Court of Appeals for the appropriate circuit by January 28, 2013. 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 approving the incorporation by reference of Pennsylvania’s control of NO\textsubscript{X} emissions from glass melting furnaces into ACHD Rules and Regulations, Article XXI, Air Pollution Control may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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


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

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

<table>
<thead>
<tr>
<th>Article XX or XXI citation</th>
<th>Title/subject</th>
<th>State effective date</th>
<th>EPA approval date</th>
<th>Additional explanation/§52.2063 citation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

Subpart NN—Pennsylvania

2. In §52.2020, the table in paragraph (c)(2) is amended by adding a heading for Subpart 10 and an entry for Section 2105.101 after the entry for Section 2105.90 to read as follows:

<table>
<thead>
<tr>
<th>§52.2020 Identification of plan.</th>
</tr>
</thead>
<tbody>
<tr>
<td>*(c) * * * * *</td>
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<tr>
<td>*(2) * * *</td>
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</tbody>
</table>

PART E—Source Emission and Operating Standards

<table>
<thead>
<tr>
<th>Subpart 10—NO\textsubscript{X} Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 2105.101 ........................</td>
</tr>
<tr>
<td>Control of NO\textsubscript{X} emissions from Glass Melting Furnaces.</td>
</tr>
<tr>
<td>4/3/12</td>
</tr>
<tr>
<td>New subpart and section are added.</td>
</tr>
</tbody>
</table>

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| [FR Doc. 2012–28831 Filed 11–28–12; 8:45 am] |

ENIRONMENTAL PROTECTION AGENCY

40 CFR Part 52


Approval and Promulgation of State Implementation Plans; City of Albuquerque—Bernalillo County, New Mexico; Interstate Transport Affecting Visibility and Regional Haze Rule Requirements for Mandatory Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the City of Albuquerque—Bernalillo County, New Mexico State Implementation Plan (SIP) revisions submitted by the Governor of New Mexico on July 28, 2011 addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. The EPA finds that these revisions to the State Implementation Plan (SIP) and associated rules meet the requirements of the Clean Air Act (CAA) and comply with the provisions of 40 CFR 51.309, thereby meeting requirements for reasonable progress for the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report for approval of the plan through 2018. We are also approving SIP submissions offered as companion rules to the Section 309 regional haze plan, specifically, rules for the Sulfur Dioxide Emissions Inventory Requirements and the Western Backstop Trading Program, submitted on December 26, 2003, September 10, 2008, and May 24, 2011, and rules for Open Burning, submitted on December 26, 2003 and July 28, 2011. These SIP revisions were submitted to address the requirements of the Act and our rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the “regional haze program”). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

We are also approving a portion of the SIP revision submitted by the City of Albuquerque—Bernalillo County, New Mexico on July 30, 2007, for the purpose of addressing the “good neighbor” provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the PM_{2.5} NAAQS. We are approving the portion of the SIP submittal that addresses the CAA requirement concerning non-interference with programs to protect visibility in other states. EPA is taking this action pursuant to section 110 of the CAA.

DATES: This final rule is effective December 31, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2008–0702. All documents in the docket are listed on the www.regulations.gov Web site.

Publicly available docket materials are available either electronically through www.regulations.gov, or in hard copy at the Air Planning Section (6PD–
I. Background
II. Final Action
III. Basis for Final Action
IV. Issues Raised by Commenters and EPA’s Responses
V. Statutory and Executive Orders

B. Interstate Transport and Visibility

C. Lawsuits
D. Our Proposal

We signed our notice of proposed rulemaking on April 12, 2012, and it was published in the Federal Register on April 25, 2012 (77 FR 24768). In that notice, we provided a detailed description of the various regional haze requirements and interstate transport and visibility requirements. We are not repeating that description here; instead, the reader should refer to our notice of proposed rulemaking for further detail.

In our proposal, we proposed to approve BC SIP revisions submitted on July 28, 2011 addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. We proposed to find that all reviewed components of the SIP meet the requirements of 40 CFR 51.309. We also proposed to approve a portion of the BC SIP revision submitted on July 30, 2007, for the purpose of addressing the “good neighbor” provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the PM2.5 NAAQS. This proposal proposed to approve the portion of the SIP submittal that addresses the CAA requirement concerning non-interference with programs to protect visibility in other states.

E. Public Participation

We requested comments on all aspects of our proposed action and provided a thirty-day comment period, with the comment period closing on May 25, 2012. We received comments on our proposed rule that supported our proposed action and that were critical of our proposal action. In this action, we are responding to the comments we have received, taking final rulemaking action, and explaining the bases for our action.

II. Final Action

In this action, EPA is approving City of Albuquerque—Bernalillo County, New Mexico SIP revisions submitted on July 28, 2011 addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. We find that all reviewed components of the SIP meet the requirements of 40 CFR 51.309. In conjunction with this approval, we are also approving the following related rules: 20.11.46 NMAC, Sulfur Dioxide Emission Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program (submitted after initial adoption on December 26, 2003, with revisions submitted on September 10, 2008, and May 24, 2011) and 20.11.21 NMAC, Open Burning (submitted after initial adoption on December 26, 2003, with revisions submitted on July 28, 2011).

