ADDITIONAL STATEMENT REGARDING THE EMISSION LIMITS AND CONDITIONS FOR 
THE DOMTAR ASHDOWN MILL 

The approval of the withdrawal of the current PM \(_{10}\) BART determination of 0.07 lb/MBTU for Power Boiler No. 1 in the 2008 Arkansas Regional Haze SIP and replacement with the PM \(_{10}\) BART alternative limit in the Arkansas Regional Haze Phase III SIP Revision.

(4) The reasonable progress components under 40 CFR 51.308(d)(1) pertaining to the Domtar Ashdown Mill are approved.

(5) The long-term strategy component pertaining to the Domtar Ashdown Mill that includes the emission limits and schedules of compliance component under 40 CFR 51.308(d)(3)(v)(3) is approved.

(6) Consultation and coordination in the development of the SIP revision with the FLMs and with other states with Class I areas affected by emissions from Arkansas sources, as required

under 40 CFR 51.308(i)(2) and 40 CFR 51.308(d)(3)(i), is approved.

(i) Portions of the Arkansas 2015 O\(_3\) NAAQS Interstate Transport SIP Revision and Arkansas Regional Haze SO\(_2\) and PM SIP Revision addressing Visibility Transport. The portion of the Arkansas 2015 O\(_3\) NAAQS Interstate Transport SIP revision addressing the visibility transport requirements of CAA section 110(a)(2)[II][i][II][ii][i][ii][ii] for the Domtar Ashdown Mill with respect to SO\(_2\), NO\(_X\), and PM\(_{10}\).

(2) The regional haze program-specific plantwide conditions 32 to 43 from section VI of Permit #0287–AOP–R22 are approved for Power Boilers No. 1 and 2 for the Domtar Ashdown Mill, which contain SO\(_2\), NO\(_X\), and PM\(_{10}\) emission limits and conditions for implementing the BART alternative.

(3) The approval of the withdrawal of the current PM\(_{10}\) BART determination of 0.07 lb/MBTU for Power Boiler No. 1 in the 2008 Arkansas Regional Haze SIP and replacement with the PM\(_{10}\) BART alternative limit in the Arkansas Regional Haze Phase III SIP Revision.

(4) The reasonable progress components under 40 CFR 51.308(d)(1) pertaining to the Domtar Ashdown Mill are approved.

(5) The long-term strategy component pertaining to the Domtar Ashdown Mill that includes the emission limits and schedules of compliance component under 40 CFR 51.308(d)(3)(v)(3) is approved.

(6) Consultation and coordination in the development of the SIP revision with the FLMs and with other states with Class I areas affected by emissions from Arkansas sources, as required

SUPPLEMENTARY INFORMATION: In the Federal Register of November 30, 2020, the Department issued a final rule establishing four changes to the regulatory safe harbors to the Federal anti-kickback statute (Social Security Act Section 1128B(b)). Specifically, the final rule: (1) Amended 42 CFR 1001.952(h)(5) to remove safe harbor protection for reductions in price for prescription pharmaceutical products provided to plan sponsors under Part D; (2) created a new safe harbor at § 1001.952(cc) for certain point-of-sale reductions in price offered by manufacturers on prescription pharmaceutical products that are payable under Medicare Part D or by Medicaid managed care organizations that meet certain criteria; (3) created a new safe harbor at § 1001.952(dd) for fixed fees that manufacturers pay to pharmacy benefit managers (PBMs) for services rendered to the manufacturers that meet specified criteria; and (4) added new paragraphs (h)(6) through (9) to 42 CFR 1001.952, defining certain terms. The final rule was published with an effective date of January 29, 2021, except for the amendments to 42 CFR 1001.952(h)(5), which were to be effective on January 1, 2022.

On January 12, 2021, a lawsuit challenging the final rule was filed in the U.S. District Court for the District of Columbia.1 On January 30, 2021, the Court issued an order postponing until January 1, 2023, the effective date of the provisions of the final rule that were scheduled to take effect on January 1, 2022.2 Consistent with that order, the Department notified the public that the effective date of the amendments to 42 CFR 1001.952(h)(5) in the final rule is now January 1, 2023.3

In the Federal Register of February 2, 2021, the Department announced that it was undertaking a regulatory review of the interactions between the final rule’s various provisions and the overall regulatory framework.4 To assure adequate time to determine what additional action, if any, would be appropriate, the Department delayed until March 22, 2021, the effective date of the amendments to 42 CFR 1001.952(h)(6) through (9), (cc), and (dd) published at 85 FR 76666, November 30, 2020. In addition, the Department determined that the November 2020 final rule contained a technical error in the amendingatory instructions that would have prevented the Office of the Federal Register from properly incorporating the amendments to § 1001.952 into the CFR. The Department’s February 2, 2021, Federal Register publication therefore announced a technical correction to those instructions that would likewise take effect on March 22, 2021.

On March 15, 2021, the Court issued an order postponing until January 1, 2023, the effective date of all provisions of the final rule that were scheduled to take effect on March 22, 2021.5 Consistent with that order, the Department is taking this action to notify the public that the effective date of the amendments to 42 CFR 1001.952(h)(6) through (9), (cc), and (dd) in the final rule (inclusive of the technical correction) is now January 1, 2023. Pursuant to the court order, any obligation to comply with a deadline tied to the effective date of these amendments is similarly postponed, and those obligations and deadlines are now tied to the postponed effective date.

To the extent that 5 U.S.C. 553 applies to this action, implementation of this action without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(B). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The postponement of the effective date, until January 1, 2023, is required by court order in accordance with the court’s authority to postpone a rule’s effective date pending judicial review (5 U.S.C. 705). Seeking prior public comment on this postponement would have been impracticable, as well as contrary to the public interest in the orderly issue and implementation of regulations.

Norris Cochran,
Acting Secretary.

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