ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2025–0174; FRL–12731–01–R3]

Air Plan Approval; West Virginia; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and withdrawal of proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the regional haze State implementation plan (SIP) revision submitted by West Virginia (West Virginia, WV, or the State) on August 12, 2022, to address applicable requirements under the Clean Air Act (CAA) and the EPA's Regional Haze Rule (RHR) for the regional haze program's second implementation period. The EPA is proposing this action pursuant to the CAA. The EPA is also withdrawing its previous proposed rule to disapprove West Virginia's regional haze SIP revision as published in the **Federal Register** on January 21, 2025.

DATES: *Comments:* Written comments must be received on or before May 19, 2025.

As of April 18, 2025, the proposed rule published on January 21, 2025, at 90 FR 6932, is withdrawn.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2025–0174, at *www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Commenters who would like the EPA to consider any comments relevant to this proposed rulemaking that they provided on the January 21, 2025 rulemaking proposing to disapprove West Virginia's regional haze SIP submission must resubmit those comments to the EPA during this proposal's comment period. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Gordon, U.S. Environmental Protection Agency, Region 3, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103–2852, at (215) 814–2039, or by email at *gordon.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is the EPA proposing?

The EPA is proposing to approve West Virginia's regional haze SIP revision for the second implementation period, also referred to as the second planning period. As required by section 169A of the CAA, the RHR calls for State and Federal agencies to work together to improve visibility in 156 national parks and wilderness areas, known as mandatory Class I Federal areas.[1] The rule requires the States, in coordination with the EPA, the National Park Service, the Fish and Wildlife Service, the Forest Service, and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment in mandatory Class I Federal areas. Based on our change in policy discussed in section V of this document, the EPA proposes that West Virginia's regional haze SIP meets the statutory and regulatory requirements for the regional haze second planning period.

II. Background and Requirements for Regional Haze Plans

A detailed history and background of the regional haze program is provided in multiple prior EPA proposal actions.[2] For additional background on the 2017 RHR revisions, please refer to section III of this document. Overview of Visibility Protection Statutory Authority, Regulation, and Implementation of ''Protection of Visibility: Amendments to Requirements for State Plans'' of the 2017 RHR.[3] The following is an abbreviated history and background of the regional haze program and 2017 Regional Haze Rule as it applies to the current action.

A. Regional Haze

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.[4] CAA section 169A. The CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' CAA section 169A(a)(1).

In CAA section 169A(a)(1), Congress established the national goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I Federal areas that results from manmade (anthropogenic) air pollution. The core component of a regional haze SIP submission for the second planning period is a strategy that addresses regional haze in each Class I area within the state's borders and each Class I area outside the state that may be affected by emissions originating from within the state, CAA section 169A(b)(2)(B), 40 CFR 51.308(f)(2), and makes ''reasonable progress'' toward the national goal based on consideration of the four statutory factors in CAA section 169A(g)(1)—the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources.[5]

Regional Haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities

[1] *See* 40 CFR part 81, subpart D.

[2] *See, e.g.,* 90 FR 13516 (March 24, 2025).

[3] *See* 82 FR 3078 (January 10, 2017), located at *www.federalregister.gov/documents/2017/01/10/2017-00268/protection-of-visibility-amendments-to-requirements-for-State-plans#h-16.*

[4] Areas statutorily designated as mandatory Class I Federal Areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA 162(a). There are 156 mandatory Class I Areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

[5] CAA section 169A(g)(1); 40 CFR 51.308(f)(2)(i).

which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse PM (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* SO_2, NO_X, and, in some cases, VOC and NH_3). Fine particle precursors react in the atmosphere to form fine PM ($PM_{2.5}$), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.[6]

To address Regional Haze visibility impairment, the 1999 RHR established an iterative planning process that requires both states in which Class I Areas are located and states ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I Area to periodically submit SIP revisions to address such impairment. CAA section 169A(b)(2);[7] see also 40 CFR 51.308(b), (f) (establishing submission dates for iterative Regional Haze SIP revisions); 64 FR 35768 (July 1, 1999).

On January 10, 2017, the EPA promulgated revisions to the RHR (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f).

B. West Virginia's Regional Haze Plan for the Second Implementation Period

On August 12, 2022, the West Virginia Department of Environmental Protection (WV DEP) submitted a revision to the West Virginia SIP to address regional haze for the second planning period. WV DEP made this SIP submission to satisfy the requirements of the CAA's regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308.

On January 21, 2025 (90 FR 6932), the EPA published a notice of proposed rulemaking (NPRM) proposing disapproval of West Virginia's August 12, 2022, SIP submission as failing to satisfy the regional haze requirements for the second planning period contained in the CAA and 40 CFR 51.308. As we will discuss later in this document, the EPA is withdrawing the proposed disapproval of West Virginia's SIP submission. The rulemaking docket for the now withdrawn action is available under Docket ID Number EPA–R03–OAR–2024–0625 at *www.regulations.gov.*

III. Requirements for Regional Haze Plans for the Second Implementation Period

Under the CAA and the EPA's regulations, all 50 states, the District of Columbia, and the U.S. Virgin Islands are required to submit regional haze SIPs satisfying the applicable requirements for the second implementation period of the regional haze program by July 31, 2021. Each state's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA section 169A(b)(2)(B). To this end, 40 CFR 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, with the order of the requirements in paragraphs (f)(1) through (3) generally mirroring the order of the steps in the reasonable progress analysis[8] and paragraphs (f)(4) through (6) containing additional, related requirements.

Broadly speaking, a state first must identify the Class I areas within the state and determine the Class I areas outside the state in which visibility may be affected by emissions from the state. These are the Class I areas that must be addressed in the state's long-term strategy. See 40 CFR 51.308(f) introductory text, (f)(2). For each Class I area within its borders, a state must then calculate the baseline (five-year average period of 2000–2004), current, and natural visibility conditions (*i.e.,* visibility conditions without anthropogenic visibility impairment) for that area, as well as the visibility improvement made to date and the ''uniform rate of progress'' (URP).

The URP is the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is used as a tracking metric to help states assess the amount of progress they are making towards the national visibility goal over time in each Class I area. See 40 CFR 51.308(f)(1). Each state having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility impairing pollutants that the state has selected to assess for controls for the second implementation period. Additionally, as further explained below, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five ''additional factors'' [9] that states must consider in developing their long-term strategies. See 40 CFR 51.308(f)(2).

A state evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the state's long-term strategy. After a state has developed its long-term strategy, it then establishes Reasonable Progress Goals (RPGs) for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.,* in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the state in which the Class I area is located, but also for sources in other states that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2) and (3). There are additional requirements in the rule, including Federal Land Manager (FLM) consultation, that apply to all visibility protection SIPs and SIP revisions. *See e.g.,* 40 CFR 51.308(i).

In addition to satisfying the requirements at 40 CFR 51.308(f) related

[6] There are several ways to measure the amount of visibility impairment, *i.e.,* haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (bext.) is a metric used for expressing visibility and is measured in inverse megameters (Mm–1).

