

the CAA. Accordingly, this action merely proposes to approve 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 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 11, 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 RACT provisions for NO<sub>x</sub> and VOCs with respect to the 1997 8-hour ozone may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

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

Dated: June 27, 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 40 CFR part 52 continues to read as follows:

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

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for “RACT under the 1997 8-hour ozone NAAQS” 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
RACT under the 1997 8-hour ozone NAAQS.	Statewide	10/17/11	7/13/12 [Insert page number where the document begins].	

[FR Doc. 2012–16949 Filed 7–12–12; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2012–0002; FRL–9695–5]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Regional Haze State Implementation Plan**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing the limited approval of the Regional Haze State Implementation Plan (SIP) (hereafter RH SIP) revision submitted by the Commonwealth of Pennsylvania (Pennsylvania). EPA is taking this action because Pennsylvania’s SIP revision, as a whole, strengthens the Pennsylvania SIP. This action is being taken in accordance with the requirements of the Clean Air Act (CAA) and EPA’s rules for states to prevent and remedy future and 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 13, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2012-0002. 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 Commonwealth's submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Melissa Linden, (215) 814-2096, or by email at [linden.melissa@epa.gov](mailto:linden.melissa@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On January 26, 2012, EPA published a notice of proposed rulemaking (NPR) for Pennsylvania (77 FR 3984). The NPR proposed limited approval of Pennsylvania's RH SIP. The formal SIP revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) on December 20, 2010. This revision also meets the requirements of CAA section 110(a)(2)(D)(i)(II) and (a)(2)(I), 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 SIP 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. Pennsylvania's RH SIP contains the emission reductions needed to achieve Pennsylvania's share of emission reductions for the Class I areas they impact. The specific requirements of the CAA and EPA's Regional Haze Rule (64 FR 35714, July 1, 1999) and the rationale for EPA's proposed action are explained in the NPR and are not restated here. EPA received several adverse comments and one letter of support on the January 26, 2012 NPR. One of those adverse comments requested a change to PADEP's best available retrofit technology (BART) determination for GenOn Energy's Cheswick Generating Station. Pennsylvania can revise this determination in a future SIP revision to address comments raised by GenOn Energy. A summary of the comments submitted and EPA's responses are provided in section III of this document.

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

*Comment:* EPA proposed approval of Pennsylvania's RH SIP on January 26, 2012 with a docket that includes most of the RH SIP submission from PADEP except Appendix Z, which is the comment and response document.

*Response:* PADEP did not submit an Appendix Z, nor was it referenced in the rulemaking. The PADEP comment and response document is Appendix AA and can be found in the EPA docket for this action, docket No. EPA-R03-OAR-2012-0002.

*Comment:* The commenter stated that Pennsylvania has 15 BART-eligible electric generating units (EGUs) that include 28 individual units that are among the largest uncontrolled sources for nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>). The commenter claimed PADEP did not conduct any five-step determinations for BART at these EGUs for NO<sub>x</sub> and SO<sub>2</sub>. It relied upon the pending "cross state air pollution rule (CSAPR) Better than BART" determination.

*Response:* In today's action, EPA is finalizing a limited approval of Pennsylvania's RH SIP based on its reliance on the Clean Air Interstate Rule (CAIR). EPA did not propose to find that participation in the Transport Rule<sup>1</sup> is an alternative to BART in this action. EPA addressed these comments concerning the Transport Rule as a BART alternative in a final action that was published on June 7, 2012 (77 FR

33642). EPA's response to these comments can be found in Docket ID No. EPA-HQ-OAR-2011-0729 at [www.regulations.gov](http://www.regulations.gov).

*Comment:* The commenter stated that BART determinations must consider filterable PM<sub>10</sub>, PM<sub>2.5</sub> and condensable PM. The commenter stated that the PADEP BART determinations are expressed in total PM, but the cost analyses were conducted based on filterable PM<sub>10</sub>. The commenter requested EPA to disapprove PADEP's determinations and adopt a FIP that establishes BART limits for filterable PM<sub>10</sub>, PM<sub>2.5</sub> and condensable PM because PADEP set BART limits for filterable PM<sub>10</sub> and filterable PM.

*Response:* EPA disagrees with the commenter that the PM BART limits should be disapproved. The controls on the facilities considered by PADEP for the emission limits in the BART determinations are effective in reducing filterable and condensable particulates. Separate emission limits for each are not required for BART.

