

and alternative transportation systems (if applicable).

(2) The superintendent must complete either an environmental assessment (EA) or an environmental impact statement (EIS) evaluating the effects of bicycle use in the park and on the specific trail. The superintendent must provide the public with notice of the availability of the EA and at least 30 days to review and comment on an EA completed under this section.

(3) The superintendent must complete a written determination stating that the addition of bicycle use on the existing hiking or horse trail is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources.

(4)(i) If under paragraph (d)(2) of this section, the resulting Finding of No Significant Impact, Record of Decision (ROD), or an amended ROD concludes that bicycle use on the specific trail will have no significant impacts, the superintendent must publish a notice in the **Federal Register** providing the public at least 30 days to review and comment on the written determination required by paragraph (d)(3) of this section. After consideration of the comments submitted, the superintendent must obtain the Regional Director's written approval of the determination required by paragraph (d)(3) of this section; or

(ii) If under paragraph (d)(2) of this section, the conclusion is that bicycle use on the specific trail may have a significant impact, the superintendent with the concurrence of the Regional Director must complete a concise written statement for inclusion in the project files that bicycle use cannot be authorized on the specific trail.

(e) *New trails.* This paragraph applies to new trails that do not exist on the ground and therefore would require trail construction activities (such as clearing brush, cutting trees, excavation, or surface treatment). New trails shall be developed and constructed in accordance with appropriate NPS sustainable trail design principles and guidelines. The superintendent may develop, construct, and authorize new trails for bicycle use after:

(1) In a developed area, the superintendent completes the requirements in paragraphs (d)(1) through (d)(3) of this section, publishes a notice in the **Federal Register** providing the public at least 30 days to review and comment on the written determination required by paragraph (d)(3) of this section, and after consideration of the comments

submitted, obtains the Regional Director's written approval of the determination required by paragraph (d)(3) of this section; or

(2) Outside of a developed area, the superintendent completes the requirements in paragraphs (d)(1), (2), and (3) of this section; obtains the Regional Director's written approval of the determination required by paragraph (d)(3) of this section; and promulgates a special regulation authorizing the bicycle use.

(f) *Closures and other use restrictions.* A superintendent may limit or restrict or impose conditions on bicycle use or may close any park road, parking area, administrative road, trail, or portion thereof to bicycle use, or terminate such condition, closure, limit or restriction after:

(1) Taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives; and

(2) Notifying the public through one or more methods listed in § 1.7(a) of this chapter.

(g) *Other requirements.* (1) A person operating a bicycle on any park road, parking area, administrative road or designated trail is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 4.4, 4.10, 4.11, 4.14, and 4.15.

(2) Unless specifically addressed by regulations in this chapter, the use of a bicycle within a park area is governed by State law. State law concerning bicycle use that is now or may later be in effect is adopted and made a part of this section.

(h) *Prohibited acts.* The following are prohibited: (1) Bicycle riding off of park roads and parking areas, except on administrative roads and trails that have been authorized for bicycle use.

(2) Possessing a bicycle in a wilderness area established by Federal statute.

(3) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector that is visible from at least 200 feet to the rear.

(4) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

(5) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

(6) Any violation of State law adopted by this section.

Dated: June 20, 2012.

**Rachel Jacobson,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2012-16466 Filed 7-5-12; 8:45 am]

**BILLING CODE 4312-52-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2012-0144; FRL-9695-4]

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a revision to the Maryland State Implementation Plan (SIP) submitted by the State of Maryland, through the Maryland Department of the Environment (MDE), on February 13, 2012. This action is being taken in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. EPA is also approving this revision as meeting the infrastructure requirements relating to visibility protection for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 1997 and 2006 fine particulate matter (PM<sub>2.5</sub>) NAAQS.