We are approving a portion of the SIP revision submitted by the City of Albuquerque—Bernalillo County, New Mexico on July 30, 2007, for the purpose of addressing the “good neighbor” provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the PM2.5 NAAQS. We are approving the portion of the SIP submittal that addresses the CAA requirement concerning non-interference with programs to protect visibility in other states.

III. Basis for Our Final Action

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

We are approving BC’s regional haze SIP provisions because they meet the relevant regional haze requirements. Most of the adverse comments we received concerning our proposed approval of the regional haze SIP pertained to our proposed approval of the SO2 backstop trading program.

IV. Issues Raised by Commenters and EPA’s Responses

A. Comments and Responses Common to Participating States Regarding Proposed Approval of the SO2 Backstop Trading Program Components of the RH SIPs

EPA has proposed to approve the SO2 backstop trading program components of the RH SIPs for all participating States and has done so through four separate proposals: For the Bernalillo County proposal see 77 FR 24768 (April 25, 2012); For the Utah proposal see 77 FR 28825 (May 15, 2012); for the Wyoming proposal see 77 FR 30953 (May 24, 2012); finally, for the New Mexico proposal see 77 FR 36043 (June 15, 2012). National conservation organizations paired with organizations local to each state have together submitted very similar, if not identical, comments on various aspects of EPA’s proposed approval of these common program components. These comment letters may be found in the docket for each proposal and are dated as follows: May 25, 2012 for Bernalillo County; July 16, 2012 for Utah; July 23, 2012 for Wyoming; and July 16, 2012 for New Mexico. Each of the comment letters has attached a consultant’s report dated May 25, 2012, and titled: “Evaluation of Whether the SO2 Backstop Trading Program Proposed by the States of New Mexico, Utah and Wyoming and Albuquerque-Bernalillo County Will Result in Lower SO2 Emissions than Source-Specific BART.” In this section, we address and respond to those comments we identified as being consistently submitted and specifically directed to the component of the published proposals dealing with the submitted SO2 backstop trading program. For our organizational purposes, any additional or unique comments found in the conservation organization letter that is applicable to this proposal (i.e., for the City of Albuquerque-Bernalillo County) will be addressed in the next section where we also address all other comments received.

Comment: The language of the Clean Air Act appears to require BART. The commenter acknowledges that prior case law affirms EPA’s regulatory basis for having “better than BART” alternative measures, but nevertheless asserts that it violates Congress’ mandate for an alternative trading program to rely on emissions reductions from non-BART sources and excuse EGUs from compliance with BART.

Response: The Clean Air Act requires BART “as may be necessary to make reasonable progress toward meeting the national goal” of remedying existing impairment and preventing future impairment at mandatory Class I areas. See CAA Section 169A(6)(2). In 1999, EPA issued regulations allowing for alternatives to BART based on a reading of the CAA that focused on the overarching goal of the statute of achieving progress. EPA’s regulations provided states with the option of implementing an emissions trading program or other alternative measure in
lieu of BART so long as the alternative would result in greater reasonable progress than BART. We note that this interpretation of CAA Section 169A[(b)](2) was determined to be reasonable by the D.C. Circuit in Center for Energy and Economic Development v. EPA, 398 F.3d 653, 659–660 (D.C. Cir. 2005) in a challenge to the backstop market trading program under Section 309, and again found to reasonable by the D.C. Circuit in Utility Air Regulatory Group v. EPA, 471 F.3d 1333, 1340 (D.C. Cir. 2006) ("[w]e have already held in CEED that EPA may leave states free to implement BART-alternatives so long as those alternatives also ensure reasonable progress."). Our regulations for alternatives to BART, including the provisions for a backstop trading program under Section 309, are therefore consistent with the Clean Air Act and not in issue in this action approving a SIP submitted under those regulations. We have reviewed the submitted 309 trading program SIPs to determine whether each has the required backstop trading program (see 40 CFR 51.309(d)(4)(v)), and whether the features of the program satisfy the requirements for trading programs as alternatives to BART (see 40 CFR 51.308(e)(2)(ii)). Our regulations make clear that any market trading program as an alternative to BART contemplates market participation from a broader list of sources than merely those sources that are subject to BART. See 40 CFR 51.308(e)(2)(ii)(B). Comment: The submitted 309 Trading Program is defective because only 3 of 9 Transport States remain in the program. The Grand Canyon Visibility Transport Commission Report clearly stated that the program must be "comprehensive." The program fails to include the other Western States that account for the majority of sulfate contribution in the Class I areas of participating States, and therefore Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participation by other Transport Region States compounds the program’s deficiencies. Response: We disagree that the 309 trading program is defective because only 3 States remain in the program. EPA’s regulations do not require a minimum number of Transport Region States to participate in the 309 trading program, and there is no reason to believe that the limited participation by the 9 Transport States will limit the effectiveness of the program in the 3 States that have submitted 309 SIPs. The commenter’s argument is not supported by the regional haze regulations and is demonstrably inconsistent with the resource commitments of the Transport Region States that have worked for many years in the WRAP to develop and submit SIPs to satisfy 40 CFR 51.309. At the outset, our regulations affirm that "certain States * * * may choose" to comply with the 40 CFR 51.309 requirements and conversely that "[a]ny Transport Region State [may] elect not to submit an implementation plan" to meet the optional requirements. 40 CFR 51.309(a); see also 40 CFR 51.309(f). We have also previously observed how the WRAP, in the course of developing its technical plan to set the framework for a trading program, "understood that some States and Tribes may choose not to participate in the optional program provided by 40 CFR 51.309." 68 FR 33769 (June 5, 2003). Only five of nine Transport Region States initially opted to participate in the backstop trading program in 2003, and of those initial participants only Oregon and Arizona later elected not to submit 309 SIPs. We disagree with the commenter’s assertion that Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participating States must account for sulfate contributions to visibility impairment at Class I areas by addressing all requirements that apply under 40 CFR 51.308. To the extent Wyoming, New Mexico and Utah sources “do not account for the majority of sulfate contribution” at the 16 class I areas on Colorado Plateau, there is no legal requirement that they account for SO2 emissions originating from sources outside these participating States. Aside from this, the modeling results detailed in the proposed rulemaking show projected visibility improvement for the 20 percent worst days in 2018 and no degradation in visibility conditions on the 20 percent best days at all 16 of the mandatory Class I areas under the submitted 309 plan. Finally, we do not agree with the commenter’s characterization of the Grand Canyon Visibility Transport Commission Report, which used the term “comprehensive” only in stating the following:

