

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2009-0919 ; A-1-FRL-9810-2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Connecticut State Implementation Plan (SIP) submittal addressing regional haze for the first planning period from 2008 through 2018 that was submitted by the Connecticut Department of Environmental Protection (now known as Connecticut Department of Energy and Environmental Protection or CT DEEP) on November 18, 2009, and March 12, 2012. These submittals address the requirements of the Clean Air Act (CAA) and EPA's rules that require States to prevent any future, and remedy any existing, manmade 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.

DATES: This rule is effective on August 11, 2014.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2009-0919. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are

Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Response to Comments on the March 26, 2012 Proposed Rulemaking
- III. Response to Comments on the January 11, 2013 Supplemental Proposed Rulemaking
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. Background and Purpose

On March 26, 2012, (77 FR 17367), EPA published a Notice of Proposed Rulemaking for the State of Connecticut in which we proposed to approve a Connecticut State Implementation Plan (SIP) submittal as meeting the applicable requirements of the Regional Haze Rule found at 40 CFR 51.308 for the first planning period from 2008 through 2018. The SIP had been submitted by CT DEEP on November 18, 2009, with additional submittals on February 24, 2012 and March 12, 2012.

In the SIP addressing regional haze submitted on November 18, 2009 (“Connecticut Regional Haze SIP Revision, Final, November 2009”) (CT RH SIP),¹ Connecticut chose to demonstrate that programs already developed by the State would provide greater reasonable progress in visibility improvement than source-by-source Best Available Retrofit Technology (BART). The State's demonstration was made in accordance with specific criteria for determining if an alternative measure achieves greater reasonable progress than BART as set out in the Regional Haze Rule at 40 CFR 51.308(e)(2) and (3). Connecticut's

¹ See Docket No. EPA-R01-OAR-2009-0919-0006 and associated attachments.

Alternative to BART demonstration relied on three components: (1) Connecticut's Regulations of Connecticut State Agencies (RCSA) Section 22a-174-19a (“Control of sulfur dioxide emissions from power plants and other large stationary sources of air pollution”) (Section 19a); (2) revisions to RCSA Section 22a-174-22 (“Control of nitrogen oxides emissions”) (Section 22), including subparagraph 22a-174-22(e)(3); and (3) RCSA Section 22a-174-22c (“The Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_x) Ozone Season Trading Program”) (Section 22c). Section 22c implemented the NO_x trading program of the Clean Air Interstate Rule. At the time that Connecticut submitted its initial submission, reliance on the annual CAIR program in lieu of BART for electrical generating units (EGUs) had been demonstrated by EPA to achieve greater reasonable progress towards the national visibility goal than BART and the regional haze regulations have been revised to give the States the option of relying on CAIR to meet BART requirements. (70 FR 39104 (July 6, 2005)). In its Regional Haze SIP, however, Connecticut did not rely on this demonstration by EPA but rather on its own State-specific demonstration.

As discussed in greater detail in our March 26, 2012 proposal notice and later in this notice, CAIR subsequently was found to be inconsistent with the requirements of the CAA. *See North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). To replace CAIR, EPA subsequently adopted the Cross-State Air Pollution Rule (CSAPR), which did not impose any ozone season NO_x emission limits for EGUs in Connecticut. To address this deficiency in their alternative to BART, CT DEEP proposed to adopt RCSA 22a-174-22d (Section 22d) as a replacement for Section 22c. Section 22d, once adopted, would have maintained the ozone season NO_x emission reductions that were required under the CAIR program.

On February 24, 2012, CT DEEP submitted a request for parallel processing of Section 22d. Under the parallel processing procedure, EPA proposed to take action on Section 22d before the State's final adoption of the regulation. At that time, the EPA was under a consent decree to take final action on the Connecticut Regional Haze SIP by July 13, 2012. Connecticut indicated that they planned to have a final adopted regulation by June 2012, prior to the deadline for EPA's final action. Based on the substance and the intended timeline for adoption of the proposed regulation, EPA proposed approval of Connecticut's proposed

regulation Section 22d establishing an intrastate NO_x trading program as a CAIR replacement rule as one component of the State's Alternative to BART demonstration. Following a decision by the D.C. Circuit Court vacating the CSAPR trading programs that EPA had developed to replace CAIR, and ordering EPA to continue to implement CAIR, *see EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), Connecticut concluded that it was unable to adopt Section 22d and withdrew its request for parallel processing of the state regulation.

On January 24, 2013 (78 FR 5158), EPA published a supplemental notice proposing approval of the Connecticut Alternative to BART demonstration based, in part, on Connecticut's CAIR rule (Section 22c), as originally submitted by CT DEEP on November 18, 2009. EPA proposed to approve Connecticut's reliance on Section 22c as one component (along with Sections 19a and 22) of the State's Alternative to BART demonstration and solicited comment on the State's reliance on this rule in its Regional Haze SIP.

In addition, as part of the March 26, 2012 rulemaking, EPA proposed the approval of Connecticut General Statute (CGS) 16a–21a, “Sulfur content of home heating oil and off-road diesel fuel. Suspension of requirements for emergency.”

II. Response to Comments on the March 26, 2012 Proposed Rulemaking

EPA received comments on the March 26, 2012 proposed approval of the Connecticut Regional Haze SIP from the U.S. Forest Service and the Sierra Club. As Connecticut has not finalized Section 22d, EPA is not responding to comments relevant only to Section 22d. The following discussion summarizes and responds to relevant comments submitted by the Sierra Club. The Sierra Club raised concerns regarding the legality of BART alternatives generally and the means by which greater reasonable progress must be demonstrated before a BART alternative can be approved. The commenter also addressed two aspects of Connecticut's BART alternative, the intrastate trading programs for SO₂ and non-ozone-season NO_x, upon which the current Connecticut Regional Haze SIP still relies.