[7] The RHR expresses the statutory requirement for states to submit plans addressing out-of-state Class I Areas by providing that states must address visibility impairment ''in each mandatory Class I Federal Area located outside the State that may be affected by emissions from within the State.'' 40 CFR 51.308(d), (f).

[8] The EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 40 CFR 51.308(d), ''tracked the actual planning sequence.'' 82 FR 3091 (January 10, 2017).

[9] The five ''additional factors'' for consideration in 40 CFR 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

to reasonable progress, the regional haze SIP revisions for the second implementation period must address the requirements in § 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. See *e.g.,* 40 CFR 51.308(i).

A state must submit its regional haze SIP and subsequent SIP revisions to the EPA according to the requirements applicable to all SIP revisions under the CAA and the EPA's regulations. See CAA section 169A(b)(2); CAA section 110(a). Upon approval by the EPA, a SIP is enforceable by the Agency and the public under the CAA. If the EPA finds that a state fails to make a required SIP revision, or if the EPA finds that a state's SIP is incomplete or if it disapproves the SIP, the Agency must promulgate a Federal implementation plan (FIP) that satisfies the applicable requirements. CAA section 110(c)(1).

A. Identification of Class I Areas

The first step in developing a regional haze SIP is for a state to determine which Class I areas, in addition to those within its borders, ''may be affected'' by emissions from within the state. In the 1999 RHR, the EPA determined that all states contribute to visibility impairment in at least one Class I area, 64 FR 35720–22, and explained that the statute and regulations lay out an ''extremely low triggering threshold'' for determining ''whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State.'' *Id.* at 35721.

A state must determine which Class I areas must be addressed by its SIP by evaluating the total emissions of visibility impairing pollutants from all sources within the state The determination of which Class I areas may be affected by a state's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to ''document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects.''

B. Calculation of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and Uniform Rate of Progress

As part of assessing whether a SIP submission for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in § 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this section apply only to states having Class I areas within their borders; the required calculations must be made for each such Class I area. The EPA's 2018 Visibility Tracking Guidance provides recommendations to assist states in satisfying their obligations under § 51.308(f)(1); specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. See 82 FR 3103–05.

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20% clearest (the 20% of monitored days in a calendar year with the lowest values of the deciview index) and 20% most impaired days (the 20% of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment). 40 CFR 51.301. A state must calculate visibility conditions for both the 20% clearest and 20% most impaired days for the baseline period of 2000–2004 and the most recent five-year period for which visibility monitoring data are available (representing current visibility conditions). 40 CFR 51.308(f)(1)(i), (iii). States must also calculate natural visibility conditions for the clearest and most impaired days, by estimating the conditions that would exist on those two sets of days absent anthropogenic visibility impairment. 40 CFR 51.308(f)(1)(ii). Using all these data, states must then calculate, for each Class I area, the amount of progress made since the baseline period (2000–2004) and how much improvement is left to achieve to reach natural visibility conditions.

Using the data for the set of most impaired days only, states must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I area to determine the URP—the amount of visibility improvement, measured in deciviews, that would need to be achieved during each implementation period to achieve natural visibility conditions by the end of 2064. The URP is used in later steps of the reasonable progress analysis for informational purposes and to provide a non-enforceable benchmark against which to assess a Class I area's rate of visibility improvement. Additionally, in the 2017 RHR Revisions, the EPA provided states the option of proposing to adjust the endpoint of the URP to account for impacts of anthropogenic sources outside the United States and/or impacts of certain types of wildland prescribed fires. These adjustments, which must be approved by the EPA, are intended to avoid any perception that states should compensate for impacts from international anthropogenic sources and to give states the flexibility to determine that limiting the use of wildland-prescribed fire is not necessary for reasonable progress. 82 FR 3107 footnote 116.

The EPA's 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements, including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in § 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I area.

C. Long-Term Strategy for Regional Haze

The core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a state's borders and each Class I area outside the state that may be affected by emissions from the state. The long-term strategy ''must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to paragraphs (f)(2)(i) through (iv). 40 CFR 51.308(f)(2). The amount of progress that is ''reasonable progress'' is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a ''four-factor'' analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement to make reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction

measures that a source is already implementing. See 82 FR 3078, 3092–93. Such measures must be represented by ''enforceable emissions limitations, compliance schedules, and other measures'' (*i.e.,* any additional compliance tools) in a state's long-term strategy in its SIP. 40 CFR 51.308(f)(2).

Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires states to consider ''major and minor stationary sources or groups of sources, mobile sources, and area sources'' of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed.

While states have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a state's SIP submission include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a state has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.[10] This is accomplished by considering the four factors—''the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' CAA section 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.,* control options) for sources: ''use of the terms 'compliance' and 'subject to such requirements' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply to satisfy the CAA's reasonable progress mandate.'' 82 FR 3091 (January 10, 2017). Thus, for each source it has selected for four-factor analysis,[11] a state must consider a ''meaningful set'' of technically feasible control options for reducing emissions of visibility impairing pollutants. *Id.* at 3088.

The EPA has also explained that, in addition to the four statutory factors, states have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors. Ultimately, while states have discretion to reasonably weigh the factors and to determine what level of control is needed, 40 CFR 51.308(f)(2)(i) provides that a state ''must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.''

As explained above, 40 CFR 51.308(f)(2)(i) requires states to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to 40 CFR 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a state's long-term strategy and in its SIP. If the outcome of a four-factor analysis is that an emissions reduction measure is necessary to make reasonable progress towards remedying existing or preventing future anthropogenic visibility impairment, that measure must be included in the SIP.

The characterization of information on each of the factors is also subject to the documentation requirement in 40 CFR 51.308(f)(2)(iii). The reasonable progress analysis is a technically complex exercise, and also a flexible one, that provides states with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, 40 CFR 51.308(f)(2)(iii) plays an important function in requiring a state to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the state relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the state relied to determine the measures necessary to make reasonable progress. Additionally, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five ''additional factors'' [12] that states must consider in developing their long-term strategies: (1) emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.

Because the air pollution that causes regional haze crosses state boundaries, 40 CFR 51.308(f)(2)(ii) requires a state to consult with other states that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. If a state, pursuant to consultation, agrees that certain measures (*e.g.,* a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that states that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a state has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that state must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). Under all circumstances, a state must document in its SIP submission all substantive

[10] The CAA provides that, ''[i]n determining reasonable progress there shall be taken into consideration'' the four statutory factors. CAA section 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.,* from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second implementation period.

[11] ''Each source'' or ''particular source'' is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, states have ''the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.'' 82 FR 3088 (January 10, 2017).

[12] The five ''additional factors'' for consideration in 40 CFR51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

consultations with other contributing states. 40 CFR 51.308(f)(2)(ii)(C).

D. Reasonable Progress Goals

Reasonable progress goals ''measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-factor analysis.'' 82 FR 3091 (January 10, 2017). For the second implementation period, the RPGs are set for 2028. Reasonable progress goals are not enforceable targets, 40 CFR 51.308(f)(3)(iii). While states are not legally obligated to achieve the visibility conditions described in their RPGs, 40 CFR 51.308(f)(3)(i) requires that ''[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.''

