



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2010-0219; FRL-9691-5]

### **Approval and Promulgation of Implementation Plans; State of North Carolina; Regional Haze State Implementation Plan**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval of a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality (DAQ), on December 17, 2007. North Carolina's December 17, 2007, SIP revision addresses regional haze for the first implementation period. Specifically, this SIP revision addresses the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness 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 finalizing a limited approval of North Carolina's December 17, 2007, SIP revision to implement the regional haze requirements for North Carolina on the basis that this SIP revision, as a whole, strengthens the North Carolina SIP. In a separate action published on June 7, 2012, EPA finalized a limited disapproval of this same SIP

revision because of the deficiencies in the State's regional haze SIP revision arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR).

**EFFECTIVE DATE:** This rule will be effective [insert 30 days from the date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-0219. 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 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Michele Notarianni can be reached at telephone number (404) 562-9031 and by electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. What is the Background for This Final Action?**

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and in some cases, ammonia and volatile organic compounds. Fine particle precursors react in the atmosphere to form fine particulate matter (PM<sub>2.5</sub>) which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. PM<sub>2.5</sub> can also cause serious health

effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution." On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, i.e., "reasonably attributable visibility impairment." *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the Regional Haze Rule (RHR). The RHR revised the 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 51.300-309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia,

and the Virgin Islands. 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

On December 17, 2007, NC DENR submitted a revision to North Carolina's SIP to address regional haze in the State's and other states' Class I areas. On February 28, 2012, EPA published an action proposing a limited approval of North Carolina's December 17, 2007, SIP revision to address the first implementation period for regional haze.<sup>1</sup> *See* 77 FR 11858. EPA proposed a limited approval of North Carolina's December 17, 2007, SIP revision to implement the regional haze requirements for North Carolina on the basis that this revision, as a whole, strengthens the North Carolina SIP. See section II of this rulemaking for a summary of the comments received on the proposed actions and EPA's responses to these comments. Detailed background information and EPA's rationale for the proposed action is provided in EPA's February 28, 2012, proposed rulemaking.

Following the remand of CAIR, EPA issued a new rule in 2011 to address the interstate transport of NO<sub>x</sub> and SO<sub>2</sub> in the eastern United States. *See* 76 FR 48208 (August 8, 2011) ("the Transport Rule," also known as the Cross-State Air Pollution Rule (CSAPR)). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal of achieving natural visibility conditions than would best available retrofit technology (BART) in the states in which the Transport Rule applies (including North Carolina). *See* 76 FR 82219. Based on this proposed finding, EPA also

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<sup>1</sup> In a separate action, published on June 7, 2012 (77 FR 33642), EPA finalized a limited disapproval of the North Carolina regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. This final limited disapproval triggers a 24-month clock by which a Federal Implementation Plan (FIP) or EPA-approved SIP must be in place to address the deficiencies.

proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA finalized this finding and RHR revision on June 7, 2012 (77 FR 33642).

Also on December 30, 2011, the D.C. Circuit stayed the Transport Rule (including the provisions that would have sunset CAIR and the CAIR FIPs) and instructed the EPA to continue to administer CAIR pending the outcome of the court's decision on the petitions for review challenging the Transport Rule. *EME Homer City v. EPA*, No. 11-1302.

## **II. What is EPA's Response to Comments Received on This Action?**

EPA received two sets of comments on the February 28, 2012, rulemaking proposing a limited approval of North Carolina's December 17, 2007, regional haze SIP revision. Specifically, the comments were received from the Southern Environmental Law Center (on behalf of the National Parks Conservation Association and the Sierra Club) and the U.S. National Park Service. Full sets of the comments provided by all of the aforementioned entities (hereinafter referred to as "the Commenter") are provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

**Comment 1:** The Commenter incorporates by reference comments that it submitted to EPA on February 28, 2012, regarding the Agency's December 30, 2011, proposed rulemaking to find that the Transport Rule is "Better than BART" and to use the Transport Rule as an alternative to

