives though these other crops may not provide a long-term solution. Id. As part of its review EPA explained that "An analysis of the economics of growing sugar beets in southern Idaho, released in January

2009, provides important insight into recent sugar beet prices paid to growers:

Sugar beet prices in recent years have been relatively stagnant, while input costs have increased. Sugar beet prices over the past ten years averaged approximately \$39.60 per ton, ranging from a high of just over \$44 to a low of just over \$36 according to data from the USDA. A similar situation also existed for most other commodities grown in southern Idaho, with no crop having a consistent economic advantage. But when grain and forage prices spiked to unprecedented levels in 2007, the equilibrium was eliminated and growers saw an opportunity to capitalize on the high returns that these crops offered. Crops that were often viewed as money losing rotation crops by potato and sugar beet growers had become the most profitable crop alternatives available to growers. But high grain prices were short-lived with grain prices declining rapidly after the 2008 harvest. Affordability Analysis p. 22–23.

Regarding TASC0's comment about the closure of the TASC0 Nyssa, Oregon plant, in conducting the Affordability Analysis EPA considered and weighed all information it had available in coming to its conclusion. If it appears that EPA downplayed certain impacts, it is because there was additional substantive information as summarized above and described throughout its analysis that provided the basis for EPA's affordability conclusion, and TASC0 did not provide substantive information to support its assertions. For example, with respect to TASC0's comment regarding the closing of the Nyssa factory: TASC0 stated that "the economic benefit to the grower-owned Cooperative of running three factories compared to four is significant and cannot be ignored." (Affordability Analysis p. 27.) TASC0 did not provide plant specific substantive information that would enable EPA to validate TASC0's stated concerns about BART impacts to the Nampa factory and the other two factories, and to the growers, e.g., plant capacities, plant operating margins, etc.

*Comment 4.c.:* TASC0 commented that the estimated cost of compliance will exceed \$75,000 per grower that supplies sugar beets to the Nampa factory, based upon an estimated capital cost of \$15,690,000. TASC0 stated that this amount exceeds the estimated annual profit per grower which is conservatively \$65,400.

*Response:* There are several parts to TASC0's comment. First, TASC0 indicates that the \$75,000 BART related cost per grower is charged to the Nampa growers as a one-time charge. However, when as part of its analysis EPA calculated BART capital costs to the growers (Nampa only growers, and to all growers), EPA amortized these costs

over two different time periods based on information provided by TASC0. See Affordability Analysis p. 26; Table 6, p. 29; p. 36. Second, TASC0's most recent capital cost estimate (\$15,690,000) is \$2.11 million less than the capital cost EPA used for the Affordability Analysis (\$17.8 million) which was based on TASC0's BART Analysis. See Regional Haze SIP submission, Appendix F, Table 31 and Table 35. Furthermore, the number of growers for the Nampa factory and in total—(see TASC0 comments, footnote 8) are greater than those used in the Affordability Analysis. See TASC0 comment footnote 8 compared to Affordability Analysis Table 6, p. 29. Mathematically this would indicate that any new calculations made using this latest information would mean lower BART related charges passed on to each grower. Third, as explained in EPA's analysis, allocating the BART capital costs only to the Nampa factory growers and not to all the growers is a business decision made by TASC0. Affordability Analysis p. 26. Using the TASC0 figures provided in the comment, calculated for the two amortization periods of six years or nine years, the amortized BART capital cost to all growers would amount to less than \$0.45 per ton of sugar beets or less than \$0.30 per ton of sugar beets, respectively, and if the cost was the allocated only to the Nampa growers it would be approximately \$1.75 and \$1.17 respectively—amounts less than the figures indicated in EPA's original analysis. See Affordability Analysis Table 6.

*Comment 4.d.:* EPA failed to consider whether competing plants in the same industry are required to install BART controls and asserts that they know of no other plant in the sugar industry that is required to install BART controls and ignores information from TASC0 about the uniqueness of imposing BART on a small industrial boiler relative to competing plants in the sugar beet industry.

*Response:* The BART Guidelines provide that an affordability analysis may consider whether other competing plants in the same industry have been required to install BART controls. 70 FR 39171. However, in this instance EPA's analysis determined that regardless of the number of other facilities in this industry subject to BART, the cost for TASC0 to implement the controls determined to be BART are affordable and would not significantly impact its continued economic viability. Additionally, as explained above, TASC0 did not provide or substantiate its claims to demonstrate that it would operate at a competitive disadvantage

and thus, EPA was not able to determine the relative competitiveness between TASC0 and other sugar beet processors.