Comment 1: The Sierra Club commented that section 169A of the CAA does not allow States to adopt alternative programs that operate in lieu of source-specific BART. The Sierra Club acknowledged that the D.C. Circuit's decisions in *Center for Energy & Economic Development v. EPA*, 298

F.3d 653 (D.C. Cir. 2005) (“*CEED*”) and *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333 (D.C. Cir. 2006) (“*UARG*”) expressly upheld EPA's allowance of such alternatives, but argued that these cases cannot be reconciled with the plain language of the Act.

Response 1: EPA disagrees with the commenter that BART alternatives are impermissible under the CAA. As the commenter notes, EPA's interpretation that the CAA allows States to devise alternative programs in lieu of source-specific BART was upheld in both the *CEED* and *UARG* decisions. Because the conclusions in these cases have not been upset or overturned by any subsequent decision of the D.C. Circuit, as explained in more detail in our response to a similar comment on EPA's January 24, 2013 supplemental proposed rulemaking, we disagree with the commenter's contention that *CEED* and *UARG* were decided erroneously or no longer have force.

Comment 2: The Sierra Club commented that EPA's regulations require a State seeking to rely on a BART alternative to include source-specific BART analyses in its SIP for each subject-to-BART source in the State and each source that is included in its BART alternative. Accordingly, because Connecticut did not include any source-specific BART analyses in its Regional Haze SIP, the Sierra Club contends that Connecticut's BART alternative is not approvable.

Response 2: EPA disagrees. The Regional Haze Rule requires States opting to implement an alternative program in lieu of BART to make a demonstration that the alternative will result in greater reasonable progress than would have resulted under source-specific BART. 40 CFR 51.308(e)(2)(i). To make such a demonstration, the State must compare the emission reductions that will likely be achieved by the BART alternative against a BART benchmark. The BART benchmark may be derived by conducting a five-factor BART analysis “for each source subject to BART and covered by the alternative program.” 40 CFR 51.308(e)(2)(i)(C) (emphasis added). Contrary to the commenter's suggestion, however, this language does not require a State to conduct a BART analysis for each source that is subject to BART within the State and for each source that is included in the BART alternative. Such a disjunctive reading would lead to a situation in which the BART benchmark would include emissions reductions from sources not subject to the BART requirements, which was clearly not EPA's intent. *See, e.g.*, 71 FR 60612, 60619 (October 13, 2006). Rather, 40

CFR 51.308(e)(2)(i)(C) requires the State to conduct BART analyses only for those sources that are both subject to BART and included in the BART alternative. Under this natural (conjunctive) reading of the provision, the BART benchmark includes only those sources that would have required BART controls but for the creation of the alternative program.

We also note that Connecticut was not required to undertake any source-specific BART determinations in establishing a BART benchmark. As we noted in the preamble to the Regional Haze Rule, “[t]he States . . . have flexibility in developing a method to determine the emission reductions that could be achieved through the application of BART.” 64 FR 35714, 35742. Thus, in situations where the BART alternative “has been designed primarily to meet a Federal or State requirement other than BART, a State can use a more simplified approach to demonstrating that the alternative program will make greater reasonable progress than BART.” 71 FR 60612, 60615; *see also* 40 CFR 51.308(e)(2)(i)(C) (if a State's “alternative measure has been designed to meet a requirement other than BART,” then a State need not conduct source-by-source BART analyses to establish the BART benchmark). One such simplified approach specifically recommended by EPA in past rulemakings is for States to establish a BART benchmark based on the presumptive emission limits for EGUs contained in the BART Guidelines. *See* 71 FR 60612, 60619. Here, Connecticut's BART alternative consists of Section 19a (control of SO₂ emissions from power plants and other large stationary sources), Section 22 (control of NO_x emissions from similar sources, including intrastate emission trading applicable outside the ozone season), and Section 22c (CAIR NO_x Ozone Season Program), all three of which were developed to satisfy other air quality requirements. Therefore, consistent with EPA's regulations, Connecticut was not required to perform a five-factor BART analysis for any of its sources when setting its BART benchmark, but could opt instead for a simplified approach, such as one that relied upon presumptive emission limits.

Comment 3: The Sierra Club commented that Connecticut impermissibly compared the SO₂ reductions that would be achieved by its BART alternative to the reductions associated with presumptive BART limits developed by the Mid-Atlantic/Northeast Visibility Union (MANE-VU). The Sierra Club argued that the MANE-

VU presumptive limits underestimated the reductions that sources would achieve if they were subject to limits derived from a thorough five-factor analysis. Therefore, the Sierra Club concluded that Connecticut did not conclusively show that its BART alternative would provide greater reasonable progress than source-specific BART.

Response 3: As explained above, EPA has specifically endorsed the use of presumptive limits in setting a BART benchmark in situations such as this one. In referring to the presumptive limits for EGUs contained in the BART Guidelines, EPA previously stated that “the presumptions represent a reasonable estimate of a stringent case BART, particularly because in developing a BART benchmark 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.” 71 FR 60612, 60619. In other words, while in some instances conducting a case-by-case BART analysis based on the five factors could result in limits more stringent than the presumptive limits, in others instances a five-factor analysis could result in limits less stringent than the presumptive limits (including no additional controls at all). Because these differences are likely to balance out, it is reasonable for a State that is entitled to follow a simplified approach, such as Connecticut, to use presumptive limits in setting its BART benchmark. Here, Connecticut chose to use MANE-VU’s presumptive limits, which are more stringent than those contained in the BART Guidelines. Consequently, EPA is satisfied that Connecticut’s Regional Haze SIP adequately demonstrated that the State’s BART alternative will provide for greater reasonable progress than source-specific BART.