RPGs may also serve as a metric for assessing the amount of progress a state is making towards the national visibility goal. To support this approach, the RHR requires states with Class I areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.,* if visibility conditions are improving more slowly than the rate described by the URP), each state that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its long-term strategy. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each state contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide ''a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.''

E. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires states to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this section apply either to states with Class I areas within their borders, states with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. Compliance with the monitoring strategy requirement may be met through a state's participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. 40 CFR 51.308(f)(6) introductory text, (f)(6)(i) and (iv).

All states' SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the state to regional haze visibility impairment in affected Class I areas, as well as a statewide inventory documenting such emissions. 40 CFR 51.308(f)(6)(ii), (iii), and (v). All states' SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for states to assess and report on visibility. 40 CFR 51.308(f)(6)(vi).

F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a state's regional haze SIP revision to address the requirements of paragraphs 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The regional haze progress report requirement is designed to inform the public and the EPA about a state's implementation of its existing long-term strategy and whether such implementation is in fact resulting in the expected visibility improvement. *See* 81 FR 26942, 26950 (May 4, 2016), 82 FR 3119 (January 10, 2017). To this end, every state's SIP revision for the second implementation period is required to assess changes in visibility conditions and describe the status of implementation of all measures included in the state's long-term strategy, including BART and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

G. Requirements for State and Federal Land Manager Coordination

CAA section 169A(d) requires that before a state holds a public hearing on a proposed regional haze SIP revision, it must consult with the appropriate FLM or FLMs; pursuant to that consultation, the state must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that states ''provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State's decisions on the long-term strategy.'' 40 CFR 51.308(i)(2). For the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the state addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. 40 CFR 51.308(i)(4).

IV. Withdrawal of Prior Proposed Disapproval

On January 21, 2025 (90 FR 6932), the EPA proposed to disapprove West Virginia's August 12, 2022, regional haze SIP submission in accordance with sections 110 and 169A of the CAA. The action received two submissions with comments opposing disapproval, and four submissions with comments in support of disapproval. In this document, we are withdrawing our January 21, 2025, proposed disapproval. We are now reproposing as an approval based on a change in policy, as discussed in section V of this document. Commenters who would like the EPA to consider any comments submitted on the January 21, 2025, rule proposal that are relevant to this proposed action must resubmit such comments during the comment period for this proposed action.

V. The EPA's Rationale for Proposing Approval

The EPA is now proposing to approve West Virginia's submission because we have determined that the West Virginia regional haze SIP submittal for the

second planning period meets the applicable statutory and regulatory requirements. After further evaluating the SIP submittal, as well as the comments received during the comment period on our initial proposal, the EPA agrees with West Virginia's determination that, for the second planning period, no additional measures are necessary to achieve reasonable progress towards natural visibility at Class I areas impacted by emissions from West Virginia sources. The SIP submittal included evaluations, including cost analyses, for six emissions sources and a four-factor analysis conducted by Pleasants Power Station. Based on these evaluations and analyses, the State determined that no additional measures were necessary for reasonable progress. In reaching this determination, West Virginia also considered historical emissions data, existing control technologies on major sources, and the large SO_2 reductions and visibility improvements that have already occurred in the second planning period in West Virginia and nearby Class I areas. Because the State assessed the potential for additional measures, considered the four statutory factors, and the projected 2028 visibility conditions for Class I areas influenced by emissions from West Virginia sources are all below the uniform rate of progress (URP), the EPA proposes that the SIP submittal meets the CAA and regulatory requirement to make reasonable progress towards the national visibility goal.

In this action, the EPA is announcing that it is the Agency's new policy that, where visibility conditions for a Class I area impacted by a State are below the URP and the State has considered the four statutory factors, the State will have presumptively demonstrated reasonable progress for the second planning period for that area. The EPA acknowledges that this proposed action reflects a change in policy from current guidance as to how the URP should be used in the evaluation of regional haze second planning period SIPs. However, the EPA believes that this policy aligns with the purpose of the statute and RHR, which is achieving ''reasonable'' progress, not maximal progress, toward Congress' natural visibility goal. In addition, certain commenters advocated for this policy during the public comment period on our initial proposal including Monongahela Power Company (Mon Power), the owner of two of the power plants selected for evaluation in the SIP submittal.[13] Consequently, this proposed action is a result of the EPA's evaluation of the West Virginia SIP submittal and the comments submitted during the public comment period on our initial proposal.

In developing the regulations required by CAA section 169A(b), the EPA established the concept of the uniform rate of progress, or URP, for each Class I area. The URP is determined by drawing a straight line from the measured 2000–2004 baseline conditions (in deciviews) for the 20% most impaired days at each Class I area to the estimated 20% most impaired days natural conditions (in deciviews) in 2064. From this calculation, a URP value can be calculated for each year between 2004 and 2064. The URP was developed as a metric to address the diverse concerns of Eastern and Western states and accounts for the varying levels of visibility impairment in Class I areas around the country while ensuring an equitable approach nationwide. For each Class I area, there is a regulatory requirement to compare the projected visibility impairment represented by the RPG at the end of each planning period to the URP (*e.g.,* in 2028 for the second planning period).[14] 40 CFR 51.308(f)(1)(vi). If the projected RPG is above the URP, then an additional ''robust demonstration'' requirement is triggered for each state that contributes to that Class I area. 40 CFR 51.308(f)(3)(ii).

In comments on EPA's initial NPRM (90 FR 6932, January 21, 2025), West Virginia explained the following: ''The DAQ [WV DEP's Division of Air Quality] asserts progress towards decreasing visibility impairment since the first implementation period has immensely exceeded the expectations of the EPA, States, Federal land managers, and the public, causing an unreasonable belief additional visibility improvement can continue indefinitely at such a rapid pace via arbitrary federally enforceable emissions limits.'' [15] The State also disagreed ''with the assertion that its four-factor analysis was insufficient because it did not reach the conclusion additional controls were required.'' [16] Similarly, MonPower commented that Class I areas ''are presently well below the URP glide paths, proving that already implemented past measures have been and continue to be successful.'' [17] In this proposed action, the EPA is proposing to approve the SIP submittal because the State evaluated potential additional measures, considered the four statutory factors, and the visibility conditions for affected Class I areas are below the URP, thus supporting the State's decision regarding reasonable progress for the second planning period.

The EPA has the discretion and authority to change policy. In *FCC* v. *Fox Television Stations, Inc.,* the U.S. Supreme Court plainly stated that an agency is free to change a prior policy and ''need not demonstrate . . . that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better.'' 566 U.S. 502, 515 (2009) (referencing Motor *Vehicle Mfrs. Ass'n of United States, Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983)). *See also Perez* v. *Mortgage Bankers Assn.,* 135 S. Ct. 1199 (2015). As stated above, the EPA believes that its new policy here aligns with the purpose of the statute and RHR, which is achieving ''reasonable'' progress, not maximal progress, toward Congress' natural visibility goal.