*Comment:* The commenter claimed PADEP's BART determinations and EPA's proposed approval of these determinations are fundamentally flawed, arbitrary, and unlawful. The commenter stated that source-specific process design information is required to make BART determinations which PADEP did not provide. One commenter stated PADEP's BART determinations were fundamentally flawed for steps one through four of the BART determination process. The commenter stated the flaw in step one was that PADEP did not address all available technologies for each BART determination. The commenter stated the flaw in step two was that PADEP did not appropriately interpret technical feasibility of control options in accordance with the *Guidelines for BART Determinations under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereafter the BART Rule). See 70 FR 39104 (July 6, 2005). The commenter stated the flaw in step three was that PADEP did not rank the control effectiveness for all EGU and most non-EGU BART determinations. The commenter stated the flaw in step four was that PADEP eliminated technologies based on non-air quality environmental impacts that are common throughout the industry.

*Response:* Congress crafted the CAA to provide for states to take the lead in developing implementation plans but balanced that decision by requiring EPA to review the plans to determine whether a SIP meets the requirements of the CAA. In undertaking such a review, EPA does not usurp a state's authority

<sup>1</sup> The Transport Rule is also known as the Cross State Air Pollution Rule (CSAPR) and was proposed by EPA to help states reduce air pollution and attain CAA standards. See 75 FR 45210 (August 2, 2010) (proposal) and 76 FR 48208 (August 8, 2011) (final rule).



but ensures that such authority is reasonably exercised. BART determinations under the regional haze program are the responsibility of the states, which have the freedom to determine the weight and significance of the statutorily required five-factors in a BART determination. EPA then reviews a state's determination as included in its regional haze plan. Pennsylvania performed the required BART determinations for its BART-eligible sources. In Appendix J of its RH SIP submittal, Pennsylvania considered the required five-factors and explained its conclusions for each specific source. As identified in Appendix J, Pennsylvania performed its BART determinations evaluating the five-factors required. Appendix J describes the steps Pennsylvania took in evaluating BART and provides a basis for Pennsylvania's BART determinations based on those five-factors. The modeling of source impacts and technology reviews for specific source categories can be found in Pennsylvania's Appendices I, P and Q respectively, which support Pennsylvania's BART determinations found in Appendix J. EPA determined that PADEP did address all available technologies and appropriately determined technical feasibility of those technologies. The ranking of control technologies is not a requirement of step three (evaluating the control effectiveness) in BART determinations. The evaluation of non-air quality impacts as part of step four of the BART determination should be made based on a consideration of the specific circumstances of that source, so the same technology may have a different degree of impact dependent on the source. EPA determined that PADEP did address step four for the BART determinations in accordance with the BART Rule.

*Comment:* The commenter stated that the PM limit for EGUs is invalid for BART. Pennsylvania used an outdated 0.1 pound per million British thermal unit (lb/MMBtu) limit for filterable PM. The proposed BART limit is much higher than accepted as BART (or as best available control technology known as BACT), and much higher than levels currently being achieved at many other similar facilities.

*Response:* EPA disagrees that the PM BART limits are invalid. While BACT is similar to BART, BACT has a four factor analysis of environmental impact, energy consumption, economic impact, and other costs. BART determinations however involve a five factor analysis of all technologies available for retrofit, consideration of current control

technologies, cost of compliance of controls, remaining useful life of the facility, energy and non air-quality environmental impacts, and visibility impacts. BART is not a required top-down evaluation like BACT. As stated in the BART Rule, the states should retain the discretion to evaluate control options in whatever order they choose, so long as the state explains its analysis of the CAA factors. PADEP did address each of the five factors in its BART determination summaries in Appendix J of the PADEP December 20, 2010 RH SIP submittal. Because BART and BACT involve different evaluations, EPA believes it is reasonable to have different outcomes and different limits for each review. The specific BACT limits cited by the commenter cannot automatically be considered valid for BART.

*Comment:* BART guidelines provide that maximum available control technology (MACT) for hazardous air pollutants (HAPs) should be taken into account for determining BART as stated in 40 CFR part 51, appendix Y, Section IV.C. The commenter stated that Pennsylvania EGUs are subject to EPA's Mercury and Air Toxics Standards (MATS Rule) which was published on February 16, 2012 (77 FR 9304). The commenter stated that EPA must take these requirements into account in approving any BART determination because all statutory factors should be included. The commenter stated that PADEP's BART determinations for PM limits of 0.1 lb/MMBtu cannot be approved because those limits are much higher than the 0.03 lb/MMBtu limit in the final MATS Rule as a surrogate limit for non-mercury metal HAPs.

