Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding at the end of the table an entry for 2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard.	West Virginia portion of the Parkersburg-Marietta, WV–OH nonattainment area.	9/9/08	12/12/12 *[Insert page number where the document begins]*.	52.2531(c)

■ 3. Section 52.2531 is amended by adding paragraph (c) to read as follows:

§ 52.2531 Base year emissions inventory.

* * * * *

(c) EPA approves as a revision to the West Virginia State Implementation Plan the 2002 base year emissions inventory for the Parkersburg-Marietta, WV–OH fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the West Virginia Department of Environmental Protection on September 9, 2008. The 2002 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3) and sulfur dioxide (SO_2).

[FR Doc. 2012–29893 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0400; FRL–9756–9]

Approval and Promulgation of State Implementation Plans; State of Wyoming; Regional Haze Rule Requirements for Mandatory Class I Areas Under 40 CFR 51.309

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving Wyoming State Implementation Plan (SIP) revisions submitted on January 12, 2011 and April 19, 2012 that address regional haze. These SIP revisions were submitted to address the requirements of the Clean Air Act (CAA or 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. EPA is taking this action pursuant to section 110 of the CAA.

DATES: This final rule is effective January 11, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0400. 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 Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if, at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

i. The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

ii. The initials *BART* mean or refer to Best Available Retrofit Technology.

iii. The initials *EGUs* mean or refer to electric generating units.

iv. The initials *GCVTC* mean or refer to the Grand Canyon Visibility Transport Commission.

v. The initials NO_X mean or refer to nitrogen oxides.

vi. The initials *PM* mean or refer to particulate matter.

vii. The initials *SIP* mean or refer to State Implementation Plan.

viii. The initials *URP* mean or refer to uniform rate of progress.

ix. The initials *WAQSR* mean or refer to Wyoming Air Quality Standards and Regulations.

Table of Contents

I. Background
A. Regional Haze
B. Lawsuits
C. Our Proposal
D. Public Participation
II. Final Action
III. Basis for Our Final Action
IV. Issues Raised by Commenters and EPA's Responses
A. Backstop Trading Program
B. General Comments
V. Statutory and Executive Order Reviews

I. Background

The CAA requires each state to develop plans, referred to as SIPs, to meet various air quality requirements. A state must submit its SIPs and SIP revisions to us for approval. Once approved, a SIP is enforceable by the EPA and citizens under the CAA, also known as being federally enforceable. This action involves the requirement that states have SIPs that address regional haze.

A. Regional Haze

In 1990, Congress added section 169B to the CAA to address regional haze issues, and we promulgated regulations addressing regional haze in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. States were required to submit a SIP addressing regional haze visibility impairment no later than

December 17, 2007. 40 CFR 51.308(b) and 40 CFR 51.309(c).

Wyoming submitted SIPs addressing regional haze on January 12, 2011 and April 19, 2012 (these superseded and replaced prior SIP submittals dated December 24, 2003, May 7, 2004, and November 21, 2008).

B. Lawsuits

In a lawsuit in the U.S. District Court for the District of Colorado, environmental groups sued us for our failure to take timely action with respect to the regional haze requirements of the CAA and our regulations for the State of Wyoming. As a result of this lawsuit, we entered into a consent decree. The consent decree requires that we sign a notice of final rulemaking addressing the regional haze requirements of 40 CFR 51.309 for Wyoming by November 14, 2012.[1] We are meeting that requirement with the signing of this notice of final rulemaking.

C. Our Proposal

We signed our notice of proposed rulemaking on May 9, 2012, and it was published in the **Federal Register** on May 24, 2012 (77 FR 30953). In that notice, we provided a detailed description of the various regional haze 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 Wyoming SIP revisions submitted on January 12, 2011 and April 19, 2012 that address the regional haze rule (RHR) for the mandatory Class I areas under 40 CFR 51.309. EPA proposed that the January 12, 2011 and April 19, 2012 SIPs meet the requirements of 40 CFR 51.309, with the exception of 40 CFR 51.309(d)(4)(vii), and 40 CFR 51.309(g), as explained below.

As part of the January 12, 2011 and April 19, 2012 SIPs, the State submitted revisions to the Wyoming Air Quality Standards and Regulations (WAQSR). The State submitted WAQSR Chapter 14, Sections 2 and 3—*Emission Trading Program Regulations.* WAQSR Chapter 14, in conjunction with the SIP, implements the backstop trading program provisions in accordance with the applicable requirements of 40 CFR 51.308 and 40 CFR 51.309. We proposed to approve WAQSR Chapter 14, Section 2 and Section 3. The State also submitted WAQSR Chapter 10, Section 4—*Smoke Management.* WAQSR Chapter 10, Section 4, in conjunction with the SIP, implements the requirements for smoke management under 40 CFR 51.309(d)(6). We proposed to approve WAQSR Chapter 10, Section 4.