BART for North Carolina and other states subject to the Transport Rule. *See* 76 FR 82219. The Commenter also restates several of these comments, including the following: the Transport Rule does not comply with EPA’s criteria for an alternative to BART; the State cannot rely on the proposed “Better than BART” rulemaking given the D.C. Circuit’s action staying implementation of the Transport Rule; EPA has not accounted for the differences in averaging time under BART, the Transport Rule, and in measuring visibility impacts; EPA’s modeling assumed nitrate levels that are often lower than real-world conditions; in some instances, EPA relied on a single monitor to assess visibility conditions in multiple Class I areas; EPA uses a simple arithmetic mean to conclude that visibility improvements will be greater under the Transport Rule than BART; and EPA’s proposed “Better than BART” determination relies on a 2014 base case that does not account for permanent emissions reductions at non-BART eligible sources.

**Response 1:** These comments are beyond the scope of this rulemaking. In today’s action, EPA is finalizing a limited approval of North Carolina’s regional haze SIP. EPA did not propose to find that participation in the Transport Rule is an alternative to BART in this action nor did EPA reopen discussions on the CAIR provisions as they relate to BART.<sup>2</sup> As noted above, EPA proposed to find that the Transport Rule is “Better than BART” and to use the Transport Rule as an alternative to BART for North Carolina in a separate action on December 30, 2011, and the Commenter is merely reiterating and incorporating its comments on that separate action. EPA

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<sup>2</sup> In a final action published on July 6, 2005, EPA addressed similar comments related to CAIR and determined that CAIR makes greater reasonable progress than BART for certain EGUs and pollutants (70 FR 39138). EPA did not reopen comment on that issue through this rulemaking.

addressed these comments concerning the Transport Rule as a BART alternative in a final action that was published on June 7, 2012, and has determined that they do not affect the Agency's ability to finalize a limited approval of North Carolina's regional haze SIP. EPA's responses to these comments can be found in Docket ID No. EPA-HQ-OAR-2011-0729 at [www.regulations.gov](http://www.regulations.gov).

**Comment 2:** The Commenter asserts that the proposed limited approval of North Carolina's regional haze SIP violates the CAA and RHR because a regional haze plan's BART requirements and long-term strategy to achieve reasonable progress cannot be evaluated in isolation from one another. The Commenter supports its position by repeating statements made in its February 28, 2012, comments on the Agency's proposed December 30, 2011, rulemaking to find that the Transport Rule is "Better than BART" and to use the Transport Rule as an alternative to BART for North Carolina and other states subject to the Transport Rule. For example, the Commenter states that "[b]ecause BART is a critical component to achieving reasonable progress, neither the states nor EPA are authorized to exempt sources from the RHR's BART requirements without considering how doing so will affect the overarching reasonable progress mandate. . . . Concluding that CSAPR achieves greater reasonable progress toward achieving natural visibility conditions than BART, without regard to defined reasonable progress goals, is arbitrary and contrary to law under the Clean Air Act and the RHR."

**Response 2:** As discussed in the response to Comment 1, today’s action does not address reliance on CAIR or CSAPR to satisfy BART requirements. Comments related to the approvability of CAIR or CSAPR for the North Carolina regional haze SIP are therefore beyond the scope of this rulemaking and were addressed by EPA in a separate action published on June 7, 2012 (77 FR 33642). EPA addressed the Commenter’s repeated statements regarding the interrelatedness of BART, the LTS, and RPGs in that final rulemaking action and those responses support this limited approval action.<sup>3</sup>

**Comment 3:** The Commenter asserts that EPA does not have the authority under the CAA to issue a limited approval of North Carolina’s regional haze SIP. The Commenter contends that section 110(k) of the Act only allows EPA to fully approve, partially approve and partially disapprove, conditionally approve, or fully disapprove a SIP.

