Chairman. In the event of the Vice Chairman's death, departure or resignation prior to the election of a successor, the Board, as soon as practicable, shall elect a new Vice Chairman who shall serve a term that commences immediately upon election and expires upon the election and installation of a successor Vice Chairman.

PART 6—MEETINGS (ARTICLE VI)

■ 4. The authority citation for part 6 continues to read as follows:

Authority: 39 U.S.C. 202, 205, 401(2), (10), 1003, 3622; 5 U.S.C. 552b(e), (g).

■ 5. Section 6.6 is amended by revising the introductory text to read as follows:

§ 6.6 Quorum and voting.

As provided by 39 U.S.C. 205(c), and except for routine, non-controversial, and administrative matters considered through the notation voting process described in § 6.7, the Board acts by resolution upon a majority vote of those members who attend a meeting in person or by teleconference. No proxies are allowed in any vote of the members of the Board. Any 6 members constitute a quorum for the transaction of business by the Board, except:

* * * * *

■ 6. Section 6.7 is added to read as follows:

§ 6.7 Notation voting.

(a) *General.* Notation voting consists of the circulation of written memoranda and voting sheets to each member of the Board simultaneously and the tabulation of submitted responses. Notation voting may be used only for routine, non-controversial, and administrative matters.

(b) *Administrative Responsibility.* The Secretary of the Board is responsible for:

(1) Distributing notation voting memoranda and voting sheets;

(2) Establishing deadlines for notation voting sheets to be completed and returned;

(3) Processing and tabulating all notation voting sheets; and

(4) Determining whether further action is required.

(c) *Veto of notation voting.* In view of the public policy for openness reflected in the Government in the Sunshine Act and in these bylaws, each Board member is authorized to veto the use of notation voting for the consideration of any matter. If a Board member vetoes the use of notation voting, the Secretary must notify all members of such action, and must promptly take action to place the particular matter on the agenda of the next regularly scheduled Board meeting following the date of the veto, or to schedule a teleconference to consider the matter, as appropriate.

(d) *Disclosure of result.* The Secretary shall maintain all records pertaining to Board actions taken pursuant to the notation voting process, and shall make such records available for public inspection, consistent with the Freedom of Information Act, 5 U.S.C. 552.

PART 7—PUBLIC OBSERVATION (ARTICLE VII)

■ 7. The authority citation for part 7 continues to read as follows:

Authority: 39 U.S.C. 410; 5 U.S.C. 552b(a)–(m).

■ 8. Section 7.1 is amended by revising the final sentence of paragraph (b) to read as follows:

§ 7.1 Definitions.

* * * * *

(b) * * * The term ''meeting'' does not include any procedural deliberations required or permitted by §§ 6.1, 6.2, 7.4, or 7.5 of the bylaws in this chapter, or the notation voting process described in § 6.7 of the bylaws in this chapter.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–7098 Filed 3–23–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0130, FRL–9612–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Nevada; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing its approval of most of the Nevada Regional Haze State Implementation Plan (SIP) that implements the Clean Air Act (CAA) Regional Haze Rule requiring states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas through a regional haze program. EPA proposed to approve all parts of Nevada's SIP revisions on June 22, 2011 (76 FR 36450). This final approval applies to all aspects of Nevada's SIP except for that portion of Nevada's determination regarding the Best Available Retrofit Technology (BART) to reduce nitrogen oxide (NO_X) emissions at the Reid Gardner Generating Station (RGGS). We will take action on BART for NO_X at RGGS in a future notice.

DATES: *Effective Date:* This rule is effective on April 25, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0130 for this action. Generally, documents in the docket are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. Please note that while many of the documents in the docket are listed at *http://www.regulations.gov,* some information may not be specifically listed in the index to the docket and may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports or otherwise voluminous materials), and some may not be available at either locations (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Thomas Webb, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Thomas Webb can be reached at telephone number (415) 947–4139 and via electronic mail at *webb.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our,'' is used, we mean the United States Environmental Protection Agency (EPA).

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I. Background

A. Description of Regional Haze

Regional haze is the impairment of visibility across a broad geographic area produced by numerous sources and

activities that emit fine particles and their precursors, primarily sulfur dioxide (SO_2) and nitrogen oxide (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOC). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$), primarily sulfates, nitrates, organic carbon, elemental carbon, and soil dust, which impair visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication of water bodies.

Data from existing visibility monitors, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) network, indicate that visibility impairment caused by air pollution occurs virtually all the time at most federally protected national parks and wilderness areas, known as Class I areas. The average visual range in many Class I areas in the western United States is 100 to 150 kilometers, or about one-half to two-thirds of the visual range that would exist without man-made air pollution.[1] In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. 64 FR 35715 (July 1, 1999).