**DATES:** This final rule is effective on August 6, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2012-0144. All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the state submittal are

available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Lewis, (215) 814-2037, or by email at [lewis.jacqueline@epa.gov](mailto:lewis.jacqueline@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On February 28, 2012 (77 FR 11839), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of Maryland’s Regional Haze Plan for the first implementation period through 2018. The formal SIP revision (MDE SIP Number 12-01) was submitted by the State of Maryland on February 13, 2012. EPA proposed to approve this revision since it assures reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas for the first implementation period. EPA also proposed to approve this SIP revision as meeting the infrastructure requirements of section 110(a)(2)(D)(i)(II) and (a)(2)(I) of the CAA, relating to visibility protection for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

**II. Summary of SIP Revision**

The revision includes a long term strategy with enforceable measures ensuring reasonable progress towards meeting the reasonable progress goals for the first planning period through 2018. Maryland’s Regional Haze Plan contains the emission reductions needed to achieve Maryland’s share of emission reductions agreed upon through the regional planning process. Other specific requirements of the CAA and EPA’s Regional Haze Rule (RHR)<sup>1</sup> and the rationale for EPA’s proposed action are explained in the NPR and will not be restated here. Timely adverse comments were submitted on EPA’s February 28, 2012 NPR. A summary of the comments and EPA’s responses are provided in Section III of this document. As discussed more fully in the Response to Comments below, EPA is also clarifying herein its approval of the BART determinations for sulfur dioxide (SO<sub>2</sub>), nitrogen oxides

(NO<sub>x</sub>), and particulate matter (PM) for Unit 25 at the NewPage Luke Pulp and Paper Mill located in Allegany County in Luke, Maryland (NewPage Luke Mill) which we are approving into the Maryland SIP.

**III. Summary of Public Comments and EPA Response**

EPA received a number of comments on our proposal to approve Maryland’s Regional Haze SIP submittal. Comments were received from the Luke Paper Company and the U.S. Forest Service. A joint letter from the Sierra Club and the National Parks Conservation Association (NPCA) was also received. The U.S. Forest Service acknowledged the work that the State of Maryland has accomplished and encouraged the State of Maryland to continue to reduce regional haze. The complete comments submitted by all of the aforementioned entities (hereafter referred to as “the Commenter”) are provided in the docket (EPA-R03-OAR-2012-0144) for today’s final action. A summary of the comments and EPA’s responses are provided below.

*Comment 1:* The Commenter recommended that emission controls for a coal cleaning facility and three electric generating units (EGUs) which are not BART subject sources in Maryland should be evaluated under the reasonable progress provisions of the RHR as was done in Wyoming and North Dakota. The Commenter stated that initially the coal cleaning facility was identified as BART-eligible and modeling for this source demonstrated that it may impact visibility at one or more Class I areas located in West Virginia (e.g., Dolly Sods Wilderness Area and Otter Creek Wilderness Area.) This source was subsequently found not to be subject-to-BART.

*Response 1:* EPA finds Maryland’s decision not to further evaluate controls at the coal cleaning facility and the three EGUs under the reasonable progress provisions of the RHR to be reasonable. First, as discussed in the NPR, two of the EGUs are subject to Maryland’s Healthy Air Act (HAA)<sup>2</sup> which requires significant emission reductions at those EGUs. More generally, as explained below, Maryland followed a specific strategy for addressing reasonable progress. Pursuant to EPA’s Guidance for Setting Reasonable Progress Goals under the Regional Haze Program (Reasonable Progress Guidance), states may identify

key pollutants and source categories for the first planning period.<sup>3</sup> The regional planning organizations VISTAS and MANE-VU and the State of Maryland determined that the key pollutant which contributes to visibility impairment in the VISTAS and MANE-VU Class I areas is sulfate. Therefore, in accordance with EPA’s Reasonable Progress Guidance,<sup>4</sup> VISTAS, MANE-VU and Maryland focused on SO<sub>2</sub> for the first planning period. To ensure reasonable progress for the first planning period, MANE-VU recommended and Maryland agreed to pursue the following emission reductions: Timely implementation of BART; 90 percent reduction in SO<sub>2</sub> emissions from the 167 highest visibility impacting EGUs; a reduction in the sulfur content of distillate and residual oil; and continued evaluation of other emission reduction strategies. Section III.B.4. of the NPR discusses how Maryland met the 90 percent reduction in SO<sub>2</sub> emissions from the 167 highest visibility impacting EGUs and the equivalent reduction to account for the reduced sulfur content of distillate and residual oil. During the consultation process, Maryland provided West Virginia with the intended emission reductions resulting from their long term strategy for sources that are in the Area of Influence for Dolly Sods which included emission reductions projected to be achieved by the HAA. After review, West Virginia did not request additional emission reductions from neighboring states for the first planning period other than what has already been planned. Therefore, EPA does not agree that additional controls beyond BART and the HAA should be evaluated for these particular sources for reasonable progress.