"It is the intent of [the recommendation for an incentive-based trading program] that [it] include as many source categories and species of pollutants as is feasible and technically defensible. This preference for a ‘comprehensive’ market is based upon the expectation that a comprehensive program would be more effective at improving visibility and would yield more cost-effective emission reduction strategies for the region as a whole."

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

Comment: The submitted 309 trading program is defective because the pollutant reductions from participating States have little visibility benefit in each other’s Class I areas. The States that have submitted 309 SIPs are “largely non-contiguous” in terms of their physical borders and their air shed impacts. Sulfate emissions from each of the participating States have little effect on Class I areas in other participating States.

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

Comment: The emission benchmark used in the submitted 309 trading program is inaccurate. The “better-than-BART” demonstration needs to analyze BART for each source subject to BART in order to evaluate the alternative program. The submitted 309 trading program has no BART analysis. The “better-than-BART” demonstration does not comply with the regional haze regulations when it relies on the presumptive SO\textsubscript{2} emission rate of 0.15 lb/MMBtu for most coal-fired EGUs. The presumptive SO\textsubscript{2} limits are inappropriate because EPA has elsewhere asserted that “presumptive limits represented control capabilities at the time the BART Rule was promulgated, and that [EPA] expected that scrubber technology would continue to improve and control costs would continue to decline.” 77 Fed. Reg. 14614 (March 12, 2012).

Response: We disagree that the submitted 309 trading program requires an analysis that determines BART for each source subject to BART. Source specific BART determinations are not required to support the better-than-BART demonstration when the “alternative measure has been designed to meet a requirement other than BART.” See 40 CFR 51.308(e)(2)(i)(C). The requirements of Section 309 are meant to implement the recommendations of the Grand Canyon Visibility Transport Commission and are regulatory requirements “other than BART” that are part of a long-term strategy to achieve reasonable progress. As such, in its analysis, the State may assume emission reductions “for similar types of sources within a source category based on both source-specific and category-wide information, as appropriate.” See id. The 309 States used this approach in developing their emission benchmark, and we view it to be consistent with what we have previously stated regarding the establishment of a BART benchmark. Specifically, we explained that States designing alternative programs to meet requirements other than BART “may use simplifying assumptions in establishing a BART benchmark based on an analysis of what BART is likely to be for similar types of sources within a source category.” 71 FR 60619 (Oct. 13, 2006).

We also previously stated that “we believe that the presumptions for EGUs in the BART guidelines should be used for comparisons to a trading program or other alternative measure, unless the State determines that such presumptions are not appropriate.” Id. Our reasoning for this has also long been clear. While EPA recognizes that a case-by-case BART analysis may result in emission limits more stringent than the presumptive limits, the presumptive limits are reasonable and appropriate for use in assessing regional emissions reductions for the better-than-BART demonstration. See 71 FR 60619 (“the presumptions represent a reasonable estimate of a stringent case BART because they would be applied across the board to a wide variety of units with varying impacts on visibility, at power plants of varying size and distance from Class I areas”). EPA’s expectation that scrubber technology would continue to improve and that control costs would continue to decline is a basis for not regarding presumptive limits as a default or safe harbor BART determination when the BART Guidelines otherwise call for a complete, case-by-case analysis. We believe it was reasonable for the developers of the submitted trading program to use the presumptive limits for EGUs in establishing the emission benchmark, particularly since the methodology used to establish the emission benchmark was established near in time to our promulgation of the presumptive limits as well as our guidance that they should be used. We do not think the assumptions used at the time the trading program was developed, including the use of presumptive limits, were unreasonable. Moreover, the commenter has not demonstrated how the use of presumptive limits as a simplifying assumption at BART time, or even now, would be flawed merely because EPA expects that scrubber technology and costs will continue to improve.