Comment 4: The Sierra Club commented that, even when using the MANE-VU presumptive limits as the point of comparison, Connecticut failed to demonstrate that its BART alternative would result in greater reasonable progress than source-specific BART. For both SO₂ and NO_x, the Sierra Club argued that Connecticut impermissibly compared the emission reductions from all 59 sources covered by its BART alternative against the reductions that would be achieved by the much smaller set of seven subject-to-BART sources. In the case of NO_x, the Sierra Club further contended that, even under the State’s flawed comparison, the evidence still showed that the reductions associated with requiring source-specific BART at the seven subject-to-BART sources

would exceed the reductions at all 59 sources covered by the BART alternative. The Sierra Club also argued that three additional factors cited by Connecticut in its weight-of-evidence analysis—mandatory retirement of emission reduction credits, the addition of Exeter Energy to the State’s CAIR budget, and the State’s CAIR allowance allocation methodology—were insufficient to prove that the State’s BART alternative would achieve greater reasonable progress. Finally, the Sierra Club reiterated that it would not be onerous for Connecticut to determine the appropriate level of BART control for each subject-to-BART source in setting its BART benchmark.

Response 4: EPA again disagrees with the commenter’s strained reading of the Regional Haze Rule. As we stated in our response to comment 2, 40 CFR 51.308(e)(2)(i)(C) does not require States to undertake the task of conducting BART analyses for sources that could never be subject to BART controls in the first place. Rather, the BART benchmark should consist only of the emissions from those sources that are both subject to BART and included in the alternative program. This ensures that the benchmark does not include reductions from any subject-to-BART sources in the State that will not participate in the alternative program and therefore will still be required to install BART. Thus, Connecticut was correct to include in its BART benchmark only the emissions from the seven sources that were both subject to BART and included within the scope of its BART alternative. Moreover, States are permitted to include sources in an alternative program that are not otherwise BART-eligible in order to ensure that the program results in enough emission reductions to result in greater reasonable progress than source-specific BART. Consequently, EPA disagrees with the notion that Connecticut impermissibly conducted an “apples-to-oranges” comparison by including more sources in its BART alternative than would have been subject to control under source-specific BART.

EPA also disagrees with the Sierra Club’s arguments regarding the weight-of-evidence analysis. It is important to note that EPA’s weight-of-evidence analysis for NO_x draws upon, but is not identical to, Connecticut’s analysis. *Compare* 77 FR at 17,377 *with id.* at 17,378–79.

The uncertainty in Connecticut’s NO_x analysis derives from the fact that, for the BART benchmark, Connecticut estimated a range of NO_x emissions reductions between 3,120 tpy and 17,853 tpy. *See* 77 FR at 17,378 (Table

7); CT RH SIP at 9–34 (Table 9–16). The lower end of this range (3,120 tpy) resulted from imposition of the least stringent emission limits in the MANE-VU recommended range at every single BART-eligible source. Conversely, the upper end of the range (17,853 tpy) resulted from imposition of the most stringent emission limits in the MANE-VU recommended range at every single BART-eligible source.

EPA’s weight-of-evidence approach acknowledges that it is not realistic to expect that source-specific BART determinations would result in imposition of the most stringent controls recommended by MANE-VU at each one of Connecticut’s BART-eligible sources. *See* 77 FR at 17,378–79 for detailed discussion. Given the unlikelihood of this scenario, EPA considers it reasonable to conclude that the appropriate BART benchmark is considerably less than 17,853 tpy of reductions, and, in fact, less than 11,355 tpy of reductions (i.e., the amount attributable to Connecticut’s BART alternative).

Furthermore, Connecticut’s BART alternative can reasonably be expected to result in additional emissions reductions (if difficult to precisely quantify) that will occur as a consequence of the required reductions. First, the firm cap during ozone season impedes emissions growth during non-ozone season, while the restriction to intrastate trading during non-ozone season impedes emissions growth during ozone season. *See id.* at 17,379 and further discussion in Response 10. Second, Connecticut’s CAIR allowance methodology (which allocates allowances based on electricity output, rather than heat input) can also reasonably be expected to result in actual reductions, not just a change in distribution. In a region like New England with a restructured electricity market, the least efficient generators are dispatched the least often, and under Connecticut’s allocation scheme, units that run less often receive fewer CAIR allowances. Thus, the least efficient generators tend to generate less electricity in the first place and therefore receive fewer CAIR allowances, yet require more CAIR allowances for a given quantity of electric output. This tends to result in the least efficient sources operating less often, investing in controls, or repowering, and/or the more efficient sources over-controlling for the purpose of generating marketable allowances. While Connecticut has not modeled either of these effects quantitatively, they are likely to account for some additional reductions. Moreover, as

further discussed in Response 10, actual NO_x emissions are well below even the low end of the BART benchmark.

Comment 5: The Sierra Club commented that Connecticut has not demonstrated that the SO₂ and NO_x emission reductions relied upon in its BART alternative are surplus as required by the Regional Haze Rule. The Sierra Club contended that only the portion of the emission reductions that are surplus to what would otherwise be required to comply with the Clean Air Act may be credited to Connecticut's BART alternative.