B. History of Regional Haze Regulations

In section 169(A)(1) of the 1977 Amendments to the CAA, Congress established 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 man-made air pollution.'' Visibility was determined by Congress to be an important value in 156 mandatory Class I Federal areas[2] as listed in 40 CFR 81.400–437. In the first phase of visibility protection, EPA promulgated regulations on December 2, 1980, to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment'' or RAVI. 45 FR 80084. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationship between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to conduct scientific research on regional haze. This legislation established the Grand Canyon Visibility Transport Commission (GCVTC), which issued its report, ''Recommendations for Improving Western Vistas,'' on June 10, 1996. These recommendations informed the regulatory development of a regional haze program, and provided an option for certain western states to address visibility at 16 Class I areas on the Colorado Plateau under 40 CFR 51.309.

EPA promulgated a rule to address regional haze on July 1, 1999 known as the Regional Haze Rule (RHR). See 64 FR 35713 as amended at 70 FR 39156 (July 6, 2005) and 71 FR 60631 (October 13, 2006). The RHR revised the existing visibility regulations to include provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309.

The requirement to submit a regional haze SIP revision applies to all 50 states, the District of Columbia, and the Virgin Islands. States were required to submit the first SIP addressing regional haze visibility impairment no later than December 17, 2007. 40 CFR 51.308(b). Since most states, including Nevada, did not submit SIPs prior to the deadline, EPA made a Finding of Failure to Submit that under the Clean Air Act had the effect of creating a deadline of January 15, 2011, for EPA to approve a SIP or publish a Federal Implementation Plan (FIP). 74 FR 2392 (January 15, 2009). EPA is publishing this final action to meet this obligation in part.

For a more detailed discussion of the CAA and RHR requirements, please see sections II and III of our proposal dated June 22, 2011 (76 FR 36450). Our evaluation of the Nevada Regional Haze Plan is in section IV of the same proposal.

C. Our Proposed Action

On June 22, 2011, EPA proposed to approve all portions of Nevada's Regional Haze SIP as meeting the relevant requirements of CAA Section 169A and the Regional Haze Rule. We proposed to find that Nevada appropriately established baseline visibility conditions and a reasonable progress goal for its one Class I area; developed a long-term strategy with enforceable measures to ensure reasonable progress toward achieving the Reasonable Progress Goal in the first planning period ending in 2018; adequately applied Best Available Retrofit Technology to specific stationary sources, including RGGS; developed a regional haze monitoring strategy; provided for periodic progress reports and revisions; provided for consultation and coordination with federal land managers; and provided for the regional haze SIP's future review and revisions. We also proposed to find that emissions from Nevada do not interfere with other states' measures to protect visibility as required by CAA Section 110(a)(2)(D)(i)(II). Our proposed action provides more information about the relevant CAA requirements, EPA guidance, the State's submittals, and our review and evaluation of the SIP revisions.

II. BART Determination for NO_X at Reid Gardner

We are taking no action in today's rule on the portion of the Nevada SIP that contains the BART determination at RGGS for NO_X. Following our review of the public comments on this issue, we performed additional analysis of Nevada's NO_X BART determination for RGGS. As a result, we no longer consider the currently available information to be sufficient for us to take final action on the Nevada Division of Environmental Protection's (NDEP's) determination that rotating overfire air (ROFA) with Rotamix (a form of selective non-catalytic reduction or SNCR) is the NO_X control technology that represents BART. We intend to consider this determination in more detail at a future date.

A. Background

The RHR provides that a BART determination must take into account several factors, which are frequently referred to as the ''five-factor analysis.'' These factors are listed below (40 CFR 51.308(e)(1)(ii)(A)):

[1] Visual range is the greatest distance, in kilometers or miles, at which one can view a dark object against the sky.

[2] 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 CAA, 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). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 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.''

- The cost of compliance for the technically feasible control technologies;
- The energy and non-air quality impacts of the control technologies;
- Any existing air pollution control technologies at the source;
- The remaining useful life of the source; and
- The degree of visibility improvement which may reasonably be anticipated to result from the various control technologies.