*Response:* EPA agrees that we do require all statutory factors to be included in the BART determinations that are applicable at the time the determinations are done. EPA cannot require BART determinations to predict future requirements and to include those as BART. When EPA issues new rules, the states must adopt them as appropriate. The final MATS Rule was promulgated after the proposed limited approval of the PM BART determinations in the Pennsylvania RH SIP on January 26, 2012.

*Comment:* The commenter stated that EPA claimed it included all BART-eligible sources in the CSAPR Better-than-BART analysis, but the analysis omitted the BART-eligible oil-fired EGUs as identified by PADEP. These facilities in Pennsylvania are Trigen/Edison Station Units 3 and 4; Trigen/Schuylkill Station Unit 26; Eddystone Units 3 and 4; and Martins Creek Units 3 and 4. EPA's CSAPR Better-than-

BART analysis compared projected EGU emissions at the presumptive EGU BART limits to projected emissions under CSAPR. EPA then modeled these scenarios against the 2014 baseline that excludes both BART and CSAPR. The visibility benefits from this modeling were then averaged across all Class I areas. The commenter stated that EPA claims this analysis shows that CSAPR will result in more emissions reductions than BART and cites to 76 FR 82225. The commenter claimed that CSAPR will not achieve greater reasonable progress toward the national visibility goal than source-specific BART for EGUs in Pennsylvania. Even if CSAPR could lawfully substitute for BART, the commenter claimed the instant rulemaking would have to include separate NO<sub>x</sub> and SO<sub>2</sub> BART determinations for Pennsylvania EGUs because CSAPR does not in fact perform better than BART.

*Response:* These comments are beyond the scope of this rulemaking. EPA's response to comments concerning the "CSAPR is Better-than-BART" action can be found in Docket ID No. EPA-HQ-OAR-2011-0729 at [www.regulations.gov](http://www.regulations.gov).

*Comment:* The commenter stated that PADEP evaluated step five of the BART determinations in a piecemeal fashion, considering the visibility impact to each Class I area separately and determined controls based on the most highly impacted Class I area. PADEP's approach resulted in significantly underestimating visibility improvements compared to implementing BART for PA sources. Most of the BART-eligible sources are clustered in the southwest corner of the state, near four Class I areas. Most of the remaining BART-eligible sources are clustered in the southeast region of the state, near Brigantine Class I area, with Montour in the middle of the state. The federal land managers (FLMs) made similar comments on the draft Pennsylvania RH SIP. PADEP responded that the BART Rule does not require a "cumulative" impact analysis and stated that EPA has provided no guidance on this issue. The commenter disagreed and stated that the BART Rule is clear that multiple sources and Class I areas are to be considered. The commenter cited to 70 FR 39161-62. The commenter claimed EPA recommended that Nebraska Department of Environmental Quality (NDEQ) consider calculating the visibility improvement at multiple Class I areas.

*Response:* EPA disagrees with this comment in general. The BART Rule pages referred to by the commenter



address determining whether a facility is BART-eligible and not the applicable approach defined later in the guidelines for BART-subject sources. EPA agrees with PADEP that the BART Rule does not require a "cumulative" impact analysis as part of the BART determination for a specific source. The guidelines do give the option to evaluate cumulative impacts to multiple Class I areas which EPA does recommend but does not require the state to do. As noted by the language used by EPA to NDEQ, we recommend consideration of the cumulative approach.

*Comment:* The commenter stated that the PADEP source-specific analyses in Appendix J rejected every single control option as not cost effective using one or both of the following two measures: dollar per ton or dollar per deciview. However, no significance thresholds were established for either. The FLMs also commented on this issue during the PADEP review process. PADEP's response to the FLMs was that it did not establish or use "bright line thresholds for cost or for visibility improvement in making BART determinations" in Appendix AA of the Pennsylvania RH SIP submittal. The commenter noted that based on determinations in other states, the acceptable cost effectiveness value ranges from \$5,000 per ton to \$10,000 per ton. The commenter claimed that many of PADEP's "no control" determinations fall well below this range.

*Response:* EPA's BART guidelines in the BART Rule do not require Pennsylvania to develop a specific threshold, but rather to evaluate each BART determination on a case-by-case basis for each source. EPA has not established a specific cost threshold that makes a particular control option BART based on just a dollars per ton number. All five factors must be compared to determine the level of control that is BART on a case-by-case basis. As discussed in the NPR, EPA finds the BART determinations from PADEP reasonable.

*Comment:* The commenter stated that EPA unreasonably relies on CSAPR for BART and that EPA failed to adequately review Pennsylvania's BART determinations.