*Comment 5:* TASC0's comment letter to EPA included statements regarding the additional information it has outlined for IDEQ in the negotiations with the State to resolve the Tier II operating permit challenge.

*Response:* This comment relates to the pending negotiations between TASC0 and the State. At this point in time EPA does not know how IDEQ will evaluate or use the additional information provided to it. If the State revises the TASC0 operating permit and submits it to EPA, at that time EPA will evaluate IDEQ's decision and the information upon which it is based.

#### *Wyoming Outdoor Council Comments*

*Comment 1:* The commenter requests that a BART determination be conducted and BART emission limitations be imposed for two additional sources in Idaho: Nu West/Agrium facility (Nu West) in Soda Springs and the J.R. Simplot Don Plant (J.R. Simplot) in Pocatello. The commenter asserts that given that the Nu West and J.R. Simplot plants are directly upwind and in close proximity to Wyoming Class I areas, it seems clear they should merit special attention through a requirement for the installation of BART. The data developed by the State of Wyoming for its draft Regional Haze SIP also make it clear that Idaho sources of air pollution are one of the most significant contributors to visibility impairing haze in Wyoming Class I areas. The commenter also suggests the 0.5 dv impact threshold used to determine whether a BART eligible source is subject to BART, was determined for only Class I areas located in Idaho. The comment then suggests concern that all seven Wyoming Class I areas, and especially the Bridger and Fitzpatrick Wilderness Areas, are directly downwind of these plants (Nu West and J.R. Simplot), and in quite close proximity to them. Thus, absent empirical data to the contrary, there should be no finding that the J.R. Simplot and Nu West plants are not significantly impacting Wyoming Class I areas.

*Response:* In determining which BART eligible sources would be subject to BART, Idaho considered all Class I areas within a 300 km radius of the source, including Class I areas outside the State boundary. Air quality dispersion modeling is the preferred technique to determine a single source's impact on any Class I area. See BART Guidelines, Section I.A. As discussed

above, the modeling completed by Idaho demonstrates that BART-eligible sources located in Idaho, other than those identified in the SIP submittal as exceeding the BART contribution threshold, do not significantly impact Class I areas within a 300 km radius of the source, including Class I areas in Wyoming and Montana. Furthermore, IDEQ consulted with Wyoming (Wyoming Department of Environmental Quality) and other neighboring states regarding its emission reduction contribution. This consultation included the review of major contributing sources of air pollution, interstate transport of emissions, major emission sources believed to be contributing to visibility impairment, and whether any mitigation measures were needed. See Chapter 13.2.1 of the Idaho Regional Haze SIP submittal.

As explained in the Idaho Regional Haze SIP submission, Idaho considered whether these two BART eligible sources were subject-to-BART. See Regional Haze SIP submittal Appendix F, Table 3 for a discussion of the Nu West modeling to determine whether it met the threshold for being subject to BART. The modeling shows the impact of Nu West in Class I areas within a 300 km radius, including the Bridger and Fitzpatrick Wilderness Areas. The SIP submittal explains that over a three year period (2003–2005) there were no days where Nu West had an impact of greater than 0.5 dv, the Idaho threshold for sources being subject to BART. The greatest impact occurred in the Bridger Wilderness Area with a value of 0.051 dv, or approximately  $\frac{1}{10}$  the level of the ‘BART subject’ threshold.

A discussion of the J.R. Simplot modeling to determine whether it met the threshold for being subject to BART can be found in the SIP submittal, Appendix F, Table 11 (page 198 of Appendix F of the SIP submittal). The modeling shows the impact of J.R. Simplot in Class I areas within a 300 km radius of the plant, including the Fitzpatrick Wilderness Area. Over a three year period (2003–2005) there were no days where J.R. Simplot had an impact of greater than 0.5 dv in the Fitzpatrick Wilderness Area.

The modeling showed that neither facility met the 0.5 dv contribution threshold. Therefore, IDEQ reasonably determined that neither Nu West nor J.R. Simplot were subject to BART. As explained in the proposed rulemaking EPA agreed with the State’s determination in this regard.