B. NDEP's Determination

RGGS consists of four coal-fired boilers, three of which are BART-eligible units with generating capacity of 100 megawatts (MW) each. A fourth unit (250 MW) is not BART-eligible. Nevada Energy, the owner of RGGS, performed a BART analysis for the three BART-eligible RGGS units and submitted the results of its analysis to NDEP.[3] In its BART analysis, Nevada Energy considered several NO_X control technologies and evaluated the cost of compliance and visibility improvement associated with each technology. In preparing the SIP, NDEP relied on certain aspects of Nevada Energy's analysis while performing updated analyses for other aspects. When considering the cost and cost effectiveness of compliance, NDEP developed its own set of emission reduction estimates for the various NO_X control technologies, but used Nevada Energy's estimates of total capital and annual costs.[4] When considering the degree of visibility improvement associated with various control technologies, NDEP relied upon the visibility impacts for each control option as modeled by Nevada Energy, rather than modeling the visibility impacts attributable to NDEP's own estimates of NO_X removal.

In its submittal to NDEP, Nevada Energy determined that low NO_X burners (LNB) with OFA (overfire air) were BART for NO_X. In preparing the SIP, NDEP determined that a more stringent control technology, ROFA with Rotamix, was BART for NO_X. NDEP eliminated even more stringent control options, such as Selective Catalytic Reduction (SCR) with LNB and OFA, on the grounds that ''the $/ton of NO_X removed increased significantly * * * without correspondingly significant improvements in visibility.'' [5]

C. Public Comments Relevant to NDEP's Determination

As noted in Section II.B above, NDEP's elimination of control options more stringent than ROFA with Rotamix was based on the incremental cost effectiveness ($/ton) and expected visibility improvement of the various options. EPA received several comments (see Docket Items 0054, 0057, 0061, 0062 and 0062 Attachment 6) alleging flaws in NDEP's analysis and response to comments, and stating that SCR should be BART for NO_X at RGGS. These commenters alleged certain flaws and submitted additional information in criticizing NDEP's development of the cost effectiveness values and expected visibility improvement attributable to the more stringent SCR-based control option.

Regarding cost effectiveness, several commenters (see Docket Items 0054, 0057, 0061, and 0062) alleged that the total capital and annual cost estimates relied upon by NDEP for the SCR-based control options were overestimated, included several costs not allowed by EPA's Control Cost Manual (CCM) such as owner's costs, surcharge, and allowance for funds used during construction (AFUDC), and used certain variables and values that were either inflated or unreasonable. One commenter (see docket item 0062 Attachment 6) performed a revised analysis of SCR cost effectiveness that adjusted for these alleged issues, and projected a 33 to 40 percent decrease in average and incremental cost effectiveness values as a result of these adjustments. In addition, commenters stated that total capital and annual cost estimates lacked evidentiary support in the administrative record due to the absence of detailed information such as equipment design parameters, equipment lists, and actual cost calculations. Finally, commenters also stated that the level of SCR performance relied upon by NDEP is not supported in the administrative record by site-specific information such as vendor quotes or specifications (see Docket Items 0054 and 0061 to 0063).

Regarding visibility improvement, commenters (see Docket Items 0054 and 0062) noted that while baseline visibility modeling indicated that RGGS currently causes or contributes to visibility impairment at multiple Class I areas, control scenario visibility modeling results were only provided for the single closest Class I area, Grand Canyon National Park. They asserted that the potential visibility benefit at all affected Class I areas should be accounted for when considering control technology options. In addition, as described in Section II.B above, NDEP estimated larger NO_X emission reductions than the emission reductions estimated by Nevada Energy. NDEP, however, continued to rely on the visibility modeling provided by Nevada Energy, and did not update the modeling to reflect NDEP's larger NO_X emission reduction estimates. As a result, the existing visibility modeling does not reflect the incremental visibility improvement attributable to NDEP's estimates of NO_X emission reductions. Finally, commenters noted that certain modeling files and documentation were missing from our docket and were unavailable from NDEP, such as the NO_X control scenario modeling result files and supporting information for NDEP's baseline emission scenarios.

D. EPA's Analysis

After reviewing the public comments, we performed additional analysis of the cost effectiveness and visibility improvement associated with the various NO_X control technologies considered by NDEP in determining BART at RGGS. Based upon this additional analysis, we no longer consider the currently available supporting information to be sufficiently detailed to allow us to perform a critical review of these issues. As a result, we are taking no action in this rule on NDEP's determination that ROFA with Rotamix is the NO_X control technology that represents BART.

Therefore, EPA is taking no action on the portion of the SIP containing the BART determination for NO_X at RGGS including the corresponding emission limits and schedules of compliance for NO_X at RGGS in the SIP's long-term strategy. Specifically, these are sections 5.5.3, 5.6.3 and 7.2 of Nevada's SIP that address the NO_X BART control analyses, visibility improvement, and implementation at RGGS. Since the emissions inventories used to develop the reasonable progress goal (RPG) did not include NO_X reductions from BART, the fact that we take no action in this rule regarding the RGGS BART

[3] Nevada Energy BART Analysis Reports, Reid_Gardner_1_10–03–08.pdf, Reid_Gardner_2_10–03–08.pdf, Reid_Gardner_3_10–03–08.pdf. Available in Docket Item No. EPA–R09–OAR–2011–0130–0007.