The State's submitted another SIP revision dated January 12, 2011 that addresses the requirements under 40 CFR 51.309(d)(4)(vii) and 40 CFR 51.309(g) pertaining to best available retrofit technology (BART) for particulate matter (PM) and nitrogen oxides (NO_X) and additional Class I areas, respectively. EPA proposed action on this SIP in a separate notice (77 FR 33022). In addition, the January 12, 2011 and April 19, 2012 submittals we proposed to act on supersede and replace regional haze SIPs submitted on December 24, 2003, May 27, 2004, and November 21, 2008.

D. Public Participation

We requested comments on all aspects of our proposed action and provided a sixty-day comment period, with the comment period closing on July 23, 2012. We received comments on our proposed rule that supported our proposed action and that were critical of our proposed 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 Wyoming SIP revisions submitted on January 12, 2011 and April 19, 2012 that address the RHR requirements for the mandatory Class I areas under 40 CFR 51.309. EPA taking final action to find that the January 12, 2011 and April 19, 2012 SIPs meet the requirements of 40 CFR 51.309, with the exception of 40 CFR 51.309(d)(4)(vii), and 40 CFR 51.309(g).

As part of the January 12, 2011 submittal, the State submitted revisions to WAQSR. The State submitted WAQSR Chapter 14, Sections 2 and 3—*Emission Trading Program Regulations.* We are approving WAQSR Chapter 14, Section 2 and Section 3. The State also submitted WAQSR Chapter 10, Section 4—*Smoke Management.* We are approving WAQSR Chapter 10, Section 4. We are also approving Wyoming's April 19, 2012 SIP submittal that contains the pre-trigger emission inventory requirements, which are covered by WAQSR Chapter 14, Section 3—*Emission Inventory.*

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 Wyoming's regional haze SIP submittal against the regional haze requirements at 40 CFR 51.300–51.309 and CAA sections 169A and 169B. 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 Wyoming's SIP submittal is based on CAA section 110(k).

We are approving the State's regional haze SIP provisions because they meet the relevant regional haze requirements. The adverse comments we received concerning our proposed approval of the regional haze SIP pertained to our proposed approval of the SO_2 backstop trading program. However, the comments have not convinced us that the State did not meet the requirements of 40 CFR 51.309 that we proposed to approve.

IV. Issues Raised by Commenters and EPA's Responses

A. Backstop Trading Program

EPA has proposed to approve the SO_2 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 SO_2 Backstop Trading Program Proposed by the States of New Mexico, Utah and Wyoming and Albuquerque-Bernalillo County Will Result in Lower SO_2 Emissions than Source-Specific BART.'' In this section, we address and respond to those comments we identified as being

[1] The State submitted another SIP revision dated January 12, 2011 that addresses the requirements of 40 CFR 51.309(g) and 40 CFR 51.309(d)(4)(vii). We are under a consent decree deadline to take final action on this SIP by December 14, 2012. We will be taking final action on this SIP in a separate action.

consistently submitted and specifically directed to the component of the published proposals dealing with the SO_2 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 State of Wyoming) will be addressed in the next section where we also address all other comments received.

Comment: 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 electric generating units (EGUs) from compliance with BART.

Response: The CAA 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(b)(2) (emphasis added). 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 be 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 CAA 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)). 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)(i)(B).

Comment: The submitted 309 trading program is defective because only three of nine transport states remain in the program. The Grand Canyon Visibility Transport Commission (GCVTC) 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 three 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 Region States will limit the effectiveness of the program in the three 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 analyses as 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 33,769 (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 SO_2 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 GCVTC 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.'' [2]

It is apparent that the GCVTC 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 51.308(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.

[2] The Grand Canyon Visibility Transport Commission, *Recommendations for Improving Western Vistas* at 32 (June 10, 1996).

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 GCVTC 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 requirements for an approvable 309 trading program are met. As applicable, any transport region state, with Class I areas not on the Colorado Plateau, implementing the provisions of section 309 must also separately demonstrate reasonable progress for any additional mandatory Class I 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 51.308(d)(2). 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_2 emission rate of 0.15 lb/MMBtu for most coal-fired EGUs. The presumptive SO_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 FR 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 have 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''). The submitted SIP revisions from the 309 states have accordingly and appropriately, followed our advice that the presumptions for EGUs in the BART guidelines, generally ''should'' be used for comparisons to the trading program unless the state determines otherwise.