Comment: The presumptive SO\textsubscript{2} emission rate overstates actual emissions from sources that were included in the BART benchmark calculation. In addition, States in the Grand Canyon Visibility Transport Region have established or proposed significantly more stringent BART limits for SO\textsubscript{2}. Using actual SO\textsubscript{2} emission data for EGUs, SO\textsubscript{2} emissions would be 130,601 tpy, not the benchmark of 141,859 tpy submitted in the 309 trading program. Using a combination of actual emissions and unit-specific BART determinations, the SO\textsubscript{2} emissions would be lower still at 123,529 tpy. Finally, the same data EPA relied on to support its determination that reductions under the Cross State Air Pollution Rule are “better-than-BART” would translate to SO\textsubscript{2} emissions of 124,740 tpy. These analyses show the BART benchmark is higher than actual SO\textsubscript{2} emissions reductions achievable through BART. It follows that the submitted 309 trading program is flawed because it cannot be deemed to achieve “greater reasonable progress” than BART.

Response: The BART benchmark calculation does not overstate emissions because it was not intended to assess actual emissions at BART subject sources nor was it intended to assess the control capabilities of later installed controls. Instead, the presumptive SO\textsubscript{2} emission rate served as a necessary simplifying assumption. When the States worked to develop the 309 trading program, they could not be expected to anticipate the future elements of case-by-case BART determinations made by other States (or EPA, in the case of a BART determination through any federal implementation plan), nor could they be expected to anticipate the details of later-installed SO\textsubscript{2} controls or the future application of enforceable emission limits to those controls. The emissions projections by the WRAP incorporated the best available information at the time from the states, and utilized the appropriate methods and models to provide a prediction of emissions from all source categories in this planning period. In developing a profile of planning period emissions to support each state’s reasonable progress goals, as well as the submitted trading program, it was recognized that the final control decisions by all of the states were not yet complete, including decisions as they may pertain to emissions from BART eligible sources. Therefore, we believe it is appropriate that the analysis and demonstration is based on data that was available to the States at the time they worked to construct the SO\textsubscript{2} trading program. The States did make appropriate adjustments based on information that was available to them at the time. Notably, the WRAP appropriately adjusted its use of the presumptive limits in the case of Huntington Units 1 and 2 in Utah, because those units were already subject to federally enforceable SO\textsubscript{2} emission rates that were lower than the
Comment: SO₂ emissions under the 309 trading program would be equivalent to the SO₂ emissions if presumptive BART were applied to each BART-subject source. Because the reductions are equivalent, the submitted 309 trading program does not show, by “the clear weight of the evidence,” that the alternative measure will result in greater reasonable progress than would be achieved by requiring BART. In view of the reductions being equivalent, it is not proper for EPA to rely on “non-quantitative factors” in finding that the SO₂ emissions trading program achieves greater reasonable progress.

Response: We recognize that the 2018 SO₂ milestone equals the BART benchmark and that the benchmark generally utilized the presumptive limits for EGUs, as was deemed appropriate by the States who worked together to develop the trading program. If the SO₂ milestone is exceeded, the trading program will be activated. We note, moreover, that the 2018 milestone constitutes an emissions cap on sulfur dioxide emissions that will persist after 2018. Under this framework, sources that would otherwise be subject to the trading program have incentives to make independent reductions to avoid activation of the trading program. We cannot discount that the 2003 309 SIP submittal may have already influenced sources to upgrade their plants before any case-by-case BART determination under Section 308 may have required it. In addition, the trading program was designed to encourage early reductions by providing extra allocations for sources that made reductions prior to the program trigger year. Permitting authorities that would otherwise permit increases in SO₂ emissions for new sources would be equally conscious of the potential impacts on the achievement of the milestone. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. The 309 trading program is designed as a backstop such that sources would work to accomplish emission reductions through 2018 that would be superior to the milestone and the BART benchmark. If instead the backstop trading program is triggered, the sources subject to the program would be expected to make any reductions necessary to achieve the emission levels consistent with each source’s allocation. We do not believe that the “clear weight of the evidence” determination referenced in 40 CFR 51.308(e)(2)(E)—in short, a determination that the alternative measure of the 309 trading program achieves greater reasonable progress than BART—should be understood to prohibit setting the SO₂ milestone to equal the BART benchmark. Our determination that the 2018 SO₂ milestone and other design features of the 309 SIP will achieve greater reasonable progress than would be achieved through BART is based on our understanding of how the SIP will promote and sustain emission reductions of SO₂ as measured against a milestone. Sources will be actively mindful of the participating states’ emissions inventory and operating to avoid exceeding the milestone, not trying to maximize their emissions to be equivalent to the milestone, as this comment suggests.