In the 2017 RHR Revisions, the EPA addressed the role of the URP as it relates to a State's development of its second planning period SIP. 82 FR 3078 (January 10, 2017). Specifically, in response to comments suggesting that the URP should be considered a ''safe harbor'' and relieve States of any obligation to consider the four statutory factors, the EPA explained that the URP was not intended to be such a safe harbor. 82 FR 3099 (January 10, 2017). Some commenters stated a desire for corresponding rule text dealing with situations where RPGs are equal to (''on'') or better than (''below'') the URP or glidepath. Several commenters stated that the URP or glidepath should be a ''safe harbor,'' opining that states should be permitted to analyze whether projected visibility conditions for the end of the implementation period will be on or below the glidepath based on on-the-books or on-the-way control measures, and that in such cases a four-

[13] See MonPower's February 20, 2025, comment letter.

[14] We note that RPGs are a regulatory construct that we developed to address statutory mandate in CAA section 169B(e)(1), which required our regulations to include ''criteria for measuring 'reasonable progress' toward the national goal.'' Under 40 CFR 51.308(f)(3)(ii), RPGs measure the progress that is projected to be achieved by the control measures a state has determined are necessary to make reasonable progress. Consistent with the 1999 RHR, the RPGs are unenforceable, though they create a benchmark that allows for analytical comparisons to the URP and mid-implementation-period course corrections if necessary. 82 FR 3091–3092 (January 10, 2017).

[15] See p. 5 of WV DEP's February 19, 2025, comment letter.

[16] See p. 5 of WV DEP's February 19, 2025, comment letter.

[17] See p. 1 of MonPower's February 20, 2025, comment letter.

factor analysis should not be required. *Id.* Other 2017 RHR comments indicated a similar approach, such as ''a somewhat narrower entrance to a 'safe harbor,' '' by suggesting that if current visibility conditions are already below the end-of-planning-period point on the URP line, a four-factor analysis should not be required. *Id.* The EPA stated in its response that we do not agree with either of these recommendations. The CAA requires that each SIP revision contain long-term strategies for making reasonable progress, and that in determining reasonable progress states must consider the four statutory factors. Treating the URP as a safe harbor would be inconsistent with the statutory requirement that states assess the potential to make further reasonable progress towards natural visibility goal in every implementation period. *Id.*

However, so long as a State considers the four factors, the presumption that a Class I area below the URP is achieving reasonable progress is consistent with the CAA and RHR. Indeed, we believe this policy also recognizes the considerable improvements in visibility impairment that have been made by a wide variety of State and Federal programs in recent decades. EPA invites comments on this proposed policy. In sum, West Virginia selected a number of sources, evaluated emissions control measures, and considered the four statutory factors. In addition, visibility conditions at all Class I areas to which West Virginia contributes are below the URP. In light of these facts, the EPA agrees with West Virginia's conclusion that no additional measures are necessary to make reasonable progress during the second planning period and is proposing to approve the State's SIP submittal. The EPA's determinations are described in more detail in section VI of this document.

VI. The EPA's Evaluation of West Virginia's Regional Haze Submission for the Second Planning Period

The EPA invites comments on the following subsections that contain our evaluation of WV's regional haze plan submittal with respect to the requirements of the CAA and RHR for the second planning period of the regional haze program.

1. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each State in which any Class I Area is located or ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I Area to have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f) introductory text, which provides that each State's plan ''must address Regional Haze in each mandatory Class I Federal Area located within the State and in each mandatory Class I Federal Area located outside the State that may be affected by emissions from within the State,'' and 40 CFR 51.308(f)(2), which requires each State's plan to include a long-term strategy that addresses Regional Haze in such Class I Areas.

The EPA concluded in the 1999 RHR that ''all [s]tates contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area,'' 64 FR 35721 (July 1, 1999), and this determination was not changed in the 2017 RHR. Critically, the statute and regulation both require that the cause-or-contribute assessment consider all emissions of visibility impairing pollutants from a state, as opposed to emissions of a particular pollutant or emissions from a certain set of sources.

To address 40 CFR 51.308(f), WV DEP identified Class I areas within West Virginia and out-of-state Class I areas downwind of West Virginia that were affected by West Virginia statewide emissions of visibility impairing pollutants. West Virginia has two mandatory Class I areas within its borders: Dolly Sods Wilderness Area (Dolly Sods) and Otter Creek Wilderness Area (Otter Creek). Out-of-state Class I Areas affected by West Virginia included Acadia National Park (Maine), James River Face Wilderness Area (Virginia), Lye Brook Wilderness Area (Vermont), Moosehorn Wilderness Area (Maine), Roosevelt Campobello International Park (Maine/New Brunswick), Shenandoah National Park (Virginia), and Swanquarter Wilderness Area (North Carolina). West Virginia, like other Visibility Improvement State and Tribal Association of the Southeast (VISTAS) States, implemented a two-step process to select sources contributing to visibility impairment in Class I areas within and outside the State. West Virginia presented the results of Particulate Matter Source Apportionment Technology (PSAT) [18] modeling that VISTAS conducted to estimate the projected impact of statewide SO_2 and NO_X emissions across all emissions sectors in 2028 on total light extinction for the 20 percent most impaired days in all Class I areas in the VISTAS modeling domain.[19] PSAT results were used to calculate the percent contribution of each tagged facility to the total sulfate and nitrate point source (electric generating unit (EGU) + non-EGU) contribution at each Class I area; more details of the PSAT analysis can be found in Appendix E–7b of WV DEP's SIP submittal. West Virginia also relied on facility-level SO_2 and NO_X Area of Influence (AoI) analyses [20] for each Class I area to assess relative visibility impacts from each facility.[21] WV DEP concluded that sources and emissions within the State contribute to visibility impairment at seven out-of-state Class I Areas and took part in the emission control strategy consultation process as a member of VISTAS. WV DEP also included analyses of visibility impairing pollutant emissions and visibility impacts from other regional planning organizations (RPOs) and States, and their impact on Class I Areas within VISTAS.[22] From these analyses, WV DEP concluded that ''sulfate will generally be a much larger contributor to visibility impairment in 2028 at VISTAS mandatory Federal Class I areas than nitrates'' and, that ''emissions from other planning organizations . . . generally have higher contributions to 2028 visibility impairment at mandatory Federal Class I areas in VISTAS than the emissions from the home State.'' [23] The

[18] PSAT is Particulate Matter Source Apportionment Technology, which is an option in the photochemical visibility impact modeling performed by VISTAS that is a methodology to track the fate of both primary and secondary PM. PSAT allows emissions to be tracked (''tagged'') for individual facilities as well as various combinations of sectors and geographic areas (*e.g.,* by state). The PSAT results provide the modeled contribution of each of the tagged sources or groups of sources to the total visibility impacts.

[19] West Virginia did not include primary PM (directly emitted) data in this analysis because the PSAT analyses performed by VISTAS tagged statewide emissions of SO_2 and NO_X and did not tag primary total PM emissions in the analysis after concluding that emissions of the PM precursors SO_2 and NO_X, particularly from point sources, are projected to have the largest impact on visibility impairment in 2028 and that SO_2 and NO_X are the most significant visibility impairing pollutants from controllable anthropogenic sources.