[4] Based on a comparison of emission reductions summarized in Table 1, NDEP Reid Gardner BART Determination, October 22, 2009 (Available as Docket Item No. EPA–R09–OAR–2011–0130–0005), and emission reductions summarized in Table 3–2 of the NVE BART Analysis Reports. Visibility impacts as summarized from Table 5–4 of the NVE BART Analysis Reports.

[5] Revised NDEP Reid Gardner BART Determination Review, page 6. Available as Docket Item No. EPA–R09–OAR–2011–0130–0005. See also Nevada Regional Haze SIP, Appendix D (Responses to Comments), pages D–32 to –42. Available in docket item No. EPA–R09–OAR–2011–0130–003.

determination for NO_X does not impact the RPG, and will not require adjustments to the long-term strategy (LTS) in the SIP.[6] EPA will propose further action on this particular portion of the SIP in the future.

III. EPA Responses to Public Comments Except BART for NO_X at RGGS

EPA's proposed approval published on June 22, 2011 (76 FR 36450) included a 30-day public comment period, which ended on July 22, 2011. We subsequently extended the comment period by 30 days until August 22, 2011 (76 FR 43963). We received comments from WildEarth Guardians, a consortium of environmental and conservation organizations[7] (''Consortium''), the Moapa Band of Paiutes, the Nevada Division of Environmental Protection (NDEP), the National Park Service, the U.S. Fish and Wildlife Service, and seven individuals. With the exception of NDEP's comments, which support EPA's proposed approval of its plan, most of the comments expressed opposition to EPA's full approval of the SIP. The majority of these comments criticized our proposed approval of NDEP's determination of BART controls to reduce emissions of NO_X at RGGS. In this final rule approving all other portions of Nevada's RH SIP, we are responding to all other major comments on our proposed SIP approval. We find that the SIP is approvable except BART for NO_X at RGGS on which EPA is taking no action.

A. Reasonable Progress Goal

Comments: The National Park Service and U.S. Fish and Wildlife Service expressed concern that the SIP's reasonable progress analysis was not consistent with Section 308(d)(1) of the Regional Haze Rule and EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program* because NDEP ''did not consider what additional emissions reductions beyond those already being implemented might be reasonable to improve visibility.'' Similarly, WildEarth Guardians commented that the Clean Air Act requires EPA to base reasonable progress goals on the factors set forth under Section 169A(g), and not the bare minimum required to meet the uniform rate of progress. WildEarth Guardians expressed concern that ''EPA has overlooked opportunities to further reduce haze forming pollution from sources in Nevada.'' By contrast, NDEP asserted that its reasonable progress analysis considered the four factors required under the Regional Haze Rule (i.e., 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 existing source subject to such requirements). Specifically, NDEP noted that ''[c]ost was considered first, * * * and the NDEP concluded it was not necessary to continue with an analysis of the remaining factors.''

Response: As explained in the proposed rule, in promulgating the SIP NDEP considered the four factors in setting the reasonable progress goal for the Jarbidge Wilderness Area, the only Class I area in Nevada. The RHR and EPA's guidance affords the State considerable flexibility in determining whether additional emission reduction measures are needed to achieve the RPG in the first planning period. The NDEP reasonably concluded that the cost of additional controls was not warranted given projected emissions reductions from anthropogenic sources and the fact that the majority of haze at Jarbidge is from natural and out-of-state sources. Moreover, NDEP noted in its comments that ''of the five proposed electrical generating units (EGUs) included in the State's 2018 emissions inventory, only two have moved forward and are now operational,'' which would further lower emissions projections for both NO_X and SO_2 by 2018. The comments do not demonstrate that the State failed to consider reasonably the four factors, but the comments question whether the State should have done a more robust analysis. EPA has considered the comments and the comments have not provided any further specific facts that should have been considered in the State's analysis beyond conclusory criticisms. Therefore, given the broad discretion the RHR affords the State, and the lack of specificity in the comments on this issue, EPA reaffirms its proposed decision to approve the State's reasonable progress goal for Jarbidge.