*Comment 2:* The Commenter questioned the BART-eligibility of a coal cleaning facility in Maryland because Maryland originally identified this source as BART-eligible. The Commenter further noted that control technologies available in 1977 differ from those available today, so a BART analysis would be beneficial. In addition, the Commenter suggested that

<sup>3</sup> See Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, p. 3-1 (June 1, 2007). EPA’s Reasonable Progress Guidance is also available at [www.epa.gov/ttn/caaa/t1/memoranda/reasonable\\_progress\\_guid071307.pdf](http://www.epa.gov/ttn/caaa/t1/memoranda/reasonable_progress_guid071307.pdf).

<sup>4</sup> “In deciding what amount of emission reductions is appropriate in setting the RPG, you (the State) should take into account that the long-term goal of no manmade impairment encompasses several planning periods. It is reasonable for you to defer reductions to later planning periods in order to maintain a consistent glidepath toward the long-term goals.” Reasonable Progress Guidance at p. 1-4.

<sup>1</sup> EPA promulgated the RHR to address regional haze on July 1, 1999 (64 FR 35714). The RHR revised existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA’s visibility protection regulations at 40 CFR 51.300-51.309.

<sup>2</sup> Md. Code Ann., Environment Title 2, Ambient Air Quality Control, Subtitle 10 Healthy Air Act, Section 2-1001-2-1005 (2012). See also COMAR 26.11.27.

a permit condition to shut down the coal cleaning facility by the end of 2014 would address the Commenter's concerns because the facility indicated that it did not plan to operate beyond 2014.

*Response 2:* EPA disagrees with the Commenter's assertions that the identified Maryland coal cleaning facility should be subject to BART. EPA agrees with Maryland that the source was not in existence by August 7, 1977 because this source did not meet EPA's definition of "in existence" at 40 CFR 51.301. EPA did not grant approval of the coal cleaning construction application until February 23, 1978. Therefore, the coal cleaning facility was not in existence prior to 1977 and is not a BART-eligible source. Additionally, EPA disagrees that any permit requirements for shutdown are necessary or required for this particular source. The Federal regional haze program does not require existing sources to shutdown. While the facility may intend to cease operations in the near future, Maryland was not required to make such a shutdown enforceable in its Regional Haze SIP.

*Comment 3:* The Commenter further stated that Maryland's discussion on achievement of reasonable progress goals focused on the contribution to emission reductions of sulfur only and not NO<sub>x</sub>.

*Response 3:* EPA disagrees with the Commenter's assertion that Maryland was required to focus on the contribution to emission reductions of NO<sub>x</sub> in its Regional Haze SIP. As discussed in EPA's Response to Comment 2, VISTAS, MANE-VU, and Maryland determined that the key pollutant contributing to visibility impairment in the MANE-VU and VISTAS Class I areas is sulfate. Maryland accordingly focused on SO<sub>2</sub> emission reductions for the first planning period, an approach that EPA believes was appropriate given the technical analyses done by VISTAS and MANE-VU. As discussed in the NPR, the State of Maryland does not have a Class 1 area and is not required to establish reasonable progress goals such as NO<sub>x</sub> emission reductions.

*Comment 4:* The Commenter recommended two different control technologies for Unit 26 at the NewPage Luke Mill that combined would reduce NO<sub>x</sub> emissions at the Mill by 60 to 90 percent.

*Response 4:* Although Unit 26 at the NewPage Luke Mill is mentioned in the BART analysis done by the facility, Unit 26 is not a BART-eligible source. The owner of the NewPage Luke Mill correctly provided a BART analysis for

the BART-eligible Unit 25, and Maryland determined BART for Unit 25. As discussed more fully in EPA's Response to Comments 2 and 3 above, EPA does not agree that any further controls for NO<sub>x</sub> are needed for reasonable progress at any source at the NewPage Luke Mill at this time.