Response 5: EPA disagrees that Connecticut has failed to show that the reductions it relied upon are surplus. To show that a BART alternative will achieve greater reasonable progress, the State must include in its SIP a "demonstration that the emission reductions resulting from the [BART alternative] will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP." 40 CFR 51.308(e)(2)(iv) (emphasis added). In promulgating the Regional Haze Rule in 1999, we explained that the "baseline date of the SIP" in this context means "the date of the emissions inventories on which the SIP relies," 64 FR 35714, 35742, which is "defined as 2002 for regional haze purposes," 70 FR 39104, 39143. Any measure adopted after 2002 is accordingly "surplus" under 40 CFR 51.308(e)(2)(iv). Therefore, we believe that Connecticut's Regional Haze SIP adequately demonstrates that the reductions from the State's BART alternative, which consists entirely of regulations enacted after 2002, are properly considered surplus emission reductions for this purpose.

Comment 6: The Sierra Club commented that Connecticut must carefully scrutinize wet- and dry-scrubber technology and selective and non-selective catalytic reduction for Bridgeport Harbor Station Unit 3. The Sierra Club provided cost data and stated that the cost-effectiveness of such controls is reasonable.

Response 6: EPA disagrees that Connecticut was required to conduct a source-specific BART determination for Bridgeport Harbor Station Unit 3, regardless of the cost-effectiveness of additional controls. As discussed above in the response to comment 3, Connecticut was entitled to rely upon the presumptive BART limits established by MANE-VU in setting its BART benchmark. Therefore, no five-factor analysis, including an exploration of the costs of specific control technologies, was required for

Bridgeport Harbor Station Unit 3 or any other BART-eligible unit.

III. Response to Comments on the January 11, 2013 Supplemental Proposed Rulemaking

In regard to the January 11, 2013 supplemental proposed rulemaking, EPA received comments from the Utility Air Regulatory Group (UARG) and a joint letter from Sierra Club, Earth Justice, and National Parks Conservation Association (for brevity referred to in the singular as, "Sierra Club"). The UARG comments encouraged States to take into account CAIR-related emission reductions when developing and submitting Regional Haze SIPs, including the BART provisions. UARG stated that EPA should finalize the supplemental proposal and approve Connecticut's Regional Haze SIP in full. The following discussion summarizes and responds to the relevant adverse comments submitted by the Sierra Club on EPA's supplemental proposed approval of Connecticut's Regional Haze SIP.

Comment 7: The Sierra Club commented that because all elements of any SIP approved by EPA must be enforceable, EPA cannot approve the Connecticut SIP to the extent it relies on CAIR. The commenter argued that in light of the remand of the rule by the D.C. Circuit in *North Carolina*, CAIR is neither permanent nor enforceable. Sierra Club also stated that EPA has recognized that CAIR is temporary on a number of occasions and noted that most of EPA's actions to date implicating CAIR reflect that EPA can only rely on CAIR in a limited fashion, namely "to temporarily preserve the environmental values covered by CAIR pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws." The commenter also noted that in the "Cross-State Air Pollution Rule (CSAPR) is Better than BART" rulemaking, which was issued after the *EME Homer City* court stayed CSAPR pending review, EPA found that CAIR was in place only temporarily and that the Agency could not fully approve Regional Haze SIPs that relied on the now-temporary reductions from CAIR. The commenter further argues that even if the emission reductions from CAIR were sufficiently permanent to be used in the 10-year initial planning period of the Connecticut SIP, there is no guarantee that any replacement rule for CAIR will require the same emission reductions for Connecticut.

Response 7: EPA agrees that all control measures in a SIP must be enforceable. See CAA 110(a)(2)(A). EPA disagrees, however, that CAIR is not

enforceable at this time, given the scope of the court's order in *EME Homer City* and the issuance of the mandate in that case.

On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO₂ and NO_x from EGUs to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form secondarily in the atmosphere. See 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the court's decision, EPA issued CSAPR to address the interstate transport of NO_x and SO₂ in the eastern United States. See 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR "pending . . . development of a valid replacement." *EME Homer City Generation*, 696 F.3d at 38.²

This directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be enforceable and in place for a number of years. EPA has been ordered by the court to develop a new rule and the opinion makes clear that after promulgating that new rule EPA must provide States an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be removed from a SIP as an enforceable measure until EPA has promulgated a final rule through a notice-and-comment rulemaking process. States have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a Federal Implementation Plan (FIP) if appropriate. These steps alone will take many years, even with EPA and the States acting expeditiously. In the meantime, neither the State nor EPA has taken any final action to remove CAIR from the Connecticut SIP. These SIP provisions remain in place and are federally enforceable.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years." *EME Homer*

² EPA and other parties filed petitions for a writ of *certiorari* of the decision in *EME Homer City* with the Supreme Court on March 29, 2013.

City, 696 F.3d at 38. The accumulated reliance interests include the interests of States who reasonably assumed they could rely on reductions associated with CAIR to meet the requirements of the Regional Haze Rule.

The proposed and final EPA actions cited by the commenter as support for its argument that EPA has considered CAIR to be temporary all pre-date the vacatur of CSAPR and were based on EPA's expectation that CSAPR was the replacement for CAIR, and thus CAIR would end soon.³ At the time of those actions, CAIR was reasonably expected to sunset by operation of law in a fairly short timeframe. That background assumption no longer applies. Based on the vacatur of CSAPR and the court's related decision to keep CAIR in force, EPA believes that it is appropriate at this time to rely on CAIR emission reductions as one component of the Connecticut Alternative to BART demonstration while a valid replacement rule is developed and until implementation plans complying with any such new rule are submitted by the States and acted upon by EPA or until the *EME Homer City* case is resolved in a way that provides different direction regarding CAIR and CSAPR.