[20] States often use an AoI analysis to help identify the areas and sources most likely contributing to poor visibility in Class I areas. The AoI analysis involves running a backward trajectory model to determine the origin of the air parcels affecting visibility, which is then combined with emissions data to determine the sources or source sectors most likely contributing to pollutant emissions. For more information on AoI analyses, see Appendix D of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[21] See section 7.5, ''Area of Influence Analyses for West Virginia Class I Areas,'' of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[22] See section 7.2.3, ''Projected VISTAS 2028 Emissions Inventory'', section 7.2.5, ''2028 Visibility Projection Results'', and section 7.4, ''Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas,'' of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[23] See section 7.4, ''Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas,'' of WV DEP's

State adequately addressed the elements of 40 CFR 51.308(f) regarding identification of its statewide visibility impacts to Class I areas outside of the State and consulting with States with Class I areas which may reasonably be anticipated to cause or contribute to any impairment of visibility due to West Virginia's emissions. The State's approach of focusing on SO_2 and NO_X impacts from West Virginia on the basis that for current visibility conditions evaluated for the 2014–2018 period, ammonium sulfate is the dominant visibility impairing pollutant at most of the VISTAS Class I areas followed by organic carbon and ammonium nitrate (depending on the area) is reasonable. VISTAS focused on controllable emissions from point sources and thus, initially considered impacts from sulfates and nitrates on regional haze at Class I areas affected by VISTAS States.

The EPA is proposing that West Virginia has satisfied the requirements of 40 CFR 51.308(f)(2), related to the identification of Class I areas outside of West Virginia that may be affected by emissions from within the State and consultation with affected States because the State analyzed its statewide sulfate and nitrate contributions to total visibility impairment at out-of-state Class I areas (Figure 7–14 of WV DEP's submittal); none of the Class I areas that WV sources contribute to from Figure 7–14 of WV DEP's submittal have 2028 RPGs on the 20 percent most impaired days above the URP; West Virginia analyzed its in-state and out-of-state impacts through modeling; and the State completed consultation with VISTAS and Mid-Atlantic/Northeast Visibility Union (MANE–VU) States via the RPO processes.

2. Calculation of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress (URP)

Section 51.308(f)(1) requires states to determine the following for ''each mandatory Class I Federal area located within the State'': baseline visibility conditions for the clearest days and most impaired days, natural visibility conditions for clearest days and most impaired days, progress to date for the clearest days and most impaired days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for states to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives. See 40 CFR 51.308(f)(1)(vi)(B). The URP can then be used in the manner described in section V. of this document.

In its submittal, WV DEP included baseline visibility conditions (2000–2004) in Table 2–3; current visibility conditions (2014–2018) in Table 2–5;[24] and natural visibility conditions in Table 2–2 for the 20 percent most impaired and 20 percent clearest days for the State's Class I areas in deciviews. WV DEP also included for its Class I areas the actual progress made toward natural visibility conditions to date since the baseline period (current minus baseline), and the additional progress needed to reach natural visibility conditions from current conditions (natural minus current), in deciviews, in Table 2–6 (for the 20 percent most impaired days) and Table 2–7 (for the 20 percent clearest days).

Additionally, Figure 3–1 of WV DEP's submittal provide the URP figures for the 20 percent most impaired days for Dolly Sods, which also represents the URP for Otter Creek. The URPs were developed using EPA guidance[25] and used data collected from the IMPROVE monitoring network which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. All West Virginia Class I areas are projected to be below the 2028 URP values for the second planning period based on VISTAS' modeling.

WV DEP's submittal meets the requirements of 40 CFR 51.308(f)(1) because the State provided for its two Class I areas: baseline, current, and natural visibility conditions for the 20 percent clearest days and most impaired days; progress to date for the 20 percent clearest days and most impaired days; differences between the current visibility conditions and natural visibility conditions; and the URP for each Class I area in West Virginia. Therefore, the EPA is proposing to approve the portions of WV DEP's SIP submission related to 40 CFR 51.308(f)(1).

3. Long-Term Strategy (LTS) for Regional Haze

The core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a State's borders and each Class I area that may be affected by emissions from the State. The long-term strategy ''must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).'' 40 CFR 51.308(f)(2). The amount of progress that is ''reasonable progress'' is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a ''four-factor'' analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement in order to make reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction measures that a source is already implementing. See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10. Such measures must be represented by ''enforceable emissions limitations, compliance schedules, and other measures'' (*i.e.,* any additional compliance tools) in a State's long-term strategy in its SIP. 40 CFR 51.308(f)(2).

Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires States to consider ''major and minor stationary sources or groups of sources, mobile sources, and area sources'' of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed, which we previously addressed in section VI.1 of this document.

To determine the necessary emission reductions measures, a state must first select the sources to evaluate. WV DEP included information on the emissions impacts from numerous sources within the state on various Class I Areas. Section 7.6.1, Table 7–17 of the WV DEP submittal lists the facilities selected for PSAT tagging in Virginia and West

Regional Haze SIP Submittal for the 2nd Planning Period.

[24] The period 2014–2018 represents current visibility conditions for West Virginia because it is the most recent five-year period for which visibility monitoring data were available at the time of SIP development.

[25] ''Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program.'' EPA Office of Air Quality Planning and Standards, Research Triangle Park (December 20, 2018). *www.epa.gov/sites/default/files/2018-12/documents/technical_guidance_tracking_visibility_progress.pdf* and *www.epa.gov/sites/default/files/2020-06/documents/memo_data_for_regional_haze_technical_addendum.pdf.*

Virginia based on an AOI visibility contribution of 0.2% or more which include thirteen facilities located in West Virginia.[26] West Virginia then decided not to select eight of those facilities for analysis of reasonable progress measures or controls.[27] The State considered a percent contribution of greater than or equal to 1.00% (individual facility contribution divided by the total sulfate and nitrate contributions from EGU + non-EGU point sources) to determine whether to select a facility for a reasonable progress analysis. West Virginia excluded seven of the eight unselected facilities in part based on a PSAT modeling result of <1.00% as well as various factors through a qualitative weight-of-the evidence approach.[28] The remaining of the unselected facilities, Grant Town Plant,[29] had a PSAT modeling result of ≥1.00% which WV DEP scaled down to <1.00% contribution to Dolly Sods based on recent emissions data.[30] WV DEP also included discussion as to why no reasonable progress analysis is warranted for Mountaineer Plant, a ninth facility that was not tagged for PSAT modeling.[31]

After excluding eight of the thirteen facilities selected for PSAT tagging—along with Mountaineer Plant, which had not been selected for PSAT—West Virginia then selected the remaining five facilities: Harrison Power Station; Fort Martin Power Station; Pleasants Power Station; Mitchell Plant; and the John E. Amos Plant, to perform a four-factor analysis.[32] WV DEP also included in its reasonable progress discussion at section 7.8 of the SIP submittal a sixth facility—Grant Town Plant—which was initially included among the eight facilities for which WV DEP explained that no reasonable progress analysis was warranted.[33] Although the State then selected Grant Town Plant for a reasonable progress evaluation, it did not contact the facility to request such analysis giving as the reason, ''the facility is already subject to a federally enforceable Title V permit (R30–04900026–2020) that limits SO_2 emissions to less than the quantity projected to exceed the 1.00% visibility threshold of the VISTAS PSAT modeling.'' [34] We refer to these particular facilities as the ''selected six facilities'' or the ''six selected sources''.