*Comment 5:* The Commenter stated that EPA mischaracterized the Luke Paper Company's commitment in the letter dated October 31, 2007 for BART controls at the NewPage Luke Mill. The Commenter stated that EPA noted in its NPR that Luke Paper Company committed to installing either a spray dryer absorber or a circulating dry scrubber resulting in approximately 90 percent emission reductions in SO<sub>2</sub> and to year round operation of the existing selective non-catalytic reduction (SNCR) control at Unit 25 for NO<sub>x</sub> control as BART for the BART subject Unit 25 at the NewPage Luke Mill. The Commenter asserted that its October 31, 2007 letter committed to reduce emissions by 90 percent for SO<sub>2</sub> without specifying controls, to reduce NO<sub>x</sub> emissions to 0.4 pounds per million British thermal units (lb/MMbtu), and to control PM emissions to 0.07 lb/MMbtu for Unit 25 at the NewPage Luke Mill on a yearly basis.

*Response 5:* EPA agrees with the Commenter that Maryland's Regional Haze SIP submittal and our approval of the submittal requires the NewPage Luke Mill at Unit 25 to meet BART limits of 0.44 lb/MMbtu for SO<sub>2</sub>, a rolling 30-day emission rate of 0.40 lb/MMbtu for NO<sub>x</sub>, and 0.07 lb/MMbtu for PM. Although Maryland's BART determination was based on the use of certain controls, BART is an emission limit. 40 CFR 51.301. In our NPR, we inadvertently suggested that the Maryland Regional Haze SIP required the use of specific controls. We agree with the Commenter that the Maryland Regional Haze SIP requires the NewPage Luke Mill to meet the BART emission limits noted above but does not require the facility to install specific controls at Unit 25 to meet these limits.

*Comment 6:* The Commenter stated that Maryland failed to meet the requisite demonstration that the distribution of emission reductions will be similar to that under the source-specific BART and failed to conduct dispersion modeling to show that the Maryland HAA results in greater reasonable progress toward achieving natural baseline visibility conditions in the areas protected by the RHR.

*Response 6:* EPA disagrees with the Commenter. EPA discussed in the NPR how Maryland's HAA was an acceptable alternative to BART for EGUs and

discussed how the HAA met the requirements for a BART alternative program in 40 CFR 51.308(e)(2). EPA finds that the distribution of emission reductions in Maryland at EGUs from the HAA is comparable to and not substantially different from emission reductions under BART at EGUs. The emission reductions from the HAA are discussed in detail in the NPR.

Maryland's HAA covers all of the BART-subject EGU sources and also includes two EGUs which are not BART-subject sources. With the exception of a single unit at one EGU, the Maryland HAA covers more units at each source than just BART-eligible units as illustrated in Table 5 of Section III.B.5 of the NPR.<sup>5</sup> The HAA does not allow facilities to obtain out-of-state emission allowances in lieu of adding pollution controls locally. All of the emission reductions pursuant to the HAA are at EGUs in Maryland which are located in the eastern portion of Maryland around Baltimore and Washington, DC in the same physical location as BART-eligible EGUs. Table 5 of Section III.B.5 of the NPR supports the conclusion that the distribution of emissions is not substantially different under the HAA than under BART because the HAA includes all of the BART sources and all of the BART-eligible units with the exception of Chalk Point Unit 3. Because the Maryland HAA includes all the BART-subject EGU sources, the distance from HAA sources to Class I areas is identical to the distance from BART-subject EGU sources to Class I areas.

EPA provided an analysis supporting emission reductions from the HAA exceeding presumptive BART in the NPR. The factors used by Maryland to develop the HAA emission limitations incorporate criteria used in the RHR as discussed in the NPR in greater detail. As discussed in Section III.B.5 of the NPR, Maryland did a comparison of HAA emission limits for 13 of the 15 units subject to the HAA which resulted in a surplus of SO<sub>2</sub> and NO<sub>x</sub> reductions compared to presumptive BART because the HAA applies to more units