B. Long-Term Strategy

Comments: The Consortium argued that the SIP ''does not contain evidence showing full and effective consultation with other states, does not 'ensure that it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon' through that consultation process and further fails to 'document the technical basis, including modeling, monitoring and emissions information,' on which it relies to determine its apportionment of emission reduction obligations agreed upon through that process.'' Specifically, the Consortium noted that, ''[a]lthough the Proposed SIP implies that Nevada consulted with the Western Regional Air Partnership (''WRAP'') in determining its apportionment of visibility impacts to Class I areas outside of the State of Nevada, the administrative record does not support the legally-required level of consultation.'' They further argued that ''WRAP's failure to apportion Nevada's contribution does not save Nevada from its independent obligation to require adequate BART determinations and a long-term strategy to reduce haze-causing pollutants in out-of-state Class I areas from its pollution sources.''

Response: EPA disagrees with the assertions that Nevada did not consult with other states, did not meet its source apportionment obligations to Class I areas in other states, and did not document the technical basis for its apportionment as required in 40 CFR 51.308(d)(3)(i), (ii), and (iii). Although Nevada lacked formal membership in the WRAP, representatives from NDEP actively participated with other state representatives in the WRAP's committees and work groups, which jointly directed the development of the WRAP's technical analyses. Nevada and other western states relied on the WRAP's source apportionment modeling results to estimate the contribution of out-of-state emissions and relied on the WRAP's consultation process to ensure the compatibility of reasonable progress goals and long-term strategies.[8] Nevada used the WRAP's source apportionment modeling to demonstrate the minimal contribution of Nevada's emissions to sulfate and nitrate extinction at 25 Class I areas in five neighboring states.[9] Based on consultation through the WRAP, Nevada identified no major contributions that supported developing new interstate strategies, mitigation measures, or emissions reduction obligations. Nevada and neighboring states agreed that the implementation of BART and other existing measures in state regional haze plans were sufficient for the states to meet the reasonable progress goals for their respective Class I areas, and that future consultation would address any

[6] Per the Nevada RH SIP, page 6–5, the only BART emission reductions included in the 2018 emission inventory were SO_2 reductions resulting from presumptive BART limits.

[7] The Consortium's comment letter was signed by representatives of the Sierra Club, National Parks Conservation Association, Citizens for Dixie's Future, Defend Our Desert, Friends of Gold Butte, Grand Canyon Trust, and Western Resource Advocates.

[8] See 9.1.3 Past Consultation with other States in Nevada's SIP.

[9] See 4.3.3 Source Apportionment for Other Class I Areas in Nevada's SIP.

new strategies or measures needed. Moreover, Nevada did not receive any requests from other states to achieve even greater reductions in its emissions in order for other states to meet their RPGs. Therefore, EPA reaffirms its proposed determination that Nevada adequately consulted with other states, demonstrated that its SIP includes all measures necessary to obtain its share of emission reductions at other Class I areas, and provided the technical basis to document its analysis.

C. BART for SO_2 and PM_{10} at RGGS

In addition to extensive comments addressing NDEP's BART determination for NO_X at RGGS, we also received comments concerning the timing of implementation of BART at RGGS generally, as well as comments specifically addressing the SO_2 and PM_{10} BART determinations for RGGS. As noted above, we are not acting on NDEP's BART determination for NO_X at RGGS at this time. Therefore, our responses concerning RGGS are limited to comments related to the SO_2 and PM_{10} BART determinations.

1. BART for SO_2 at RGGS

Comments: Regarding NDEP's BART determination for SO_2 at RGGS, WildEarth Guardians expressed concern that ''SO_2 limits do not appear to represent the degree of reduction achievable through the application of the best system of continuous emission reduction.'' In particular, they asserted that ''it appears that Reid Gardner is already meeting emission limits that are less than half of this proposed limit'', and that ''even Nevada recognizes the SO_2 emissions increases will occur as a result of [NDEP's] proposed BART.'' By contrast, the National Park Service and the U.S. Fish and Wildlife Service praised ''NDEP's action to lower the SO_2 limit'' at RGGS.

Response: In setting the SO_2 BART limits for RGGS, NDEP took into account the existing controls at the facility, consistent with CAA Section 169A(g)(2) and 40 CFR 51.308(e)(1)(ii)(A). In particular, NDEP considered the effect of new fabric filter baghouses that were installed on all three BART units at RGGS in 2008 and 2009 pursuant to a consent decree between the facility's owner and NDEP and EPA.[10] The consent decree established an SO_2 emissions limit of 0.40 lbs/MMbtu (a million British thermal units), based on a 10-day rolling average period, for each of the three BART units.[11] In its draft regional haze SIP, NDEP proposed an SO_2 emissions limit of 0.25 lbs/MMbtu for each of the three BART units at RGGS. In response to comments from EPA and the National Park Service, NDEP subsequently lowered the BART limits to 0.15 lbs/MMbtu, based on a 24-hour averaging period.[12]

In arguing for further reductions in these BART limits, WildEarth Guardians notes that, ''according to Clean Air Markets data from the EPA, units 1–3 are meeting annual sulfur dioxide emission rates of between 0.054 and 0.064 lbs/MMbtu and have for at least the last two years.'' However, while the units' current annual average emission rates may be less than 0.15 lb/MMbtu, these figures are not directly comparable to the 24-hour rolling average emissions limits set by NDEP in its BART determination for RGGS. The more relevant points of comparison are the units' current Title V permit limits of 0.40 lbs/MMbtu, based on a 10-day rolling average period, which are more than twice the limit that NDEP has set for each of the three BART units in its Regional Haze SIP.