Section 7.6.2, Table 7–19 of the SIP submittal contains PSAT results for the Dolly Sods Area, which includes fifteen facilities where sulfate contributions are ≥1.00% and addresses nearly 36.5% of the entire sulfate plus nitrate point source visibility impact in 2028; six of these fifteen facilities are located in West Virginia.[35] Table 7–20 contains PSAT results for the Otter Creek Wilderness Area, which includes fourteen facilities where sulfate contributions are ≥1.00% and addresses more than 34.7% of the entire sulfate plus nitrate point source visibility impact in 2028; five of these fourteen facilities are located in West Virginia.[36] The West Virginia facilities listed in Tables 7–19 and 7–20 are the same as the five facilities plus Grant Town Plant in section 7.8 of the SIP submittal.

Tables 7–21 through 7–27 contain the PSAT results for the five West Virginia facilities [37] that WV DEP selected for evaluation of emissions control measures based on sulfate contributions of ≥1.00% to the following out-of-state Class I Areas: Acadia National Park (Maine), James River Face Wilderness Area (Virginia), Lye Brook Wilderness Area (Vermont), Moosehorn Wilderness Area (Maine), Roosevelt Campobello International Park (Maine/New Brunswick), Shenandoah National Park (Virginia), and Swanquarter Wilderness Area (North Carolina), respectively.

Further, WV DEP states that (1) the Allegheny Energy Supply Co LLC—Harrison facility [38] affects eight Class I areas; (2) Monongahela Power Co.—Pleasants Power Station impacts six Class I areas; (3) Mitchell Plant impacts four Class I areas; (4) Monongahela Power Co.—Fort Martin Power impacts three Class I areas; (5) Appalachian Power Company—John E. Amos Plant impacts three Class I areas; and (6) American Bituminous Power—Grant Town Plant impacts one Class I area. The full list of tagged facilities and their contributions to each Class I area can be found in Appendix E–7b of the SIP submittal. WV DEP ultimately identifies six West Virginia facilities as contributing to visibility impairment in at least one Class I Area, and five of these facilities as contributing to visibility impairment in multiple Class I Areas.[39]

Thus, West Virginia selected six facilities via their source selection process: Harrison Power Station; Fort Martin Power Station; Pleasants Power Station; Mitchell Plant; Grant Town; and the John E. Amos Plant. All the selected facilities are coal- or coal waste-fired EGUs, and as such are already subject to many Federal and State air pollution regulatory programs, which were described in WV DEP's submittal. Each of the coal-fired EGUs already have scrubber technology installed, except for one,[40] and are operating pursuant to the Cross-State Air Pollution Rule (CSAPR) program; and Mitchell Power Plant has an SO_2 emission limit of 3,149 lbs/hr on a 30-day rolling average in the West Virginia SIP.[41]

WV DEP's Regional Haze SIP submittal included a general cost analysis for the six selected sources. This included cost analyses for replacing SO_2 controls at the six selected facilities with limestone forced

[26] Allegheny Energy Supply Co, LLC—Harrison; American Bituminous Power—Grant Town Plant; Appalachian Power Company—John E. Amos Plant; Dominion Resources, Inc.—Mount Storm Power Station; Equitrans—Copley Run CS 70; Files Creek; Glady; Kingsford Manufacturing Company; Longview Power; Mitchell Plant; Monongahela Power Co.—Fort Martin Power; Monongahela Power Co.—Pleasants Power Station; Morgantown Energy Associates.

[27] See section 7.6.4, ''Selection of Sources for Reasonable Progress Evaluation'' of WV DEP's Regional Haze SIP submittal for the 2nd Planning Period (''section 7.6.4'' or ''section 7.6.4 of the SIP submittal'').

[28] *Id.*

[29] West Virginia refers to this facility as ''Grant Town Plant'' as well as ''Grant Town Power Plant'' in the SIP submittal.

[30] *Id.* at 182 of 257.

[31] *Id.* at 187 of 257. West Virginia might have included Mountaineer because the EPA's January 5, 2022 comments submitted during the public comment period asked for ''further explanation of why the 4th largest SO_2 source in the state was not selected for a 4-factor analysis. . . .'' Appendix H–4 ''West Virginia Department of Environmental Protection Division of Air Quality Responses to EPA Region 3 Comments on the West Virginia Draft Regional Haze State Implementation Plan August 2022,'' section. 6.e.

[32] See section 7.8, ''Reasonable Progress for Individual Sources to be Included in the Long-Term Strategy'', of WV DEP's Regional Haze SIP submittal for the 2nd Planning Period (''section 7.8'' or ''section 7.8 of the SIP submittal'').

[33] *Id.* and section 7.6.4 of the SIP submittal.

[34] Section 7.8 of the SIP submittal at 197 of 257.

[35] Allegheny Energy Supply Co, LLC—Harrison; Monongahela Power Co—Pleasants Power Station; Kentucky Power Company—Mitchell Plant; Appalachian Power Company—John E. Amos Plant; Monongahela Power Co—Fort Martin Power; and American Bituminous Power—Grant Town Plant.

[36] Allegheny Energy Supply Co, LLC—Harrison; Monongahela Power Co—Pleasants Power Station; Kentucky Power Company—Mitchell Plant; Appalachian Power Company—John E. Amos Plant; and Monongahela Power Co—Fort Martin Power.

[37] Allegheny Energy Supply Co, LLC—Harrison; Monongahela Power Co—Pleasants Power Station; Kentucky Power Company—Mitchell Plant; Appalachian Power Company—John E. Amos Plant; and Monongahela Power Co—Fort Martin Power.

[38] WV DEP sometimes refers to this facility as Monongahela Power Company—Harrison Power Station, with a Facility ID of 54033–6271711. This is the same Facility ID used for Allegheny Energy Supply Co LLC—Harrison.

[39] See section 7.6.2, ''PSAT Contributions at West Virginia Class I Areas,'' and section 7.6.3, ''AoI versus PSAT Contributions,'' of WV DEP's Regional Haze SIP submittal for the 2nd Planning Period.

[40] American Bituminous Power—Grant Town Plant consists of two circulating fluidized bed boilers. Although theses boilers do not have flue gas desulfurization (scrubbers), limestone is introduced directly into the combustion area of the boilers to capture and remove SO_2.

[41] See 40 CFR 52.2520(d) and 85 FR 67664, October 26, 2020.

oxidation (LFSO) scrubbers, assuming 98% control efficiency and a remaining useful life of 20 years. WV DEP stated that LFSO was chosen because it is considered the best control technology with the highest SO_2 removal efficiency for coal boiler acid gas controls, and noted that LFSO was already installed and in operation at several of these facilities.[42] Additionally, for these sources, WV DEP estimated the replacement costs per facility, and per unit, of their Flue Gas Desulfurization (FGD) systems.[43] WV DEP determined that the cost to replace scrubbers on these facilities and units was not cost effective.