*Comment 2:* The commenter believes that Region 10 should make good on its finding that the 0.5 dv threshold is not

adequate to avoid the requirement for BART to be installed because there is likely no objective basis to claim that the J.R. Simplot and Nu West plants have “relatively limited impact on visibility” when it comes to Wyoming Class areas. If the greatest improvements due to BART being required on the Monsanto/P4 Plant are seen at the Teton Wilderness Area, it seems very likely that even greater benefits would be seen at the Bridger and Fitzpatrick Wilderness Areas if BART were required for the J.R. Simplot and Nu West plants. Consequently BART should be required for these sources of emissions.

*Response:* As explained above, the methods and process IDEQ used to determine that 0.5dv is an appropriate threshold to use to determine if an individual source is subject to BART are consistent with the Regional Haze Rule. For the reasons explained in the **Federal Register** notice describing the rationale for the proposed action, while Idaho failed to provide an adequate rationale for selecting the 0.5 dv threshold for determining BART eligible sources subject to BART, EPA determined that even with a more robust rationale the 0.5 dv threshold was acceptable. 76 FR 1585. Additionally, in reviewing the modeling results for Nu West and J.R. Simplot for determining whether they are subject to BART, it is apparent that Idaho would had to have established a threshold below 0.1 dv in order to include these additional sources subject to BART. A 1.0 dv change in visibility is usually a small but perceptible scenic change. (See Interagency Monitoring of Protected Visual Environments (IMPROVE) newsletter, Vol. 2 No. 1, Winter 1993). In EPA’s view, generally a 0.1 dv threshold is unreasonable because the human eye could not perceive this change in visibility impairment and yet would require significant expenditure of resources to implement BART.

The Wyoming Regional Haze SIP submittal that was submitted to EPA Region 8 does not identify any sources in Idaho that significantly impact Class I areas in Wyoming. In developing the Reasonable Progress Goals for Class I areas in Wyoming, the Wyoming SIP relies on the consultation process in the WRAP for establishing emission reductions from sources located in Idaho. See Chapter 11.1 page 184 of the Wyoming SIP submittal.

### III. Final Action

EPA is approving the BART measures in the Idaho Regional Haze plan as meeting the requirements of section 110(a)(2)(D)(i)(II) of the CAA with

respect to the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS. In addition, EPA is approving portions of the Idaho Regional Haze SIP, submitted on October 25, 2010, as meeting the requirements set forth in section 169A of the Act and in 40 CFR 51.308(e) regarding BART. EPA is also approving the Idaho submittal as meeting the requirements of 51.308(d)(2) and (4)(v) regarding the calculation of baseline and natural conditions for Craters of the Moon National Monument, Sawtooth Wilderness Area, and Selway-Bitterroot Wilderness Area, and the statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal Area.

### IV. Scope of Action

Idaho has not demonstrated authority to implement and enforce IDAPA chapter 58 within “Indian Country” as defined in 18 U.S.C. 1151.<sup>4</sup> Therefore, EPA proposes that this SIP approval not extend to “Indian Country” in Idaho. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA’s previous approval of Idaho’s prevention of significant deterioration (PSD) program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). It is also consistent with EPA’s approval of Idaho’s title V air operating permits program. See 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

<sup>4</sup> “Indian country” is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation. (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d’Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

**V. Statutory and Executive Orders Review**

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

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the rule neither imposes substantial direct compliance costs on Tribal governments, nor preempts Tribal law. Therefore, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this rule. Consistent with EPA policy, EPA nonetheless provided a consultation opportunity to Tribes in Idaho, Oregon and Washington in letters dated January 14, 2011. EPA received one request for consultation, and we have followed-up with that Tribe. This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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

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

is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *August 22, 2011*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: June 13, 2011.

**Dennis J. McLerran**,  
*Regional Administrator, Region 10.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart N—Idaho**

■ 2. Section 52.670 is amended as follows:

- a. In paragraph (d) by adding two entries to the end of the table.
- b. In paragraph (e) by adding an entry to the end of the table.