In response to commenters' concerns regarding potential increases in SO_2 emissions as a result of NDEP's BART determination at RGGS, EPA re-examined NDEP's estimates of emission reductions resulting from BART controls at RGGS. Nevada's SIP provides two sets of estimated emission reductions resulting from BART controls at RGGS, one based on the WRAP baseline (4,970 tons) and one based on NDEP's baseline (1,441 tons) for SO_2.[13] Although SO_2 emissions are estimated to increase by 838 tons from NDEP's baseline, they are expected to decrease by 2,696 tons from the WRAP's baseline. Under both scenarios, the emissions after BART Controls are held constant at 2,279 tons. Thus, the difference in estimated emissions reductions is a reflection of the large difference between the WRAP baseline and the NDEP baseline for SO_2.

NDEP's baseline emissions for SO_2 were calculated using acid rain data that omitted data deemed invalid due to monitoring problems that were addressed by the consent decree. According to NDEP, the omission of the invalid data effectively lowered the baseline emissions (measured in lbs/MMbtu) by nearly half.[14] Thus, the projected increase in SO_2 appears to be an artifact of NDEP's exceptionally low baseline that is attributable to the exclusion of invalid data.

From a broader perspective, NDEP's BART determination for SO_2 at RGGS will result in a lower emissions limit (0.15 lbs/MMbtu based on a 24-hour rolling average compared to the current Title V Permit limit of 0.40 lbs/MMbtu based on a 10-day rolling average period) related to the new fabric filter baghouses and existing wet soda ash with a dry flue gas desulfurization system. Since the BART determination lowers the short-term emissions limit, there is no valid reason to suspect that SO_2 emissions will increase as a result of BART controls. EPA will use the progress report due five years after the SIP's approval to evaluate actual SO_2 emissions at RGGS to ensure that NDEP's BART determination has not resulted in increased emissions and will encourage NDEP to take appropriate action, if necessary, at that time.

2. BART for PM_{10} at RGGS

Comments: Regarding the PM_{10} limit, WildEarth Guardians expressed concern that ''the proposed BART determination is unenforceable because there are no monitoring, recordkeeping, or reporting requirements proposed that would ensure compliance with the 24-hour limits. There are simply no monitoring requirements proposed that would actually ensure that the PM limit is met on a continuous basis. This is contrary to the Clean Air Act, which defines BART based on continuous emission reductions.''

Response: As explained in EPA's BART Guidelines, ''[m]onitoring requirements generally applicable to sources, including those that are subject to BART, are governed by other regulations. See, e.g., 40 CFR part 64 (compliance assurance monitoring); 40 CFR 70.6(a)(3) (periodic monitoring); 40 CFR 70.6(c)(1) (sufficiency monitoring).''[15] The monitoring, recordkeeping and reporting requirements specifically applicable to RGGS are found in the existing Nevada SIP as well as the facility's Title V permit. In particular, the applicable SIP requires continuous monitoring of opacity and compliance with a 20 percent opacity limit.[16] Although opacity does not directly correlate with particulate concentrations, it is a good indicator of proper operation of the baghouse since almost any opacity from a baghouse-controlled coal-fired boiler

[10] See Nevada's RH SIP Sections 5.5 and 6.5.2.2.

[11] *United States* v. *Nevada Power Company,* Case 2:07–cv–00417 (D. Nev.) (consent decree entered June 15, 2007).

[12] See Nevada's RH SIP Chapter 5, footnote 4.

[13] See Nevada's RH SIP, Table 5–6 Reid Gardner: BART Emissions Reductions in Tons per Year.

[14] See Nevada's RH SIP Section 5.5.

[15] 40 CFR part 51 Appendix Y, Section V.

[16] See 40 CFR 52.1470(c); Nevada Administrative Code 445B.256–267, 22017.

is indicative of leaks in the baghouse. Under Part 64, such an excursion or exceedance must be addressed ''as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions.'' [17] For directly assuring compliance with existing PM_{10} limits, the Title V permit for RGGS contains an annual stack test requirement using Method 5 for PM and Method 201A/202 for PM_{10}. Given the current opacity limit in the SIP and the compliance methods in RGGS's Title V permit, we are approving the BART determination for PM_{10} in Nevada's RH SIP. We will continue to work with Nevada to ensure that all appropriate compliance provisions are in the SIP.