The WV Regional Haze SIP submittal also contains a detailed four-factor analysis for Pleasants Power Station, which reviewed three pre-combustion and five post-combustion SO_2 emissions controls.[44] The pre-combustion control options considered were: utilization of lower sulfur coals; fuel blending with limestone; and coal cleaning. The post-combustion controls considered were: wet limestone scrubbers, also known as LSFO;[45] spray dry absorbers (SDA); dry sorbent injection (DSI); circulating dry scrubbers with fabric filters (DS/FF); and hydrated ash reinjection (HAR).''[46] Based on the documentation provided within the submittal, it appears WV DEP relied, at least in part, on the January 2021 ''Regional Haze Four-Factor Analysis''[47] provided by Energy Harbor to eliminate all potential control options, aside from LSFO, from further consideration under the four statutory factors under the basis of technological feasibility. The single feasible technology, LFSO, was analyzed using the four factors. The estimated cost-effectiveness of the LFSO system is $11,292.95 per ton, or $9,931.94 per ton for one scrubber, and was determined by WV DEP to not be economically feasible to install.

If a State determines through consideration of the four statutory factors that no measures are necessary to make reasonable progress for this planning period for a Class I area that is below the URP, then the State generally does not need to include any additional measures in its long-term strategy. The purpose of the long-term strategy is to make reasonable progress toward Congress' national goal, but if the state has considered the four factors, and a Class I area is below the URP, it has presumptively already made reasonable progress for the planning period. It thus follows that additional measures for West Virginia's long-term strategy are unnecessary for this planning period, particularly when there is no evidence in the record that visibility conditions at the impacted Class I areas might deteriorate absent enforceable measures.

Section 51.308(f)(2)(ii) provides that states must consult with other states that are reasonably anticipated to contribute to visibility impairment in a Class I Area to develop coordinated emission management strategies containing the emission reductions measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) require states to consider the emission reduction measures identified by other states as necessary for reasonable progress and to include agreed upon measures in their SIPs. Section 51.308(f)(2)(ii)(C) requires a State to document in its SIP submission all substantive consultations with other contributing States and also speaks to what happens if states cannot agree on what measures are necessary to make reasonable progress. WV DEP included documentation of its calls, webinars, presentations, and other consultation with VISTAS and non-VISTAS states from December 2017 to October 2020. West Virginia's consultation documentation confirms that no states disagreed with or provided comment on West Virginia's approach to its long-term strategy.

Section 51.308(f)(2)(iii) requires that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the state has submitted triennial emissions data to the EPA (or a more recent year), with a twelve-month exemption period for newly submitted data. WV DEP included emissions information from the most recent year in its submittal; 2017, 2018, and 2019 emissions information that had been previously reported to the EPA and compared these emissions to the 2028 emissions used in its modeling.[48] Table 7–35 shows all West Virginia facilities with greater than 100 tpy SO_2 emissions in 2017 and Table 7–36 shows all West Virginia facilities with greater than 100 tpy NO_X emissions in 2017.

Section 51.308(f)(2)(iv) requires states to consider the following additional factors in developing its long-term strategy: (1) emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to mitigate the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. WV DEP includes information on these factors in its SIP submittal, including additional information on smoke management practices and measures to mitigate the impacts of construction activities.[49]

Based on the reasoning described in section V and VI in this document, EPA is proposing that West Virginia has met the requirements of 40 CFR 51.308(f)(2).

4. Reasonable Progress Goals (RPGs)

West Virginia identified 2028 RPGs for each of its Class I areas in deciviews for the 20 percent most impaired days and the 20 percent clearest days in Tables 8–1 and 8–2 of its regional haze plan submittal, respectively, which are well below the 2028 URP value for each Class I area. Table 1, in this document, summarizes the 2028 RPGs and 2028 URP for West Virginia's Class I areas.

[42] Section 7.8 of the SIP submittal at 202 of 257, and Table 7–37.

[43] Section 7.8 of the SIP submittal at 204 of 257, and Table 7–38.

[44] Section 7.8 of the SIP submittal at 199 of 257.

[45] LSFO is the correct abbreviation, though West Virginia also uses the incorrect abbreviation LFSO multiple times in the SIP submittal as quoted by EPA.

[46] Section 7.8 of the SIP submittal at 199 of 257.

[47] Appendix G–2 at G–2d, ''Response Letter from Energy Harbor (Pleasants Station),'' WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[48] *See* section 7.6.5, ''Evaluation of Recent Emission Inventory Information,'' of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

[49] Section 7.9 of the SIP submittal at 207 of 257.

TABLE 1—WEST VIRGINIA'S CLASS I AREA 2028 RPGS AND URP IN DECIVIEWS (dv)

Class I area	2028 RPG for 20% clearest days	2028 RPG for 20% most impaired days	2028 Uniform rate of progress (URP)
Dolly Sods Wilderness Area	7.55	15.29	20.54
Otter Creek Wilderness Area	7.55	15.29	20.54

Figure 3–1 of the WV DEP regional haze plan submittal shows the URP for the 20 percent most impaired days for Dolly Sods Wilderness Area which also represents the URP for the Otter Creek Wilderness Area. Therefore, EPA is proposing that West Virginia satisfied the applicable requirements of 40 CFR 51.308(f)(3)(i). The State established 2028 RPGs expressed in deciviews that reflect the visibility conditions that are projected to be achieved by the end of the second planning period. West Virginia's RPGs illustrate improvement in visibility for the 20 percent most impaired days since the baseline period (2000–2004) and demonstrate that there is no degradation in visibility for the 20 percent clearest days since the baseline period. EPA is also proposing that West Virginia has satisfied the applicable requirements of 40 CFR 51.308(f)(3)(ii) because the projected 2028 visibility conditions for both in-state and out-of-state Class I areas influenced by emissions from West Virginia sources are all below the URP.

5. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a State's Regional Haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this section is for States with Class I Areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to Regional Haze visibility impairment at mandatory Class I Federal Areas both within and outside the State. Section 51.308(f)(6)(iii) requires SIPs to provide procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to Regional Haze visibility impairment at mandatory Class I Federal Areas in other States. Section 51.308(f)(6)(iv) requires the SIP to provide for the reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State. Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available. Section 51.308(f)(6)(v) also requires States to include estimates of future projected emissions and include a commitment to update the inventory periodically.

With respect to 40 CFR 51.308(f)(6)(i), WV DEP stated that the existing IMPROVE monitors for the State's Class I areas are sufficient for the purposes of this SIP revision. With respect to 40 CFR 51.308(f)(6)(ii), WV DEP stated that it will use data from these IMPROVE monitors for future haze plans and progress reports. Section 51.308(f)(6)(iii) does not apply to West Virginia, as this provision only applies to States with no Class I areas. With respect to 40 CFR 51.308(f)(6)(iv), the U.S. National Park Service (NPS) manages and oversees the IMPROVE monitoring network and reviews, verifies, and validates IMPROVE data before its submission to the EPA's Air Quality System (AQS). With respect to 40 CFR 51.308(f)(6)(v), WV DEP provided a baseline emissions inventories, current emissions data, and 2028 future emissions projections for visibility-impairing pollutants for source categories and specific point sources, and committed to update the inventory periodically.[50] With respect to 40 CFR 51.308(f)(6)(vi), West Virginia affirmed that there are no elements, including reporting, recordkeeping, or other measures, necessary to address and report on visibility for West Virginia's Class I areas or Class I areas outside the State that are affected by sources in West Virginia. Therefore, EPA is proposing that West Virginia has satisfied the applicable requirements of 40 CFR 51.308(f)(6).