Comment: In proposing to find that the SO₂ trading program achieves greater reasonable progress than BART, EPA’s reliance on the following features of the 309 trading program is flawed: Non-BART emission reductions, a cap on new growth, and a mass-based cap on emissions. The reliance on non-BART emission reductions is “a hollow promise” because there is no evidence that the trading program will be triggered for other particular emission sources, and if the program is never triggered there will be no emission reductions from smaller non-BART sources. The reliance on a cap on future source emissions is also faulty because there is no evidence the trading program will be triggered, and thus the cap may never be implemented. Existing programs that apply to new sources will already ensure that SO₂ emissions from new sources are reduced to the maximum extent. EPA’s discussion of the advantages of the mass-based cap is unsupported and cannot be justified. EPA wrongly states that a mass-based cap based on actual emissions is more stringent than BART. There should not be a meaningful gap between actual and allowable emissions under a proper BART determination. A mass-based cap does not effectively limit emissions when operating at lower loads and, as an annual cap, does not have restrictive compliance averaging. EPA’s argument implies that BART limits do not apply during startup, shutdown or malfunction events, which is not correct. The established mass-based cap would allow sources to operate their SO₂ controls less efficiently, because some BART-subject EGUs already operate with lower emissions than the presumptive SO₂ emission rate of 0.15 lb/MMBtu and because some EGUs were assumed to be operating at 85% capacity when their capacity factor (and consequently their SO₂ emissions in tpy) was lower.

Response: We disagree that it is flawed to assess the benefits found in the distinguishing features of the trading program. The backstop trading program is not specifically designed so that it will be activated. Instead sources that are covered by the program are on notice that it will be triggered if the regulatory milestones are not achieved. Therefore, the backstop trading program would be expected to garner reductions to avoid its activation. It also remains true that if the trading program is activated, all sources subject to the program, including smaller non-BART sources would be expected to secure emission reductions as may be necessary to meet their emission allocation under the program. We also disagree that the features of the 2018 milestone as a cap on future source emissions and as a mass-based cap has no significance. As detailed in our proposal, the submitted SIP is consistent with the requirement that the 2018 milestone does indeed continue as an emission cap for SO₂ unless the milestones are replaced by a different program approved by EPA as meeting the BART and reasonable progress requirements under 51.308. Future visibility impairment is prevented by capping emissions growth from those sources not eligible under the BART requirements, BART sources, and from entirely new sources in the region. The benefits of a milestone are therefore functionally distinct from the control efficiency improvements that could be gained at a limited number of BART subject sources. While BART-subject sources may not be operating at 85% capacity today, we believe the WRAP’s use of the capacity assumption in consideration of projected future energy demands in 2018 was reasonable for purposes of the submitted demonstration. While BART requires BART subject sources to operate SO₂ controls efficiently, this does not mean that an alternative to BART thereby allows, encourage, or causes sources to operate their controls less efficiently. On the contrary, we find that the SIP, consistent with the well-considered 309 program requirements, functions to the contrary. Sources will be operating their controls in consideration of the milestone and they also remain subject to any other existing or future...
requirements for operation of SO\textsubscript{2} controls.

We also disagree with the commenter’s contention that existing programs are equivalent in effect to the emissions cap. EPA’s new source review programs are designed to permit, not cap, source growth, so long as the national ambient air quality standards and other applicable requirements can be achieved. Moreover, we have not argued that BART does not apply at all times or that emission reductions under the cap are meant to function as emission limitations are made to meet the definition of BART (40 CFR 51.309). The better-than-BART demonstration is not, as the comment would have it, based on issues of compliance averaging or how a BART limit operates in practice at an individual facility. Instead, it is based on whether the submitted SIP follows the regulatory requirements for the demonstration and evidences comparatively superior visibility improvements for the Class I areas it is designed to address.

Comment: The submitted 309 SIP will not achieve greater reasonable progress than would the requirement for BART on individual sources. The BART program “if adequately implemented” will promote greater reasonable progress, and EPA should require BART on all eligible air pollution sources in the state. EPA’s proposed approval of the 309 trading program is “particularly problematic” where the BART sources cause or contribute to impairment at Class I areas which are not on the Uniform Rate of Progress glide-path towards achieving natural conditions. EPA should require revisions to provide for greater SO\textsubscript{2} reductions in the 309 program, or it should require BART reductions on all sources subject to BART for SO\textsubscript{2}.

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

Comment: The WRAP attempts to justify the SO\textsubscript{2} trading program because SO\textsubscript{2} emissions have decreased in the three Transport Region states relying on the alternative program by 33% between 1990–2000. The justification fails because the reductions were made prior to the regional haze rule. The reliance on reductions that predate the regional haze rule violates the requirement of 40 CFR 51.308(e)(2)(iv) that BART alternatives provide emission reductions that are “surplus” to those resulting from programs implemented to meet other Clean Air Act Requirements. EPA must explain and correct the discrepancies between the data presented in the 309 SIP submittals. There are discrepancies in what has been presented as the results of WRAP photochemical modeling. The New Mexico RH SIP proposal by EPA shows, for example, that the 20% worst days at Grand Canyon National Park have visibility impairment of 11.1 deciviews, while the other EPA proposals show 11.3 deciviews. The discrepancy appears to be due to the submittals being based on different modeling scenarios developed by the WRAP. EPA must explain and correct the discrepancies and “re-notice” a new proposed rule containing the correct information.