*Response:* For BART determinations of sources other than EGUs, EPA reviewed PADEP's BART determinations in the December 20, 2010 Pennsylvania RH SIP submittal and approves the conclusions as the determinations are reasonable. Comments related to CSAPR as an alternative to BART for EGUs are beyond the scope of this rulemaking. EPA addressed similar comments

concerning the Transport Rule as a BART alternative in a final action that was signed on May 30, 2012 (77 FR 33642, June 7, 2012). The EPA's response to these comments can be found in Docket ID No. EPA-HQ-OAR-2011-0729 at [www.regulations.gov](http://www.regulations.gov).

*Comment:* The commenter stated that EPA's proposed SO<sub>2</sub> reductions from Pennsylvania sources as substitute measures addressing Pennsylvania's failure to adopt the Mid-Atlantic/Northeast Visibility Union (MANE-VU) low sulfur fuel oil strategy are largely reliant upon the Portland Generating Station SO<sub>2</sub> reductions from the federally enforceable order from EPA responding to the CAA section 126 petition from the State of New Jersey. The commenter also states that this order has been appealed in the federal Court of Appeals and should not be relied upon due to its uncertainty.

*Response:* EPA disagrees with the commenter. The rule issued in response to the CAA section 126 petition from the State of New Jersey for the Portland Generating Station is federally enforceable and can be relied upon because it has not been stayed, nor has it been revoked at this time. The reductions can be relied upon for reasonable progress at this time because it is a federally enforceable measure. If these reductions do not occur, then PADEP may have to address them in the five year look back by submitting a SIP revision.

*Comment:* The commenter stated that Pennsylvania's failure to adopt the low-sulfur fuel oil strategy that was included in New Jersey's reasonable progress goals cannot be supplemented by SO<sub>2</sub> emission reductions without modeling the impacts as required by 40 CFR 51.308(d)(3)(iii).

*Response:* EPA disagrees with the commenter. 40 CFR 51.308(d)(3)(iii) provides that a state "must document the technical basis, including modeling, monitoring and emissions information, on which the State is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects. The State may meet this requirement by relying on technical analyses developed by the RPO and approved by all State participants. The State must identify the baseline emissions inventory on which its strategies are based." 40 CFR 51.308(d)(3)(iii). EPA did identify the baseline emissions for the measures substituted to address the SO<sub>2</sub> reductions that would have come from Pennsylvania's low-sulfur fuel oil strategy, and the modeling impact of the

MANE-VU rule was done by the regional planning organization (RPO). The low-sulfur fuel oil strategy was an area source rule and the substituted emission reductions are from specific sources that are located closer to the Brigantine Class I area. Thus, the substitution of SO<sub>2</sub> reductions does meet the requirements in 40 CFR 51.308(d)(3)(iii).

*Comment:* The commenter stated that both the EPA proposed action for CSAPR Better-than-BART and EPA's proposed action on Pennsylvania's RH SIP stated that EPA was taking action on long-term strategy in a separate notice. The commenter stated that neither rulemaking acted on the long-term strategy for Pennsylvania which is untenable according to the commenter.

*Response:* The commenter has made an incorrect assumption. The EPA stated in the proposed action for CSAPR Better-than-BART that we proposed a limited disapproval of the regional haze SIPs that have been submitted by several states including Pennsylvania and that these states "fully consistent with the EPA's regulations at the time, relied on CAIR requirements to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals" (76 FR 82221). We further stated that "CAIR and CAIR FIP requirements, however, will only remain in force to address emissions through the 2011 control period and thus CAIR cannot be relied upon in a SIP as a substitute for BART or as part of a long-term control strategy." *Id.* EPA proposed and finalized a limited disapproval for the Pennsylvania RH SIP for the long-term strategy due to reliance on CAIR. The other long-term strategy measures are covered under the limited approval proposed for Pennsylvania's RH SIP in 77 FR 3988. Therefore, all long-term control strategies beyond reliance on CAIR are included in the limited approval previously proposed, and now finalized, by this action. The final limited disapproval and FIP was published on June 7, 2012, addressing the deficiencies of the long-term strategy insofar as it relied on CAIR (77 FR 33642).

*Comment:* The commenter requested a conditional approval of Pennsylvania's RH SIP requiring the implementation of the lower-sulfur fuel strategy since it was relied upon for establishing the reasonable progress goals for MANE-VU Class I areas. Multiple commenters also stated that EPA's substitution of emission reductions is not permitted under the



Regional Haze Rule for reasonable progress goals for visibility.

*Response:* EPA does not agree that a conditional approval is appropriate for the Pennsylvania RH SIP given our determination that the plan meets the relevant applicable requirements. As set forth in a prior response, EPA disagrees that substitution of emission reductions is not permitted for reasonable progress goals.