<sup>5</sup>Chalk Point Unit 3 is the sole unit at an EGU which is a BART-eligible unit *not* covered by the HAA because it is not a coal-fired EGU. However, Chalk Point Unit 3 is required to operate on natural gas during 75% of its annual heat input and is required to operate on natural gas during 95% of the ozone season heat input pursuant to a consent decree with MDE which was effective on March 10, 2011 and which has been submitted to EPA for approval into the Maryland SIP. See 77 FR 26438 (May 4, 2012) (providing direct final rulemaking to approve consent decree limits for Chalk Point Unit 3 into Maryland SIP). EPA expects significant reductions of NO<sub>x</sub>, SO<sub>2</sub>, and PM from the required combustion of natural gas instead of combustion of fuel oil at Chalk Point Unit 3. *Id.*

than BART. Because the BART-subject sources are all HAA-subject sources, the distribution of emission reductions is not substantially different than under BART. As discussed in the NPR and in Maryland's Regional Haze SIP submittal, the alternative measure (i.e., the HAA) results in greater emission reductions than BART and therefore achieves greater reasonable progress. See 40 CFR 51.308(e)(3). Because the distribution of emissions is not substantially different, dispersion modeling is not required in 40 CFR 51.308(e)(3).

*Comment 7:* The Commenter stated that Maryland has not demonstrated how the emissions reductions resulting from the Maryland HAA are surplus to those reductions resulting from measures adopted to meet other requirements of the CAA as of the baseline date of this SIP, as required by EPA's RHR and the infrastructure requirements related to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Response 7:* Because Maryland is using the HAA as an alternative to BART for its EGU BART-eligible sources as permitted by the RHR and as discussed in the NPR, EPA agrees with Maryland's analysis that emission reductions from the 13 HAA units will result in emission reductions that are surplus to the baseline date of the SIP. In promulgating the RHR in 1999, EPA explained that the "baseline date of the SIP" in this context means "the date of the emissions inventories on which the SIP relies," which is "defined as 2002 for regional haze purposes." See 64 FR 35742, July 1, 1999, and 70 FR 39143, July 6, 2005. Any measure adopted after 2002 is accordingly "surplus" under 40 CFR 51.308(e)(2)(iv). As discussed in the NPR, Maryland's use of the HAA (which was adopted after 2002) as an alternative to BART for EGUs is in accordance with and satisfies the requirements in 40 CFR 51.308(e)(2) for BART alternatives, including the requirement that the emission reductions be surplus to the baseline date of the SIP. The NPR also discusses how Maryland developed the emission reductions required by the HAA. EPA is not restating that analysis here.

Also, EPA's final approval of Maryland's Regional Haze SIP herein will satisfy the infrastructure requirements of CAA section 110(a)(2)(D)(i)(II) and (a)(2)(I) for the 1997 8-hour Ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS. EPA disagrees with the Commenter's suggestion that the emission reductions from the HAA are not surplus solely

because the reductions are part of Maryland's Regional Haze SIP which satisfies CAA infrastructure elements in section 110(a)(2)(D) and (I) of the CAA. Section 110(a)(2) of the CAA does not impose specific requirements on particular sources, and therefore surplus reduction is not at issue.

*Comment 8:* The Commenter stated that the BART analyses submitted by Constellation Energy for Wagner Unit 3 and Crane Unit 2 are deeply flawed and failed to identify correctly BART technology and BART limits for those units. The Commenter also stated that Maryland improperly compared HAA emissions to those under presumptive BART and that Maryland must redo its analysis and compare emissions reductions under the HAA to those produced by full source-specific BART analyses.

*Response 8:* The primary requirement, as specified in CAA section 169A, is for sources to procure, install, and operate BART. In some cases this requirement is met with an analysis of potential controls considering five factors given in EPA's RHR. EPA has interpreted this requirement to be met if an alternative set of emission limits are established which mandate greater reasonable progress toward visibility improvement than direct application of BART on a source-by-source basis. In promulgating the RHR, EPA stated that to demonstrate that emission reductions of an alternative program would result in greater emission reductions, "the State must estimate the emission reductions that would result from the use of BART-level controls. To do this, the State could undertake a source-specific review of the sources in the State subject to BART, or it could use a modified approach that simplifies the analysis." 64 FR 35742 (July 1, 1999).

In guidance published October 13, 2006, EPA offered further clarification for states for assessing alternative strategies, in particular regarding the benchmark definition of BART to use in judging whether the alternative is better. See 71 FR 60619. In this rulemaking, EPA stated in the preamble that the presumptive BART levels given in the BART guidelines would be a suitable baseline against which to compare alternative strategies where the alternative has been designed to meet a requirement other than BART. 71 FR at 60619; see also 40 CFR 51.308(e)(2)(i)(C). Maryland's analysis is fully consistent with EPA's conclusions in this rulemaking.