Response: We agree that there are discrepancies in the numbers in Table 1 of the proposal notices. The third column of the table below shows the modeling results presented in Table 1 of the Albuquerque, Wyoming and Utah proposals. The modeling results in the New Mexico proposal Table 1 are shown in the fourth column. The discrepancies come from the State’s using different preliminary reasonable progress cases developed by the WRAP. The Wyoming, Utah and Albuquerque proposed notices incorrectly identify the Preliminary Reasonable Progress case as the PRP18b emission inventory instead of correctly identifying the presented data as modeled visibility based on the “prp18a” emission inventory. The PRP18a emission inventory is a predicated 2018 emission inventory with all known and expected controls as of March 2007. The preliminary reasonable progress case (“PRP18b”) used by New Mexico is the more updated version produced by the WRAP with all known and expected controls as of March 2009. Thus, we are correcting Table 1, column 5 in the

*This particular comment was not submitted in response to the proposal to approve Albuquerque’s 309 trading program, the earliest published proposal. It was consistently submitted in the comment periods for the proposals to approve the 309 trading programs for NM, WY and UT, which were later in time.
Wyoming, Utah and Albuquerque of our proposed notices to include model results from the PRP18b emission inventory, consistent with the New Mexico proposed notice and the fourth column in the table below. We are also correcting the description of the Preliminary Reasonable Progress Case (referred to as the PRP18b emission inventory and modeled projections) to reflect that this emission inventory includes all controls “on the books” as of March 2009.

<table>
<thead>
<tr>
<th>Class I area</th>
<th>State</th>
<th>2018 Preliminary reasonable progress PRP18a case (deciview)</th>
<th>2018 Preliminary reasonable progress PRP18b case (deciview)</th>
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<tbody>
<tr>
<td>Grand Canyon National Park</td>
<td>AZ</td>
<td>11.3</td>
<td>11.1</td>
</tr>
<tr>
<td>Mount Baldy Wilderness</td>
<td>AZ</td>
<td>11.4</td>
<td>11.5</td>
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<tr>
<td>Petrified Forest National Park</td>
<td>AZ</td>
<td>12.9</td>
<td>12.8</td>
</tr>
<tr>
<td>Sacraments Canyon Wilderness</td>
<td>AZ</td>
<td>15.1</td>
<td>15.0</td>
</tr>
<tr>
<td>Black Canyon of the Gunnison Park Wilderness</td>
<td>CO</td>
<td>9.9</td>
<td>9.8</td>
</tr>
<tr>
<td>Flat Tops Wilderness</td>
<td>CO</td>
<td>9.0</td>
<td>9.0</td>
</tr>
<tr>
<td>Mesa Verde National Park</td>
<td>CO</td>
<td>12.5</td>
<td>12.5</td>
</tr>
<tr>
<td>Weminuche Wilderness</td>
<td>CO</td>
<td>9.9</td>
<td>9.8</td>
</tr>
<tr>
<td>West Elk Wilderness</td>
<td>CO</td>
<td>9.0</td>
<td>9.0</td>
</tr>
<tr>
<td>San Pedro Parks Wilderness</td>
<td>NM</td>
<td>9.8</td>
<td>9.8</td>
</tr>
<tr>
<td>Arches National Park</td>
<td>UT</td>
<td>10.9</td>
<td>10.7</td>
</tr>
<tr>
<td>Bryce Canyon National Park</td>
<td>UT</td>
<td>11.2</td>
<td>11.1</td>
</tr>
<tr>
<td>Capitol Reef National Park</td>
<td>UT</td>
<td>10.9</td>
<td>10.7</td>
</tr>
<tr>
<td>Zion National Park</td>
<td>UT</td>
<td>10.5</td>
<td>10.4</td>
</tr>
<tr>
<td>Yellowstone National Park</td>
<td>UT</td>
<td>13.0</td>
<td>12.8</td>
</tr>
</tbody>
</table>

Section 309 requires Transport Region States to include a projection of the improvement in visibility expected through the year 2018 for the most impaired and least impaired days for each of the 16 Class I areas on the Colorado Plateau. 40 CFR 51.309(d)(2). As explained in the preamble to the 1999 regional haze regulations, EPA included this requirement to ensure that the public would be informed on the relationship between chosen emissions control measures and their effect on visibility. 64 FR at 35751. Given the purpose of this requirement, we do not consider the discrepancies noted above to be significant and are not re-noticing our proposed rulemaking as the discrepancies do not change our proposed conclusion that SIP submitted by City of Albuquerque—Bernalillo County contains reasonable projections of the visibility improvements expected at the 16 Class I areas at issue. The PRP18a modeling results show projected visibility improvement for the 20 percent worst days from the baseline period to 2018. The PRP18b modeling results show either the same or additional visibility improvement on the 20 percent worst days beyond the PRP18a modeling results. We also note there are two discrepancies in New Mexico’s Table 1, column four compared to the other participating States’ notices. The 2018 base case visibility projection in the New Mexico proposed notice for Black Canyon of the Gunnison National Park Wilderness and Weminuche Wilderness should be corrected to read 10.1 deciview rather than 10.0. Notwithstanding the discrepancies described above, we believe that the BC SIP adequately projects the improvement in visibility for purposes of Section 309.