**§ 52.670 Identification of plan.**

\* \* \* \* \*  
(d) \* \* \*

**EPA-APPROVED IDAHO SOURCE-SPECIFIC REQUIREMENTS<sup>1</sup>**

Name of source	Permit No.	State effective date	EPA approval date	Explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
The Amalgamated Sugar Company LLC— Nampa Factory, Nampa, Idaho.	T2–2009.0105	09/07/10 (date issued).	06/22/11 [Insert page number where the document begins].	The following conditions: 1.2 (including table), 3 (heading only), 3.1, 3.2, 3.3, 3.4 (including table), 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.15, 3.16, and 3.17. (Regional Haze SIP revision).

EPA-APPROVED IDAHO SOURCE-SPECIFIC REQUIREMENTS<sup>1</sup>—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanation
P4 Production, L.L.C. , Soda Springs, Idaho	T2-2009.0109	11/17/2009 (date issued).	06/22/11 [Insert page number where the document begins].	The following conditions: 1.2 (including Table 1.1), 2.3, 2.4, 2.5, 2.6, 2.7, and 2.8. (Regional Haze SIP Revision).

<sup>1</sup>EPA does not have the authority to remove these source-specific requirements in the absence of a demonstration that their removal would not interfere with attainment or maintenance of the NAAQS, violate any prevention of significant deterioration increment or result in visibility impairment. Idaho Department of Environmental Quality may request removal by submitting such a demonstration to EPA as a SIP revision.

\* \* \* \* \* (e) \* \* \*

## EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
Regional Haze SIP Revision.	State-wide .....	10/25/10	06/22/11 [Insert page number where the document begins].	The portion of the Regional Haze SIP revision relating to BART, the calculation of baseline and natural conditions, and the statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal Area.

■ 3. Section 52.672 is amended by adding paragraph (g) to read as follows:

**§ 52.672 Approval of plans.**

\* \* \* \* \*

(g) *Visibility protection.* (1) EPA approves portions of a Regional Haze SIP revision submitted by the Idaho Department of Environmental Quality on October 25, 2010, as meeting the requirements of Clean Air Act section 169A and 40 CFR 51.308(e) regarding Best Available Retrofit Technology. The SIP revision also meets the requirements of 40 CFR 51.308(d)(2) and (4)(v) regarding the calculation of baseline and natural conditions for Craters of the Moon National Monument, Sawtooth Wilderness Area, and Selway-Bitterroot Wilderness Area and the statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal Area. The SIP revision also meets the requirements of Clean Air Act section 110(a)(2)(D)(i)(II) as it applies to visibility for the 1997 8-hour ozone NAAQS and 1997 PM<sub>2.5</sub> NAAQS.

(2) [Reserved]

[FR Doc. 2011-15452 Filed 6-21-11; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 98**

[EPA-HQ-OAR-2009-0927; FRL-9322-1]

**RIN A2060**

**Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs: Extension of Best Available Monitoring Provisions for Electronics Manufacturing**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; Grant of reconsideration.

**SUMMARY:** This action gives notice that EPA has initiated the reconsideration process in response to a request for reconsideration of provisions for the use of best available monitoring methods in Subpart I: Electronics Manufacturing of the Mandatory Greenhouse Gas Reporting Rule. Consequently, this action extends three of the deadlines in Subpart I related to using the best available monitoring methods provisions from June 30, 2011 to September 30, 2011.

**DATES:** This final rule is effective on June 30, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC-6207), Environmental Protection

Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number (202) 343-9263; fax (202) 343-2342; e-mail address:

[GHGReportingRule@epa.gov](mailto:GHGReportingRule@epa.gov). For technical information and implementation materials, please go to the Web site <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>. To submit a question, select Rule Help Center, then select Contact Us.

**SUPPLEMENTARY INFORMATION:**

*Acronyms and Abbreviations.* The following acronyms and abbreviations are used in this document.

BAMM Best Available Monitoring Methods  
 CAA Clean Air Act  
 CBI confidential business information  
 CFR Code of Federal Regulations  
 EPA U.S. Environmental Protection Agency  
 FR Federal Register  
 GHG greenhouse gas  
 mm millimeters  
 NTTAA National Technology Transfer and Advancement Act of 1995  
 PRA Paperwork Reduction Act  
 QA/QC quality assurance/quality control  
 RFA Regulatory Flexibility Act  
 SIA Semiconductor Industry Association  
 SBREFA Small Business Regulatory Enforcement Fairness Act  
 UMRA Unfunded Mandates Reform Act of 1995  
 U.S. United States  
 WWW Worldwide Web

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I. Background Information