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 an alternative emissions reductions scenario such as the HAA when comparing it to the BART scenario. See 71 FR 60619 (stating "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").

Maryland's HAA was developed to bring Maryland into attainment with the NAAQS for ozone and PM<sub>2.5</sub> by CAA deadlines and to reduce atmospheric deposition of nitrogen to the Chesapeake Bay and other Maryland waters. The HAA imposes limitations on SO<sub>2</sub>, NO<sub>x</sub>, and mercury emissions from coal-fired EGUs in Maryland. Although Maryland is also now using the HAA as an alternative to BART for its EGU BART-eligible sources as permitted pursuant to EPA's RHR (40 CFR 51.308(e)(2)), the use of presumptive limits is appropriate. EPA agrees with Maryland's analysis that emission reductions from the thirteen HAA units will result in emission reductions that will provide greater reasonable progress than would BART alone as described more fully in the NPR.

Regarding the units at H.A. Wagner and C.P. Crane, EPA notes that H.A. Wagner Units 2 and 3 and C.P. Crane Units 1 and 2 are subject to the HAA (Maryland's alternative BART program) while only C.P. Crane Unit 2 and H.A. Wagner Unit 3 are BART-eligible units. Because these additional units (as well as units at Brandon Shores and Dickerson) are covered under the HAA, significantly more emission reductions are achieved by the HAA than through application of presumptive BART as discussed in Section III.B.5 in the NPR.

*Comment 9:* The Commenter stated that Maryland must ensure that reasonable progress goals are set so as to put the state on the glidepath to attainment of baseline natural visibility conditions in all affected Class I areas by 2064. For at least the Dolly Sods Wilderness, the Commenter stated that it did not appear that Maryland has done so and questioned what date the Class I areas would attain.

*Response 9:* EPA disagrees with the Commenter. As stated in the NPR, because Maryland does not have a Class I area, it is not required to establish reasonable progress goals. However, Maryland participated in conference calls and a meeting with West Virginia during the consultation process. They discussed the sources and emissions reductions expected within the area of

influence for Dolly Sods. Subsequently, based on the planned measures in neighboring states, West Virginia decided for the first planning period not to ask neighboring states for additional emissions reductions. Previously, EPA approved West Virginia's reasonable progress goals for the Dolly Sods Class I area. See 77 FR 16932 (March 23, 2012). Therefore, EPA disagrees with the Commenter and confirms that no such further analysis regarding the glidepath to attainment is needed.

*Comment 10:* The Commenter stated that EPA lacked CAA statutory authority to allow Maryland to use the HAA as an alternative to source-specific BART.

*Response 10:* EPA disagrees with the Commenter regarding EPA's clear statutory authority. EPA's authority to establish non-BART alternatives in the regional haze program and the specific methodology in 40 CFR 51.308(e)(2) for assessing such alternatives have been previously challenged and upheld by the United States Court of Appeals for the District of Columbia Circuit. In the first case challenging the provisions in the RHR allowing for states to adopt alternative programs in lieu of BART, the court affirmed our interpretation of section 169A(b)(2) of the CAA as allowing for alternatives to BART where those alternatives will result in greater reasonable progress than BART. *Center for Energy and Economic Development v. EPA*, 398 F.3d 653, 660 (DC Cir. 2005) (finding reasonable EPA's interpretation of CAA section 169(a)(2) as requiring BART only as necessary to make reasonable progress). In the second case, *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333 (DC Cir. 2006), the court specifically upheld our determination that states could rely on the Clean Air Interstate Rule (CAIR) as an alternative program to BART for EGUs in the CAIR-affected states. The court concluded that EPA's two-pronged test for determining whether an alternative program achieves greater reasonable progress was a reasonable one and also agreed with EPA that nothing in the CAA required EPA to "impose a separate technology mandate for sources whose emissions affect Class I areas, rather than piggy-backing on solutions devised under other statutory categories, where such solutions meet the statutory requirements." *Id.* at 1340. We do not agree, therefore, that EPA lacks statutory authority for 40 CFR 51.308(e)(2) which permits states to include in a SIP an alternative trading program that provides for greater reasonable progress than BART in place of source-specific BART.