B. Additional Comments

Comment: The regional haze regulations at 40 CFR 51.308(e)(2)(i)(B) require that “each BART-eligible source in the State must be subject to the requirements of the alternative program, [and] have a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART * * *” The sole coal-fired electric generating units (“EGUs”) that are subject to BART in New Mexico are the four units at the San Juan Generating Station (“SJGS”). While the BC RH SIP lists SJGS as a BART eligible source, it fails to identify a federally enforceable emission limitation for SO2 that is determined to be BART by the State and has been approved by EPA as meeting BART. As such, the BC RH SIP fails to comply with 40 CFR 51.308(e)(2)(i)(B).

Response: This comment presents a flawed reading of our regulations by inserting the word “and” where it does not, in fact, appear in the language of 40 CFR 51.308(e)(2)(i)(B). 40 CFR 51.308(e)(2)(i)(B) requires that “each BART-eligible source in the State must be subject to the requirements of the alternative program, have a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART in accordance with section 302(c) or paragraph (e)(1) of this section, or otherwise addressed under paragraphs (e)(1) or (e)(4) of this section.” This section of the rule requires that each BART-eligible source be covered by the alternative program or satisfy the BART requirements by either participation in a “Transport Rule Federal Implementation Plan” under paragraph (e)(4) or by determining BART for the source under paragraph (e)(1). Because there are no BART-eligible sources in Bernalillo County, the requirement to make BART determinations does not apply. As was detailed in the proposal, the alternative program satisfies the requirements of 40 CFR 51.308(e)(2)(i)(B), because all BART-eligible sources are covered by the alternative program. We also note the alternative program goes further to additionally cover point sources that have actual emissions of SO2 greater than 100 tons per year (sources meeting the requirements of 20.2.81.101. NMAC).

Comment: The BC RH SIP also fails to comply with 40 CFR 51.309(g), which requires that SIPs address impacts to Class I areas not located on the Colorado plateau. 40 CFR 51.309(g). States are required to submit air quality modeling or other reliable evidence revealing visibility impacts and establishing that reasonable progress goals will be met. In December 2010 and February 2011, EPA informed Bernalillo County that its SIP failed to comply with 40 CFR 51.309(g)(1) and (2) because it did not submit evidence showing Bernalillo
County’s effects on visibility in Class I areas in New Mexico, such as Gila Wilderness and Carlsbad Cavern. EPA Docket EPA–R06–OAR–2008–0702–0011 at pages 110–111 and 126–127. EPA determined that SO2 emissions in New Mexico were projected to increase from 4,966 tpy in 2002 to 14,073 tpy by 2018 with nearly 30% of the 2018 emissions coming from Bernalillo County. Id. EPA also determined that a significant increase in NOx emissions from Bernalillo County was projected to occur over this same time period. Id. EPA asked Bernalillo County to conduct visibility modeling to determine its impacts to Class I areas and to explain how reasonable progress goals would be met in light of significant emissions increases. Id.

The commenters state that they were unable to identify any visibility modeling or other analysis conducted by Bernalillo County to address EPA’s concerns. The commenters request an opportunity to review any visibility modeling or related analysis and that EPA reject the BC RH SIP until these issues are fully addressed.

Response: The letters referred to by the commenter state that the analysis with regard to the requirements of 40 CFR 51.309(g)(1) and (2) in BC’s draft SIP revision shared with EPA in 2010 may be incomplete. Specifically, the qualitative analysis provided in “Appendix 2007–H” and “Addendum to Appendix 2007–H” addressed the impact of BC’s emissions on nearby Class I areas, but did not include information on the inaccuracy and over-prediction in the 2018 WRAP emission projections for NOx and SO2 emissions in BC, or the effect of an accurate emission inventory with respect to modeled visibility degradation at Gila Wilderness and Carlsbad Caverns. With respect to the above mentioned modeled degradation at Gila Wilderness, an error in data retrieval affected initial results for modeled visibility conditions at Gila Wilderness in 2002 and indicated that visibility would degrade from 2002 to 2018. This error was corrected and the updated submitted data indicates a predicted improvement in visibility conditions on the 20% worst days and no degradation of visibility on the 20% best days.5 For Carlsbad Caverns, NMED providing modeling data that demonstrates that significant projected growth in emissions by 2018 from Mexico are responsible for the degradation in visibility conditions on the 20% best days at this Class I area (Section 11.3.3 of the NM RH 309(g) SIP submittal). WRAP visibility modeling results with Mexico emissions held constant from 2002 to 2018 show a slight improvement in visibility conditions at Carlsbad Caverns on the 20% best days. Therefore, the initial modeled visibility degradation at both Gila Wilderness and Carlsbad Caverns was addressed without a need to further evaluate the impact of over-estimated NOx and SO2 emissions in BC.