6. Requirements for Periodic Reports Describing Progress Toward the RPGs

Section 51.308(f)(5) requires a state's regional haze SIP revision to address the requirements of paragraphs 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first planning period. The regional haze progress report requirement is designed to inform the public and EPA about a state's implementation of its existing LTS and whether such implementation is in fact resulting in the expected visibility improvement. See 81 FR 26942, 26950 (May 4, 2016), 82 FR 3119 (January 10, 2017).

A core component of the progress report requirements is an assessment of changes in visibility conditions on the clearest and most impaired days. For second planning period progress reports, 40 CFR 51.308(g)(3) requires states with Class I areas within their borders to first determine current visibility conditions for each area on the most impaired and clearest days, 40 CFR 51.308(g)(3)(i), and then to calculate the difference between those current conditions and baseline (2000–2004) visibility conditions to assess progress made to date. See 40 CFR 51.308(g)(3)(ii). States must also assess the changes in visibility impairment for the most impaired and clearest days since they submitted their first planning period progress reports. See 40 CFR 51.308(f)(5) and (g)(3)(iii). Since different states submitted their first planning period progress reports at different times, the starting point for this assessment will vary state by state.

Similarly, states must provide analyses tracking the change in emissions of pollutants contributing to visibility impairment from all sources and activities within the state over the period since they submitted their first planning period progress reports. See 40 CFR 51.308(f)(5) and (g)(4). Changes in emissions should be identified by the type of source or activity. Section 51.308(g)(5) also addresses changes in emissions since the period addressed by

[50] See section 4, ''Types of Emissions Impacting Visibility Impairment in West Virginia Class I Areas'', section 7.2.4, ''EPA Inventories'', and section 13, ''Progress Report,'' of WV DEP's Regional Haze SIP Submittal for the 2nd Planning Period.

the previous progress report and requires states' implementation plan revisions to include an assessment of any significant changes in anthropogenic emissions within or outside the state. This assessment must include an explanation of whether these changes in emissions were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility relative to what the state projected based on its LTS for the first planning period.

With respect to the progress report elements pursuant to 40 CFR 51.308(f)(5), WV DEP addressed these elements in section 13 of its submittal for the period 2011 to 2018, the end of the first period.

Regarding 40 CFR 51.308(g)(1) and (2), WV DEP describes the status of the implementation of the measures of the LTS from the first planning period in section 13.3 of its submittal and provides a summary of the emission reductions achieved by implementing those measures. Regarding 40 CFR 51.308(g)(3), WV DEP calculated current visibility conditions, the difference between current visibility conditions compared to the baseline, and the change in visibility impairment for the most and least impaired days over the past five years for the State's two Class I areas in Tables 13–5, 13–6, 13–7, and 13–8. WV DEP concluded that IMPROVE monitoring data show that all West Virginia Class I areas are well below the 2018 RPG for the 20 percent worst days and there is no degradation on the 20 percent best/clearest days which is illustrated in Figures 13–2 and 13–3 of WV DEP's submittal.

Regarding 40 CFR 51.308(g)(4), in section 13.5, WV DEP provided emissions trends from 2011 through 2019 for $PM_{2.5}$, NO_X, and SO_2 which reflect the emissions reductions from the measures in the first planning period LTS. WV DEP reviewed anthropogenic SO_2 and NO_X emissions trends based on emissions included in the 2011, 2014, and 2017 National Emissions Inventories (NEIs) for the VISTAS states and all of the RPOs. The data show a decline in SO_2 and NO_X emissions from 2014 through 2019 in Table 13–10 and Figures 13–11, 13–12, and Table 13–13 of WV DEP's submittal. WV DEP concluded that there does not appear to be any anthropogenic emissions within West Virginia that would have limited or impeded progress in reducing pollutant emissions or improving visibility.

The EPA is proposing that WV DEP has met the requirements of 40 CFR 51.308(g)(1) through (5) because its submittal adequately describes the status of the measures included in the LTS from the first planning period and the emission reductions achieved from those measures; the visibility conditions and changes at the West Virginia Class I areas; an analysis tracking the changes in emissions since the first planning period progress report using available emissions data from 2011–2019, including annual 2018 and 2019 emissions data and 2017 NEI data which is the most recent triennial emissions inventory submission from WV DEP prior to submission of their 2022 haze submittal in accordance with the RHR; and assessed whether any significant changes in anthropogenic emissions within or outside the State have occurred since the end of the period addressed by WV DEP's first planning period progress report, including whether these changes in anthropogenic emissions were anticipated in that most recent plan and whether they have limited or impeded progress in reducing pollutant emissions and improving visibility. Thus, EPA is proposing that West Virginia has satisfied the progress report elements pursuant to 40 CFR 51.308(f)(5).

7. Requirements for State and Federal Land Manager (FLM) Coordination

EPA is proposing that West Virginia satisfied the requirements for State and Federal Land Manager coordination. West Virginia submitted a draft of its haze plan to the FLMs for review on August 27, 2021. WV DEP held a consultation call with NPS, U.S. Fish and Wildlife Service, U.S. Forest Service, and EPA on October 19, 2021. WV DEP held a public hearing on its proposed haze plan on November 30, 2021. On November 5, 2021, WV DEP opened the comment period, and after two extensions the comment period closed on January 10, 2022. As part of extending the comment period, WV DEP included in a notice a reference to materials including the FLMs conclusions and recommendations made available to the public.

The EPA is proposing that, as required by CAA section 169A(d), that the State consulted with the FLMs prior to holding a public hearing on its proposed haze plan, and that the State also provided the FLMs' conclusions and recommendations to the public during the comment period. The State also satisfied the requirements of 40 CFR 51.308(i). As required by 40 CFR 51.308(i)(2), WV DEP provided the FLMs with the opportunity to consult. In accordance with 40 CFR 51.308(i)(3), WV DEP also responded to the FLMs' comments in Appendix H–2 of its submittal. Finally, sections 1.6 and 11 of the regional haze SIP describe how WV DEP will meet the requirements of 40 CFR 51.308(i)(4) regarding procedures for continuing consultation.

VII. Proposed Action

For the reasons set forth in this rulemaking, EPA is proposing to approve West Virginia's August 12, 2022 SIP submittal as satisfying the regional haze requirements for the second planning period contained in 40 CFR 51.308(f).

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act 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 Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Executive Order 14192 (90 FR 9065, February 6, 2025) does not apply because SIP actions are exempt from review under Executive Order 12866;
- 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 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Catherine A. Libertz,

Acting Regional Administrator, Region III.

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