#### IV. Final Action

EPA is approving a revision to the Maryland SIP submitted on February 13, 2012 by the State of Maryland through MDE that addresses regional haze for the first implementation period. In submitting the plan, Maryland also stated that the Regional Haze SIP submission meets the relevant and applicable obligations related to visibility pursuant to section 110(a)(2) of the CAA, including, but not limited to, section 110(a)(2)(D)(i)(II) and (a)(2)(J) of the CAA, for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS for Maryland. EPA has determined that the Maryland Regional Haze SIP contains the emission reductions needed to achieve Maryland's share of emission reductions agreed upon through the regional planning process. Furthermore, Maryland's Regional Haze Plan ensures that emissions from the state will not interfere with the reasonable progress goals for neighboring states' Class I areas consistent with the requirements of the visibility prong of section 110(a)(2)(D)(i)(II) of the CAA. EPA is approving this SIP revision as meeting the requirements of the regional haze program, CAA section 110(a)(2)(J),<sup>6</sup> and the infrastructure SIP requirements of CAA section 110(a)(2)(D)(i)(II) relating to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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:

<sup>6</sup> CAA section 110(a)(2)(J) states that the plan must meet the applicable requirements for visibility protection. EPA would not expect the establishment of a new primary NAAQS to change the applicable visibility protection and regional haze program requirements under Part C of Title I of the CAA. Thus, EPA does not consider there to be new applicable visibility protection obligations under CAA section 110(a)(2)(J) as a result of the 1997 ozone NAAQS revision or the 1997 and 2006 p.m.2.5 NAAQS revisions. We do agree, however, that Maryland has met the requirements of CAA section 110(a)(2)(J) by submitting an approvable regional haze SIP.

- 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 CAA; 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.

##### B. Submission to Congress and the Comptroller General

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).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of

such rule or action. This action pertaining to Maryland's Regional Haze Plan for the first implementation period, through 2018 may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the CAA.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 13, 2012.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

Therefore, 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart V—Maryland**

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for the Maryland Regional Haze Plan at the end of the table to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Maryland Regional Haze Plan	Statewide	2/13/12	7/6/2012	[Insert page number where the document begins].

[FR Doc. 2012-16417 Filed 7-5-12; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2011-0598; FRL-9683-6]

**Approval and Promulgation of Air Quality Implementation Plans; Illinois; Regional Haze**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to the Illinois State Implementation Plan, submitted on June 24, 2011, addressing regional haze for the first implementation period. EPA received comments disputing its proposed finding regarding best available retrofit technology, but EPA continues to believe that Illinois' plan limits power plant emissions as well as would be achieved by directly requiring best available retrofit technology. Therefore, EPA finds that the Illinois regional haze plan satisfactorily addresses Clean Air Act section 169A and Regional Haze Rule requirements for states to remedy any existing and prevent future anthropogenic impairment of visibility at mandatory Class I areas. EPA is also approving two state rules and

incorporating two permits into the state implementation plan.

**DATES:** This final rule is effective on August 6, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2011-0598. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886-6067 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard,

Chicago, Illinois 60604, (312) 886-6067, [summerhays.john@epa.gov](mailto:summerhays.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information section is arranged as follows:

- I. Synopsis of Proposed Rule
- II. Comments and Responses
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

**I. Synopsis of Proposed Rule**

Illinois submitted a plan on June 24, 2011, to address the requirements of Clean Air Act section 169A and the Regional Haze Rule, as codified in Title 40 Code of Federal Regulations Part 51.308 (40 CFR 51.308).

EPA published a notice of proposed rulemaking evaluating Illinois' submittal on January 26, 2012, at 77 FR 3966. This notice described the nature of the regional haze problem and the statutory and regulatory background for EPA's review of Illinois' regional haze plan. The notice provided a lengthy delineation of the requirements that Illinois intended to meet, including requirements for mandating BART, consultation with other states in establishing goals representing reasonable progress in mitigating anthropogenic visibility impairment, and adoption of limitations as necessary to implement a long-term strategy for reducing visibility impairment.

Of particular interest were EPA's findings regarding BART. States are required to address the BART