Furthermore, BC provided additional information in Appendix 2010–B of the BC RH SIP6 that included an evaluation of emission inventory trends for 2002, 2005, and 2008 for NOx and SO2 emissions for Bernalillo County. The analysis in the BC RH SIP submittal identifies some inaccuracies in the emission inventories used by the WRAP to model the 2002 baseline and the 2018 future case. The 2002 and 2018 emission projections are higher than expected when compared to the reduction in SO2 emissions observed in the actual emissions inventories for 2002, 2005 and 2008. Table 5 of our proposed approval of the BC RH SIP (77 FR 24790) shows a comparison of emission data from Bernalillo County and a trend of decreasing emissions compared to emissions included in the WRAP estimates and photochemical modeling, projecting a large increase of both NOx and SO2. Based on the information provided in BC RH SIP submittal, we agree with the determination that visibility impacts at the nearby Class I areas due to area and mobile emission sources in Bernalillo County are overestimated in the WRAP 2002 and 2018 visibility modeling. The emission trends for 2002 through 2008 (BC RH SIP submittal Appendix 2010–B) indicate that emissions of NOx and SO2 within Bernalillo County are declining and therefore visibility impairment due to these emissions are also anticipated to decrease from their current low levels presented in Appendix 2007–H and in the addendum to Appendix 2007–H of the BC RH SIP. We find that BC adequately evaluated the Class I areas that may be impacted by sources of air pollution within Bernalillo County and BC adequately determined and demonstrated that, at this time, it is improbable that sources located within the county cause or contribute to visibility impairment in a Class I area located outside of the county.

In addition, no sources in Bernalillo County satisfy the definition for BART-eligible sources at 40 CFR 51.301. Therefore, no visibility improvement is anticipated due to the application of BART within Bernalillo County. We note, that BC is participating in the SO2 emission milestone and backstop trading program. This program applies to all SO2 point sources over 100 tons per year and requires that emissions in the participating States and BC remain below the established milestone or result in the triggering of the 309 backstop trading program. The milestone caps these sources at actual emissions, and the program also provides for a cap on new source growth. The milestone schedule and the trading program submitted to BC and the participating states provide for steady and continuing emissions reductions through 2018.

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 52.2(a). The 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.);
- 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 provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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. Consistent with EPA policy, EPA nonetheless offered consultation to tribes regarding the rulemaking action. 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 January 28, 2013. 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).)

<table>
<thead>
<tr>
<th>List of Subjects in 40 CFR Part 52</th>
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<td>Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Regional haze, Best available control technology, Interstate transport of pollution, Visibility.</td>
</tr>
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</table>

Dated: November 13, 2012.

Ron Curry,
Regional Administrator, Region 6.

40 CFR part 52 is amended to read as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

Subpart GG—New Mexico

2. Section 52.1620 is amended:

   a. In paragraph (c), under the second table entitled “EPA Approved Albuquerque/Bernalillo County, NM Regulations” by revising the entry for part 21 (20.11.21 NMAC), Open Burning and adding an entry in sequential order for “Part 46 (20.11.46 NMAC)”.

   b. In paragraph (e), under the second table entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in The New Mexico SIP” by adding new entries to the end of the table for “Interstate transport for the 1997 ozone and PM2.5 NAAQS” and “Regional Haze SIP under 40 CFR 51.309”.

The amendments read as follows:

§ 52.1620 Identification of plan.

* * * * * *(c) * * *
EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

<table>
<thead>
<tr>
<th>State citation</th>
<th>Title/subject</th>
<th>State approval/effective date</th>
<th>EPA approval date</th>
<th>Explanation</th>
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<tr>
<td>New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board</td>
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<tr>
<td>Part 21 (20.11.21 NMAC).</td>
<td>Open Burning ....................................................</td>
<td>7/11/2011</td>
<td>11/29/12 and FR page number where document begins</td>
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<td>Part 46 (20.11.46 NMAC).</td>
<td>Sulfur Dioxide Emission Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program.</td>
<td>5/16/2011</td>
<td>11/29/12 and FR page number where document begins</td>
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(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

<table>
<thead>
<tr>
<th>Name of SIP provision</th>
<th>Applicable geographic or nonattainment area</th>
<th>State submittal/effective date</th>
<th>EPA approval date</th>
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<tr>
<td>Interstate transport for the 1997 ozone and PM2.5 NAAQS.</td>
<td>Bernalillo County ...........</td>
<td>7/30/2007</td>
<td>11/29/12 and FR page number where document begins</td>
<td>Revisions to prohibit interference with measures required to protect visibility in any other State. Revisions to prohibit contribution to nonattainment in any other State approved 11/8/2010 (75 FR 68447).</td>
</tr>
</tbody>
</table>

Revisions to the California State Implementation Plan, San Joaquin Valley United Air Pollution Control District (SVJUAPCD) and South Coast Air Quality Management District (SCAQMD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the SVJUAPCD and SCAQMD portion of the California State Implementation Plan (SIP). This action was proposed in the Federal Register on June 21, 2012 and concerns volatile organic compound (VOC) emissions from chipping and grinding activities, and composting operations. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules will be effective on December 31, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0252 for this action. Generally, documents in the docket for this action are available electronically at http://www.regulations.gov or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket for this action are available electronically at http://www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the FOR FURTHER INFORMATION CONTACT section.

FOR FURTHER INFORMATION CONTACT: Robert Marinaro, EPA Region IX, (415) 972–3019, marinaro.robert@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

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I. Proposed Action
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I. Proposed Action

On June 21, 2012 (77 FR 37359), EPA proposed to approve the following rules into the California SIP.