As noted above, the commenter also argues that even if the emission reductions from CAIR were sufficiently permanent to be used in the first planning period of the Connecticut Regional Haze SIP, it is unclear what emissions reductions would be required in a future replacement rule for CAIR. The commenter is correct in that we do not know at this time what will be required of Connecticut in any replacement rule for CAIR. The uncertainty surrounding the requirements of a future replacement rule, however, does not mandate that source-by-source BART determinations be required today. For now, the Connecticut Regional Haze SIP addressed in today's action ensures that while CAIR is in place, the BART requirements will be met. The adequacy of the Connecticut Regional Haze SIP to address the BART requirements in the future will be better addressed when a replacement rule for CAIR has been promulgated and the Connecticut SIP

revised to comply with that rule. This does not mean that the BART requirements will be later ignored. When Connecticut submits a SIP revision to remove Section 22c, either in response to an EPA replacement rule or for other purposes, the State will be required to demonstrate that such a SIP revision ensures that the BART requirements are met. *See* CAA § 110(l). EPA would then review the State action, submit its initial determination for public comment, and take final action after responding to significant public comments. This multi-step sequence of events will afford adequate opportunity to review the adequacy of Connecticut's approved Regional Haze SIP under the applicable legal framework at the time of removal of Section 22c. In sum, we do not agree with the commenter that the uncertainty surrounding the timing and contours of a replacement rule mandate that Connecticut undertake a source specific NO_x BART determination for its EGUs now rather at a later date when the current regulatory uncertainties have been resolved.

Comment 8: The commenter argues that EPA cannot approve Connecticut's proposal to rely on CAIR to satisfy its obligation to control NO_x at BART sources. The Sierra Club states that EPA must require BART determinations at all subject-to-BART sources. The commenter states that there is no statutory authority for EPA to allow a State to rely on CAIR as a better-than-BART alternative and that the force of the holdings in *Center for Energy & Economic Dev. v. EPA*, 398 F.3d 653 (D.C. Cir. 2005) and *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333, 1340 (D.C. Cir. 2006) allowing EPA to do just that have been undermined by subsequent decisions of the D.C. Circuit. The commenter cite to several cases to support the argument that the CAA does not allow EPA to waive the statutory mandate for BART at "each" BART-eligible source.

Response 8: It is important to emphasize that Connecticut's Regional Haze SIP submission does not rely on 40 CFR 51.308(e)(4), sometimes known as the "CAIR equals BART" provision, which was at issue in *UARG* and which permits States to rely on CAIR in lieu of BART without any further analysis. Rather, Connecticut's submission relies on 40 CFR 51.308(e)(2), the "Alternative to BART" or "Better than BART" provision, which was at issue in *CEED* and which does require an analysis that the alternative measures will achieve greater reductions than source-by-source BART. *See id.* § 51.308(e)(2)(i). CT DEEP has submitted a combination of regulations (Sections 19a, 22, and 22c),

and an appropriate analysis demonstrating that reductions will be superior to those from source-by-source BART, as part of its Alternative to BART package. *See* CT RH SIP, at 9–28 to 9–35; *see also* 77 FR at 17,373–17,380. Because of the complex history of this action, and to avoid any confusion, we emphasize that we are approving Connecticut's Regional Haze SIP under 40 CFR 51.308(e)(2), not section 51.308(e)(4).

The commenter's arguments that the plain language of the CAA precludes use of alternative programs (including but not limited to CAIR) to satisfy the BART requirements were raised and rejected in *CEED* and *UARG*. *CEED* and *UARG* remain good law and have not been questioned by subsequent D.C. Circuit decisions. The decisions cited by the commenter, *North Carolina v. EPA*, 531 F.3d 896, 906–08 (D.C. Cir. 2008) and *NRDC v. EPA*, 571 F.3d 1245, 1255–58 (D.C. Cir. 2009) address the requirements of sections 110(a)(2)(D)(i)(I) and 172(c)(1), respectively. Given the differences between the language of these statutory provisions and that of section 169A(b)(2), the courts' interpretation of these other provisions of the CAA do not undermine the two previous rulings of the same court interpreting the visibility provisions of the Act.⁴

Similarly, the Supreme Court's conclusions in *Massachusetts v. EPA*, 549 U.S. 497, 528–29 (2007) regarding the meanings of "each" and "any" do not conflict with or impact the EPA's reading of section 169A(b)(2) of the CAA or the D.C. Circuit's conclusion that the agency's interpretation of the statute is a reasonable one. As the *CEED* court explained, EPA interprets this provision to mean that "each SIP's 'emission limits, schedules of compliance, and other measures' must 'include' BART only 'as may be necessary to make reasonable progress toward' national visibility goals." 398 F.3d 653, quoting 42 U.S.C. 7491(b)(2); *see also Central Arizona Water Conservation District v. EPA*, 990 F.2d 1531, 1543 (9th Cir. 1993) (upholding the same interpretation of section 169A(b)(2)). We do not agree, therefore, that 40 CFR 51.308(e)(2), EPA's regulation allowing for the use of

³ On August 21, 2012, the D.C. Circuit issued an opinion to vacate CSAPR and keep CAIR in place pending promulgation of a valid replacement rule. However, the court also ordered the Clerk to withhold issuance of the mandate until seven days after disposition of any timely petition for rehearing or rehearing en banc. All petitions for rehearing were denied on January 24, 2013 and the mandate was issued by the D.C. Circuit on February 4, 2013. As noted above EPA and other parties subsequently filed petitions seeking Supreme Court review of the D.C. Circuit decision.