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 that time, or even now, would be flawed merely because EPA expects that scrubber technology and costs will continue to improve.

Comment: The presumptive SO_2 emission rate overstates actual emissions from sources that were included in the BART benchmark calculation. In addition, states in the transport region have established or proposed significantly more stringent BART limits for SO_2. Using actual SO_2 emission data for EGUs, SO_2 emissions would be 130,601 tons per year (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_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_2 emissions of 124,740 tpy. These analyses show the BART benchmark is higher than actual SO_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_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_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, as 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_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_2 emission rates that were lower than the presumptive rate. The use of actual emissions data after the 2006 baseline is not relevant to the demonstration that has been submitted.

Comment: SO_2 emissions under the 309 trading program would be equivalent to the SO_2 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 SO_2 emissions trading program achieves greater reasonable progress.

Response: We recognize that the 2018 SO_2 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 SO_2 milestone is exceeded, the trading program will be activated. 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 SO_2 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 SO_2 milestone to equal the BART benchmark. Our determination that the 2018 SO_2 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 SO_2 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. We note the 2018 milestone constitutes an emissions cap that persists after 2018 unless the trading program can be replaced via future SIP revisions submitted for EPA approval that will meet the BART and reasonable progress requirements of 51.308. See 40 CFR 51.309(d)(4)(vi)(A).

Comment: In proposing to find that the SO_2 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 SO_2 emissions from new sources are reduced to the maximum extent. EPA's discussion of the advantages of a 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 SO_2 controls less efficiently, because some BART-subject EGUs already operate with lower emissions than the presumptive SO_2 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 SO_2 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 required to secure emission reductions as may be

necessary to meet their emission allocations 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 SO_2 unless the milestones are replaced by a different program approved by EPA as meeting the BART and reasonable progress requirements under 40 CFR 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 SO_2 controls efficiently, this does not mean that an alternative to BART thereby allows, encourages, 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_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 program is designed to permit, not cap, source growth, so long as the national ambient air quality standards and other 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 that are made to meet the definition of BART (40 CFR 51.301). 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 (URP) glide-path towards achieving natural conditions. EPA should require revisions to provide for greater SO_2 reductions in the 309 program, or it should require BART reductions on all sources subject to BART for SO_2.

Response: We disagree with the issues discussed in this comment. As discussed in other responses to comments, we have found that the State's SIP submitted under the 309 program will achieve greater reasonable progress than source-by-source BART. As the regulations housed within section 309 make clear, states have an opportunity to submit regional haze SIPs that provide an alternative to source-by-source BART requirements. Therefore, the commenter's assertion that we should require BART on all eligible air pollution sources in the state is fundamentally misplaced. The commenter's use of the URP as a test that should apparently be applied to the adequacy of the 309 trading program as a BART alternative is also misplaced, as there is no requirement in the regional haze rule to do so.

Comment: The 309 trading program must be disapproved because it does not provide for ''steady and continuing emissions reductions through 2018'' as required by 40 CFR 51.309(d)(4)(ii). The program establishes its reductions through milestones that are set at three-year intervals. It would be arbitrary and capricious to conclude these reductions are ''steady'' or ''continuous.''

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. We find the milestone schedule and the remainder of the trading program submitted by Wyoming does in fact reasonably provide for ''steady and continuing emissions reductions through 2018.''

Comment: The WRAP attempts to justify the SO_2 trading program because SO_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 CAA requirements.

Response: We did not focus on the WRAP's discussion of early emission reductions in our proposal. However, we do not understand commenter's claim or agree with this comment. The WRAP's statements regarding past air quality improvements are not contrary to the requirement that reductions under a trading program be surplus. Instead, the WRAP was noting that forward-planning sources had already pursued emission reductions that could be partially credited to the design of the 309 SIP. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. Sources that make early reductions prior to the program trigger year may acquire extra allocations should the program be triggered. This is an additional characteristic feature of the backstop trading program that suggests benefits that would be realized even without triggering of the program itself. The surplus emission reduction requirement for the trading program is not an issue, because the existence of surplus reductions is studied against other reductions that are realized ''as of baseline date of the SIP.'' The 1990–2000 period plainly falls earlier than the baseline date of the SIP, so we disagree that the WRAP's discussion of that period was problematic or violates 40 CFR 51.308(e)(2)(iv), regarding surplus reductions.

Comment: EPA must correct discrepancies between the data presented in the 309 SIPs.[3] There are discrepancies in what has been presented as the results of WRAP photochemical modeling. The New

[3] 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.