*Comment:* The commenter stated that EPA should have disapproved Pennsylvania's RH SIP due to PADEP's failure to implement a proposed low-sulfur fuel oil strategy. The commenter stated that EPA should have demanded the additional 5,702 tons of SO<sub>2</sub> emission reductions from Pennsylvania instead of saying that EPA does not anticipate the difference will interfere with the ability of other states to achieve reasonable progress goals.

*Response:* EPA disagrees with the commenter. Disapproving the entire Pennsylvania RH SIP would have slowed implementation of other controls listed in the RH SIP. As explained in the NPR, we anticipate that the Pennsylvania RH SIP will ensure sufficient emission reductions to meet its share needed for nearby states to achieve their reasonable progress goals. If it is determined that the shortfall of SO<sub>2</sub> emission reductions impedes the achievement of reasonable progress, then at the time of the five year periodic review PADEP may need to submit a SIP revision requiring those additional reductions.

*Comment:* One commenter stated that the PADEP BART determination for GenOn Energy's Cheswick Generating Station included emission limits including PM which were inconsistent with the plant's current permits. The commenter requested EPA to require PADEP to revise the BART determination.

*Response:* EPA evaluated the BART determination and agrees with PADEP's determination of the appropriate BART limit based on current controls. In setting the BART limits, PADEP appears to have set emission limits for the facility that are far more stringent than intended. If Pennsylvania submits a revised BART determination for the Cheswick Generating Station, EPA commits to act expeditiously on the revised SIP submittal.

*Comment:* Two commenters stated that PADEP did not address reasonable progress requirements for addressing MANE-VU's modeled exceedance of the uniform rate of progress (URP) at Dolly Sods Class I area.

*Response:* Reasonable progress goals are set by the Class I area state. West

Virginia did not request any reductions from Pennsylvania to meet the URP as modeled by Visibility Improvement State and Tribal Association of the Southeast (VISTAS). The discrepancies in modeling between the two RPOs were addressed in Pennsylvania's RH SIP submittal. The requirement for the state consultation process was met, and Pennsylvania fulfilled what was requested by West Virginia.

*Comment:* The commenter stated that Pennsylvania's modeling for the RH SIP submittal did not address the significant growth in emissions from Marcellus Shale natural gas drilling operations and therefore does not support reasonable progress.

*Response:* EPA disagrees with the commenter because reasonable progress goals are set by the Class I area and are evaluated during the 5 year periodic review. In addition, CAA section 169A(g)(1) requires states to take into consideration a number of factors for reasonable progress. States have flexibility in how to take into consideration these statutory factors and any other factors that are determined to be relevant. As previously explained herein and in the NPR, we anticipate that the Pennsylvania RH SIP will ensure sufficient emission reductions for reasonable progress goals. During the five year periodic review, any significant changes in projected emissions can be addressed.

#### IV. Final Action

EPA is finalizing its limited approval of the revision to the Pennsylvania SIP submitted on December 20, 2010 that addresses regional haze for the first implementation period in Pennsylvania. EPA is issuing a limited approval of the Pennsylvania SIP because overall the SIP will be stronger and more protective of the environment with the implementation of those measures by Pennsylvania and because the SIP will be stronger with federal approval and enforceability of Pennsylvania's RH SIP than it would without those measures being included in the Pennsylvania SIP. EPA has already finalized the limited disapproval of Pennsylvania's RH SIP in a separate rulemaking (77 FR 33642, June 7, 2012). EPA is also approving this revision as meeting the applicable visibility related requirements of CAA section 110(a)(2) including, but not limited to, section 110(a)(2)(D)(i)(II) and (a)(2)(F), 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:

- 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 11, 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 finalizing the limited approval of the Pennsylvania Regional Haze SIP 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 15, 2012.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

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 NN— Pennsylvania**

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for Regional Haze Plan at the end of the table to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Regional Haze Plan	Statewide	12/20/10	7/13/12 [Insert page number where the document begins].	§ 52.2042; Limited Approval.

[FR Doc. 2012-16428 Filed 7-12-12; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2011-0398; FRL-9352-2]

**Azoxystrobin; Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of azoxystrobin in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR-4) and Syngenta Crop Protection requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective July 13, 2012. Objections and requests for hearings must be received on or before September 11, 2012, 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-2011-0398; FRL-9352-2, is available either electronically through <http://www.regulations.gov> or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, 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:** Andrew Ertman, Registration Division, (7505P) Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 308-9367; email address: [ertman.andrew@epa.gov](mailto:ertman.andrew@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. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.