⁴ Furthermore, in the regulation at issue in *NRDC*, states could rely on NO_x SIP Call or CAIR reductions without providing any analysis demonstrating how compliance with those programs would result in required reductions within each nonattainment area, and EPA had not provided any technical analysis to that effect either. *See NRDC*, 571 F.3d at 1256–57. That distinguishes *NRDC* from the issues here. As noted above, we are approving Connecticut's Regional Haze SIP under 40 CFR 51.308(e)(2), not section 51.308(e)(4).

alternative regulatory programs instead of source-specific BART determinations, is inconsistent with the CAAs.

Comment 9: The Sierra Club commented that CAIR cannot be used as a substitute for BART because it provides inadequate visibility improvement. The commenter states that the visibility impacts at the Class I areas occur on a much shorter time frame than the annual or seasonal CAIR allocations. The commenter finds that the shorter averaging times for BART provides a more stringent, more protective limit than CAIR's allocations. The commenter states that appropriately averaged limits should be required even if new controls are not required.

Response 9: For a State which opts to pursue an Alternative to BART demonstration, the State must develop an analysis of the best system of continuous emission control technology available and associated emission reductions achievable for BART-eligible sources within the State subject to the alternative plan. The expected emission reductions must be compared to an analysis of the projected emission reductions achievable through the alternative measure. When crafting the alternative measures, States are not required to revise the emission limit to meet each unit's emission capability. In addition, the Regional Haze Rule does not limit the averaging period of the alternative measure. As the commenter suggested, visibility impairment can happen on a much shorter period (24-hour time period) than a seasonal limit, and thus the commenter suggests that a shorter averaging time would result in better visibility improvement. We disagree that a difference in averaging time would affect our conclusions that CAIR, in combination with the other emission limits in the Connecticut Regional Haze SIP, provides for greater reasonable progress than BART. The visibility evaluation required by the Regional Haze Rule requires States to evaluate visibility for the 20-percent best and 20-percent worst days. While EPA collects samples at the IMPROVE monitoring sites over a 24-hour time period, none of the visibility program requirements are based on these 24-hour peaks. Both the 20-percent best days and 20-percent worst days represent a relatively long time period, that is an average over one-fifth of the year, or 73 days. Because this is a relatively long time period, and even though it may be discontinuous, it tends to "smooth out" any variations that would occur over a shorter time period. Similarly, even a shorter 30-day rolling average BART limit represents a relatively long time period that would also tend to smooth

out any spikes that may occur over a day. Thus, while a seasonal (in this case 5-month) emission limit may also smooth out the occasional high emission day, the longer averaging period will still provide visibility protection for the Class I area.

In addition, as allowed under 40 CFR 51.308(e)(2)(i)(C), the components of the Connecticut Alternative to BART were developed to meet other regulatory requirements. For example, the ozone season NO_x limits in Sections 22 and 22c were designed to meet the ozone National Ambient Air Quality Standard (NAAQS), an 8-hour average standard, which ensures that the emission limit will be consistently met.

Comment 10: The Sierra Club commented that the averaging time for the non-ozone season limitations consist entirely of a 0.15 lb/MMBtu NO_x emission limit applicable as averaged over the entire non-ozone season. Again, the Sierra Club contends that this limit does not provide the same averaging time protections as would a BART limit. Furthermore, the commenter continued, although it is not evident from EPA's discussion, most of the BART-eligible units regularly emit well above this non-ozone season limit, presumably taking advantage of Connecticut's application of emission credits. As EPA's original proposal acknowledges, there is no firm year-round cap on EGUs emissions which would be required of the BART-eligible units.

Response 10: While Connecticut's non-ozone season limits do not provide a firm year-round emission cap on each unit, a facility which exceeds the 0.15 lb/MMBtu limit can only use intrastate trading to meet its NO_x emission obligation. As a result, the emission reductions come from within the State, a similar geographic area. Moreover, as we noted in the NPR, "the firm cap during ozone season acts as an impediment to emissions growth during nonozone season." 77 FR at 17379. This relationship works in both directions: The fact that Connecticut imposes a 0.15 lb/MMBtu NO_x limit during October through April, and allows only intrastate trading for facilities that exceed that limit, limits facilities' ability to emit above their CAIR allocations and comply with Section 22c simply by purchasing out-of-state allowances.

Data regarding actual emissions supports the argument that Connecticut's alternative program allows for facility flexibility while achieving emission reductions. The actual 2002 baseline NO_x emissions from the BART-identified sources were 4,054 tons of NO_x. The 2011 actual NO_x emissions from these sources under the

Connecticut Alternative to BART are 557 tons.⁵ These 2011 actual NO_x emissions are an order of magnitude lower than even the low-end projected 2006 BART benchmark emissions (9,701 tons) for these same sources.

Comment 11: The commenter suggests that the visibility impacts from several of the BART-eligible units are not, as EPA has described them, minimal. First, it is not clear that the submitted modeling actually reflects the 24-hour maximum emission input required by the BART Guidelines; therefore, the modeling may underestimate the visibility impacts. The commenter notes that Mid-Atlantic/Northeast Visibility Union ("MANE-VU") has determined that 98 percent of visibility deterioration at Class I areas in its region came from sources with impacts between 0.2 and 0.3 deciviews (dv), based on the existing modeling, and at least one of Connecticut's BART-eligible units has that level of impact from its NO_x emissions. The Sierra Club emphasized that the exact purpose of the regional haze program is to reduce the cumulative impacts from multiple sources. For this reason, the Sierra Club commented that source-by-source analysis of the costs and benefits of additional retrofit technology and year-round lower limits with appropriate averaging time is required.