Mexico regional haze SIP proposal shows, for example, that the 20% worst days at Grand Canyon National Park have visibility impairment of 11.1 deciviews, while the other 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 proposed 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 in the table below. The discrepancies come from New Mexico using different preliminary reasonable progress cases developed by the WRAP. The Wyoming, Utah, and Albuquerque proposed notices incorrectly identify the Preliminary Reasonable Progress (PRP) 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 predicted 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 our proposed notices for Wyoming, Utah, and Albuquerque 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.

Class I area	State	2018 Preliminary reasonable progress PRP18a case (deciview)	2018 Preliminary reasonable progress PRP18b case (deciview)
Grand Canyon National Park	AZ	11.3	11.1
Mount Baldy Wilderness	AZ	11.4	11.5
Petrified Forest National Park	AZ	12.9	12.8
Sycamore Canyon Wilderness	AZ	15.1	15.0
Black Canyon of the Gunnison National Park Wilderness	CO	9.9	9.8
Flat Tops Wilderness	CO	9.0	9.0
Maroon Bells Wilderness	CO	9.0	9.0
Mesa Verde National Park	CO	12.6	12.5
Weminuche Wilderness	CO	9.9	9.8
West Elk Wilderness	CO	9.0	9.0
San Pedro Parks Wilderness	NM	9.8	9.8
Arches National Park	UT	10.9	10.7
Bryce Canyon National Park	UT	11.2	11.1
Canyonlands National Park	UT	10.9	10.7
Capitol Reef National Park	UT	10.5	10.4
Zion National Park	UT	13.0	12.8

We are not re-noticing our proposed rulemaking as the discrepancies do not change our proposed conclusion that the SIP submitted by Wyoming 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 Wyoming's SIP adequately projects the improvement in visibility for purposes of Section 309.

B. General Comments

Comment: We received comments from PacifiCorp and New Mexico Environment Department supporting our proposed approval of Wyoming's 309 SIP.

Response: We acknowledge the commenters' support of our proposed rulemaking.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not 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 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 February 11, 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Sulfur oxides, Incorporation by reference.

Dated: November 13, 2012.

James B. Martin,

Regional Administrator, Region 8.

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:

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

Subpart ZZ—Wyoming

■ 2. Section 52.2620 is amended by:

■ a. Amending the table in paragraph (c)(1) under Chapter 10 by adding an entry for Section 4.

■ b. Amending the table in paragraph (c)(1) by adding Chapter 14 consisting of entries for Section 2 and Section 3.

■ c. Amending the table in paragraph (e) by adding entry ''XX'' at the end of the table.

The additions read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State adopted and effective date	EPA approval date and citation [1]	Explanation
* *	*	*	* *	*
		Chapter 10		
* *	*	*	* *	*
Section 4	Smoke Management	2/17/2005, 4/5/2005	12/12/2012 [Insert FR page number where document begins].	
* *	*	*	* *	*
		Chapter 14		
* *	*	*	* *	*
Section 2	Western Backstop Sulfur Dioxide Trading Program.	2/27/2008, 5/7/2008	12/12/2012 [Insert FR page number where document begins].	
Section 3	Sulfur Dioxide Milestone Inventory.	2/27/2008, 5/7/2008	12/12/2012 [Insert FR page number where document begins].	

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

(e) * * *

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/adopted date	EPA approval date and citation [3]	Explanations
* *	*	* *	*	*
XX. Wyoming State Implementation Plan for Regional Haze for 309.	Statewide	Submitted: 1/12/2011	12/12/2012 [Insert **Federal Register** page number where the document begins].	

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2012–29985 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0669; FRL–9369–3]

Bacillus subtilis Strain QST 713 Variant Soil; Amendment to an Exemption From the Requirement of a Tolerance for Bacillus subtilis Strain QST 713 To Include Residues of Bacillus subtilis Strain QST 713 Variant Soil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the existing exemption from the requirement of a tolerance for residues of the *Bacillus subtilis* strain QST 713 in or on all food commodities by including residues of *Bacillus subtilis* strain QST 713 variant soil. Agraquest, Inc. submitted a petition to the EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to an existing exemption from the requirement of a tolerance for *Bacillus subtilis* strain QST 713 to include residues of products containing *Bacillus subtilis* strain QST 713 variant soil in or on all agricultural commodities. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus subtilis* strain QST 713 variant soil under the FFDCA.

DATES: This regulation is effective December 12, 2012. Objections and requests for hearings must be received on or before February 11, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0669, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Glikes, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6231; email address: *glikes.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by the EPA, you must identify docket ID number EPA–HQ–OPP–2011–0669 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 11, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any CBI) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by the EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0669, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please