3. Timing of Implementation

Comments: WildEarth Guardians expressed concern that ''EPA has not demonstrated that 'by January 1, 2015' is as expeditiously as practical for complying with BART at Reid Gardner, nor shown that it is reasonable to allow the facility a full five years to come into compliance with BART.''

Response: The Nevada BART regulation in the Regional Haze SIP requires that the BART control measures at RGGS must be installed and operating ''[o]n or before January 1, 2015; or (2) [n]ot later than 5 years after approval of Nevada's state implementation plan for regional haze by the United States Environmental Protection Agency Region 9, whichever occurs first.'' Given the date of our approval of Nevada's SIP, the BART implementation deadline for the RGGS is January 1, 2015, about three years from the date of this final rule. EPA considers Nevada's choice of the January 1, 2015, to be reasonable in this instance.

D. Corrections to EPA's Technical Analysis

Comments: NDEP noted a few corrections to EPA's analysis in the proposed rule at 76 FR 36450 (June 22, 2011), but stated that these minor corrections do not alter any of EPA's conclusions. The first correction was to note that the percentages of emissions by source category shown in section IV.C.2 of EPA's proposed rule are based on the 2018 emissions inventory. The proposal omitted the date of the inventory. Secondly, NDEP commented that the discussion of predominant sources of $PM_{2.5}$ was in error because ''the predominant source of PM fine emissions are windblown dust (43 percent) and fugitive dust (30 percent).'' EPA had mistakenly attributed PM fine emissions to natural fires (49 percent) and area sources (37 percent). Lastly, NDEP commented on the sources of visibility impairment, saying that soil in $PM_{2.5}$ is mostly from windblown dust, not natural fire. EPA had mistakenly attributed the source of $PM_{2.5}$ to natural fire.

Response: EPA is correcting the record as noted above.

IV. EPA Action

Under section 110(k)(3) of the CAA, EPA is fully approving most portions of the Nevada Regional Haze SIP as satisfying all of the relevant requirements of CAA Section 169A and the Regional Haze Rule. For the portions of the SIP establishing BART for NO_X at RGGS, EPA is taking no action at this time, and will take action on those portions of the SIP in a separate rulemaking.

We find that Nevada has met the following Regional Haze Rule requirements: The State established baseline visibility conditions and reasonable progress goals for each of its Class I areas; the State developed a long-term strategy with enforceable measures ensuring reasonable progress towards meeting the reasonable progress goals for the first ten-year planning period, through 2018; the State has adequately addressed the application of Best Available Retrofit Technology to specific stationary sources, except for NO_X at RGGS; the State has an adequate regional haze monitoring strategy; the State provided for consultation and coordination with federal land managers in producing its regional haze plan; and, the State provided for the regional haze plan's future revisions.

In addition, under section 110(k)(3) of the CAA, we are fully approving the Nevada Regional Haze SIP as satisfying the CAA Section 110(a)(2)(D)(i)(II) requirement to prohibit emissions that will interfere with measures to protect visibility in another state for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.[18]

V. 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 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);
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not interfere with Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) because EPA lacks the discretionary authority to address environmental justice in this rulemaking.

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. However, the Moapa Band of Paiutes did raise issues in the context of the BART determination for RGGS, which will be addressed at a future date. Region 9 engaged in formal consultation with the Moapa Band of Paiutes on August 11, 2011, and heard these issues in person. We will continue to consult with Moapa on RGGS.

[17] 40 CFR 64.7(d)(1).

[18] As noted in our proposal, 76 FR 36465, we previously approved Nevada's SIP for Interstate Transport as meeting the other requirements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. See 70 FR 41629. We are now codifying this prior approval along with our current approval under a new section entitled ''Interstate Transport.''

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 action 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 25, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 oxides, Sulfur dioxide, Particulate matter, Reporting and recordkeeping requirements, Visibility, Volatile organic compounds.

Dated: December 13, 2011.

Jared Blumenfeld,

Regional Administrator, Region 9.

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 DD—Nevada

■ 2. In § 52.1470(c):

■ a. In paragraph (c), Table 1 is amended by adding an entry for ''445B.029'' after the entry for ''445B.022'', and adding entries for ''445B.22095,'' and ''445B.22096'' after the entry for ''445B.22093''.

■ 3. The table in paragraph (e) is amended by adding an entry for ''Nevada Regional Haze State Implementation Plan (October 2009)'' to the end of the table.