Response 11: We disagree with the conclusions the commenter draws from the MANE-VU report entitled "Five-Factor Analysis of BART-Eligible Sources," Attachment W to Connecticut's SIP submission.

The purpose of the modeling discussed in Attachment W, as the title suggests, is to support a five-factor analysis for MANE-VU's recommended BART controls. EPA agrees that MANE-VU's modeling does not adhere to the requirements of the BART Guidelines for determining an appropriate threshold for exempting BART-eligible sources from further analysis for BART; however, this modeling was not done for exemption purposes, but rather to inform the decision making process for developing MANE-VU's recommended BART controls. In this context, EPA is not considering MANE-VU's modeling under 40 CFR part 51 Appendix Y (the BART Guidelines), but rather under 40 CFR 51.308(e)(2)(i)(C)'s requirement to establish a BART benchmark for comparison to an alternative program.

While it is true that the purpose of the regional haze program as a whole is to reduce the cumulative impacts from

⁵ 2011 NO_x emission data from the Connecticut BART-identified EGUs is from the EPA Air Markets Program (<http://ampd.epa.gov/ampd/>).

multiple sources, even a source-specific BART determination includes consideration of “the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.” 40 CFR 51.308(e)(1)(ii)(A). EPA’s BART Guidelines allow States conducting source-by-source BART determinations to exempt sources with visibility impacts as high as 0.5 dv. See 40 CFR part 51 Appendix Y § III.A.1.

As part of its analysis, MANE-VU attempted to assess which sources had the greatest impact on visibility, in accordance with 40 CFR 51.308(e)(1)(ii)(A). However, MANE-VU decided to take a more stringent approach than the BART Guidelines’ 0.5 dv threshold. See Attachment W at 14. The report states that “the cumulative frequency visibility impact from all MANE-VU BART-eligible sources corresponds to a maximum 24-hr impact of 0.22 dv from the NWS [National Weather Service]-driven data and 0.29 dv from the MM5 [PSU/NCAR mesoscale model] data.” Attachment W at 13–14. Based on these results, MANE-VU concluded that a range of 0.2 to 0.3 dv would represent a “significant” impact at MANE-VU Class I areas on an average basis.” *Id.* at 14. However, as the report stipulates, the analysis only included BART-eligible units within the MANE-VU area, excluding all other BART sources outside of the MANE-VU area, a limitation noted by the report. See *id.* at 13. Therefore, for purposes of developing its recommended BART controls, MANE-VU “decided to place increased weight on sources with an individual visibility impact greater than 0.1 dv for this 1st order regional 5-factor analysis.” *Id.* at 14. As MANE-VU noted, “[t]his threshold is overly inclusive relative to exemption processes being conducted by other [Regional Planning Organizations] RPOs, but still provides MANE-VU states flexibility in choosing the weight to be given to the first of the five factors considered (i.e., the degree of visibility improvement that could result from BART).” *Id.*

Only two of the BART-eligible sources in Connecticut have more than a 0.1 dv impact from NO_x, and only one source exceeds a 0.2 dv impact; the rest show impacts far less than these levels.⁶ It is, of course, possible that a source-specific

BART analysis at one or both of these units exceeding 0.1 dv impact would result in a more stringent BART limit at those particular units than apply under Connecticut’s alternative program. However, it is also possible that full consideration of the other four factors would lead to *less* stringent limits than apply under Connecticut’s alternative program. Moreover, it is also quite possibly (indeed, likely) that full consideration of the five factors would result in less stringent limits at the other five BART-eligible units (with impacts well below 0.1 dv) than apply under Connecticut’s alternative program. Most importantly, and central to both Connecticut’s and EPA’s analyses, it is also very likely that source-by-source BART would result in fewer total emissions reductions (and therefore visibility improvements) than apply under Connecticut’s alternative program. Thus, while any one particular source might have higher or lower emissions limits under source-by-source BART (as opposed to Connecticut’s alternative program), as a whole, EPA does not agree that source-by-source BART would necessarily result in more stringent controls on the BART-eligible sources (let alone the non-BART-eligible sources) as a group.

VI. Final Action

EPA is approving Connecticut’s November 18, 2009, Regional Haze SIP submittal and March 12, 2012, supplemental submittal as meeting the applicable requirements of the Regional Haze Rule found in 40 CFR 51.308. In addition, EPA is approving Connecticut’s RCSA Section 22a–174–19a, “Control of sulfur dioxide emissions from power plants and other large stationary sources of air pollution”; revisions to RCSA Section 22a–174–22, “Control of nitrogen oxides emissions,” in particular subparagraph 22a–174–22(e)(3); and CGS 16a–21a, “Sulfur content of home heating oil and off-road diesel fuel. Suspension of requirements for emergency.”

IV. 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 it does not include measurement standards; 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.

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

⁶ The highest visibility impacts due to NO_x were modeled to be: 0.31 dv from Bridgeport Harbor Unit 3, 0.14 dv from New Haven Harbor Unit 1, 0.06 dv from Middletown Unit 3, 0.04 dv from Montville Unit 6, 0.03 dv from Middletown Unit 4, 0.03 dv from Cascade Boxboard, and 0.01 dv from Norwalk Unit 2.

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 September 8, 2014. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 26, 2013.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1.

Original signature affirmed by:

Dated: May 27, 2014.

H. Curtis Spalding,

Regional Administrator, Region 1.