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED NEVADA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Nevada Administrative Code, Chapter 445B, Air Controls, Air Pollution; Nevada Administrative Code, Chapter 445, Air Controls, Air Pollution; Nevada Air Quality Regulations—Definitions				
* *	*	*	*	* *
445B.029	''Best available retrofit technology'' defined.	4/23/09	[Insert page number where the document begins 3/26/12].	Included in supplemental SIP revision submitted on September 20, 2011, and approved as part of approval of Nevada Regional Haze SIP.
* *	*	*	*	* *
445B.22095	Emission limitation for BART	4/23/09	[Insert page number where the document begins 3/26/12].	Included in supplemental SIP revision submitted on September 20, 2011, and approved as part of approval of Nevada Regional Haze SIP.
445B.22096, excluding the NO_X emission limits and control types in sub-paragraph (1)(c).	Control measures constituting BART; limitations on emissions.	1/28/10	[Insert page number where the document begins 3/26/12].	Included in supplemental SIP revision submitted on September 20, 2011, and approved as part of approval of Nevada Regional Haze SIP. Excluding the NO_X emission limits and control types for units 1, 2 and 3 of NV Energy's Reid Gardner Generating Station.
* *	*	*	*	* *

* * * * *

(e) * * *

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* *	*	*	*	* *
Nevada Regional Haze State Implementation Plan (October 2009), excluding the BART determination and the associated emission limits for NO_X at Reid Gardner Generating Station in sections 5.5.3, 5.6.3 and 7.2.	State-wide	11/18/09	[Insert page number where the document begins 3/26/12].	Excluding Appendix A (''Nevada BART Regulation''). The Nevada BART regulation, including NAC 445B.029, 445B.22095, and 445B.22096, is listed above in 40 CFR 52.1470(c).
* *	*	*	*	* *

■ 3. Section 52.1488 is amended by adding paragraph (e) to read as follows:

§ 52.1488 Visibility protection.

* * * * *

(e) *Approval.* On November 18, 2009, the Nevada Division of Environmental Protection submitted the ''Nevada Regional Haze State Implementation Plan.'' With the exception of the BART determination and the associated emission limits for NO_X at Reid Gardner Generating Station in sections 5.5.3, 5.6.3 and 7.2, the Nevada Regional Haze State Implementation Plan, as supplemented and amended on February 18, 2010 and September 20, 2011, meets the applicable requirements of Clean Air Act sections 169A and 169B and the Regional Haze Rule in 40 CFR 51.308.

■ 4. Add a new § 52.1491 to read as follows:

§ 52.1491 Interstate transport.

(a) *Approval.* On February 7, 2007, the Nevada Division of Environmental Protection submitted the ''Nevada State Implementation Plan for Interstate Transport to Satisfy the Requirements of the Clean Air Act 110(a)(2)(D)(i) for the 8-hour Ozone and $PM_{2.5}$ NAAQS Promulgated in July 1997'' (''2007 Interstate Transport SIP''). The 2007 Interstate Transport SIP meets the requirements of Clean Air Act section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS other than the requirements of Clean Air Act section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility.

(b) *Approval.* The requirements of Clean Air Act section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS are met by the ''Nevada Regional Haze State Implementation Plan,'' as supplemented and amended on February 18, 2010 and September 20, 2011.

[FR Doc. 2012–7025 Filed 3–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0713; FRL–9652–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, Maryland, New Jersey, and Pennsylvania; Determinations of Attainment of the 1997 8-Hour Ozone Standard for the Philadelphia-Wilmington-Atlantic City Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making two determinations regarding the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE 8-hour ozone moderate nonattainment area (the Philadelphia Area). First, EPA is determining that the Philadelphia Area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2008–2010 monitoring period. In accordance with EPA's applicable ozone implementation rule, this clean data determination suspends the requirement for the Philadelphia Area to submit an attainment demonstration, reasonably available control measures (RACM), a reasonable further progress (RFP) plan and contingency measures related to attainment of the 1997 8-hours ozone NAAQS. These requirements shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Second, EPA is determining that the Philadelphia Area has attained the 1997 8-hour ozone NAAQS by its attainment date of June 15, 2011. These actions are being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on April 25, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0713. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning EPA's proposed action related to Delaware, Maryland or Pennsylvania, please contact Maria A. Pino (215) 814–2181, or by email at *pino.maria@epa.gov.* If you have questions concerning EPA's proposed action related to New Jersey, please contact Paul Truchan (212) 637–3711, or by email at *truchan.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this action.

I. Background
II. Summary of Actions
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

EPA published a notice of proposed rulemaking (NPR) for the States of Delaware, Maryland, and New Jersey