Editor’s note: This document was received by the Office of the Federal Register on July 3, 2014.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended 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 H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(103) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(103) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on November 18, 2009, and Connecticut Department of Energy and Environmental Protection on March 12, 2012.

(i) Incorporation by reference.

(A) Regulations of Connecticut State Department of Environmental Protection Section 22a–174, effective December 28, 2000; as published in the Connecticut Law Journal on January 23, 2001.

(1) Section 22a–174–19a, “Control of sulfur dioxide emissions from power plants and other large stationary sources of air pollution,” with the following exceptions which Connecticut did not submit as part of the SIP revision because they are not applicable to the Connecticut Alternative to Best Available Retrofit Technology (BART) program:

(i) Section 22a–174–19a(a)(5);

(ii) Section 22a–174–19a(a)(8);

(iii) Section 22a–174–19a(a)(11);

(iv) In Section 22a–174–19a(a)(13); the sentence “Early reduction credits shall qualify as SO₂ DERs.”;

(v) Section 22a–174–19a(d);

(vi) Section 22a–174–19a(e)(4);

(vii) Section 22a–174–19a(f) through 19a(h); and

(viii) In Section 22a–174–19a(i)(2), the reference to “or (e)(4).”

(2) Section 22a–174–22, “Control of nitrogen oxide emissions,” subsection (e)(3).

(B) Connecticut General Statute, Title 16a “Planning and Energy Policy,” Chapter 296 “Operation of Fuel Supply Business,” Section 16a–21a, “Sulfur content of home heating oil and off-road diesel fuel. Suspension of requirements for emergency,” effective June 2, 2008, as published in the State of Connecticut General Statutes, Revision of 1958, Revised to 2009.

(ii) Additional materials.

(A) The Connecticut Department of Environmental Protection document, “Connecticut Regional Haze SIP Revision, Final, November 2009.”

(B) The Connecticut Department of Energy and Environmental Protection letter “Clarification of Connecticut’s 2008 PM_{2.5} Attainment Demonstration,” dated March 12, 2012, signed by Anne Gobin.

(C) The Connecticut Department of Energy and Environmental Protection letter “Regional Haze State Implementation Plan,” dated February 24, 2012, signed by Anne Gobin.

(D) The Connecticut Department of Energy and Environmental Protection letter “Withdrawal of Request for Parallel Processing,” dated November 23, 2012, signed by Anne R. Gobin.

■ 3. In § 52.385, Table 52.385 is amended by:

■ a. Adding a state citation “22a–174–19a” in order of “Date adopted by State”; and

■ b. Adding an entry for existing state citation “22a–174–22” in order of “Date adopted by State”; and

■ c. Adding a state citation “Sec. 16a–21a” at the end of the table.

The additions read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
* 22a-174-19a	* Control of sulfur dioxide emissions from power plants and other large stationary sources of air pollution.	* 12/28/00	* 7/10/14	* [Insert Federal Register page number where the document begins].	* [Insert next available paragraph number in sequence].	* Approves the sulfur dioxide emission standards and fuel sulfur limits for units subject to the CT NO _x Budget program. The following sections were not submitted as part of the SIP: Sections (a)(5); (a)(8); (a)(11); (d); (e)(4); (f); (g); (h); and in (i)(2) reference to (e)(4).
* 22a-174-22 ...	* Control of nitrogen oxides emissions.	* 12/28/00	* 7/10/14	* [Insert Federal Register page number where the document begins].	* [Insert next available paragraph number in sequence].	* Approves the Oct–April NO _x emission limits for units subject to the CT NO _x Budget program. Only section (e)(3) was submitted as part of the SIP revision.
* Sec. 16a-21a	* Sulfur content of home heating oil and off-road diesel fuel. Suspension of requirements for emergency.	* 6/2/08	* 7/10/14	* [Insert Federal Register page number where the document begins].	* [Insert next available paragraph number in sequence].	* Approves the sulfur content of number two home heating oil and off road diesel at such time that New York, Massachusetts, and Rhode Island adopt similar limits.

[FR Doc. 2014-16071 Filed 7-9-14; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2013-0241; FRL-9913-26-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of Commercial Fuel Oil Sulfur Limits for Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision will implement low-sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils used in combustion units, which will aid in reducing sulfur dioxide (SO₂) emissions and the formation of sulfates that cause decreased visibility. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on July 10, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2013-0241. All documents in the docket are listed in the <http://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 <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814-2036, or by email at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 20, 2014 (79 FR 9701), EPA published a notice of proposed rulemaking (NPR) seeking comment on EPA’s proposed approval of Pennsylvania’s SIP revision that incorporates the Commonwealth’s low-

sulfur fuel oil provisions into the SIP. The SIP revision was submitted by the Commonwealth of Pennsylvania on February 25, 2013, adopting revisions to 25 Pennsylvania Code (Pa. Code) Chapters 121, 123, and 139. In response to the NPR, EPA received one comment, dated March 24, 2014, from Ms. Jane Kozinski, Assistant Commissioner for the State of New Jersey Department of Environmental Protection (NJDEP). A summary of the NJDEP comment and EPA’s response is provided in Unit III. (Summary of Public Comment and EPA Response) of this final rulemaking action.

II. Summary of SIP Revision

The SIP revision incorporates Pennsylvania’s low-sulfur fuel oil provisions which apply to the owners and/or operators of the following: (1) Refineries; (2) pipelines; (3) terminals; (4) retail outlet fuel storage facilities and ultimate consumers; (5) commercial and industrial facilities; and (6) facilities with a unit burning regulated fuel oil to produce electricity and domestic home heaters. The SIP revision implements low-sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils used in combustion units and amends