**Response 3:** As discussed in the September 7, 1992, EPA memorandum cited in the notice of proposed rulemaking,<sup>4</sup> although section 110(k) of the CAA may not expressly provide authority for limited approvals, the plain language of section 301(a) does provide “gap-filling” authority authorizing the Agency to “prescribe such regulations as are necessary to carry out” EPA’s CAA

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<sup>3</sup> See EPA, Response to Comments Document, Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans (76 FR 82219; December 30, 2011), Docket Number EPA-HQ-OAR-2011-0729 (May 30, 2012), pages 49-51 (noting that EPA “disagree[s] with comments that we cannot evaluate the BART requirements in isolation from the reasonable progress requirements. We have on several occasions undertaken evaluations of a state’s BART determination or promulgated a FIP separately from our evaluation of whether the SIP as a whole will ensure reasonable progress.”).

<sup>4</sup> *Processing of State Implementation Plan (SIP) Revisions*, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I-X, September 7, 1992, (“1992 Calcagni Memorandum”) located at <http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf>.

functions. EPA may rely on section 301(a) in conjunction with the Agency's SIP approval authority in section 110(k)(3) to issue limited approvals where it has determined that a submittal strengthens a given state's implementation plan and that the provisions meeting the applicable requirements of the Act are not separable from the provisions that do not meet the Act's requirements. EPA has adopted the limited approval approach numerous times in SIP actions across the nation over the last twenty years. A limited approval action is appropriate here because EPA has determined that North Carolina's SIP revision addressing regional haze, as a whole, strengthen the State's implementation plan and because the provisions in the SIP revision are not separable.

The Commenter states that EPA's action "conflicts with the plain language of the [CAA]" and cites several federal appellate court decisions to support its contention that section 110(k) of the Act limits EPA to a full approval, "a conditional approval, a partial approval and disapproval, or a full disapproval." However, adopting the Commenter's position would ignore section 301 and violate the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme'.... A court must therefore interpret the statute 'as a symmetrical and coherent regulatory scheme,'... and 'fit, if possible, all parts into an harmonious whole.'" *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quoting *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989), *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995), and *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 389 (1959)). Furthermore, the cases cited by the

Commenter did not involve challenges to a limited approval approach, and one of the cases, *Abramowitz v. EPA*, 832 F.2d 1071 (9<sup>th</sup> Cir. 1988), predates the 1990 CAA amendments enacting section 110(k).

**Comment 4:** The Commenter contends that it was inappropriate for the State to “rel[y] on CAIR (and now CSAPR)” in determining RPGs and that due, in part, to this reliance, the State “failed to evaluate numerous sources that contribute significantly to visibility impairment at the State’s Class I areas” and that it “cast doubts on the validity of DAQ’s modeling.” The Commenter therefore believes that EPA should not approve the SIP unless the State considers additional reasonable progress from the 16 electric generating units (EGUs) excluded from the reasonable progress analyses and the State conducts further analyses in setting its RPGs (or EPA “ensure[s] that DAQ follows through on its commitment to re-evaluate its ability to meet its RPGs in the five-year progress review, pursuant to 40 C.F.R. 52.308(g)”). The Commenter also states that “even when the uniform rate of progress [URP] is predicted to be met, the state still has an obligation ‘to go beyond the URP analysis in establishing RPGs . . . to determine whether additional progress would be reasonable based on the statutory factors.’”

**Response 4:** The State took into account emissions reductions expected from CAIR to determine the 2018 RPGs for its Class I areas, and this approach was fully consistent with EPA guidance at the time of SIP development. In the regional haze program, uncertainties associated with modeled emissions projections into the future are addressed through the requirement under the RHR to submit periodic progress reports in the form of a SIP revision. Specifically, 40 CFR

51.308(g) requires each state to submit a report every five years evaluating progress toward the RPGs for each mandatory Class I area located in the state and for each Class I area outside the state that may be affected by emissions from the state. Since this five-year progress re-evaluation is a mandatory requirement, it is unnecessary for EPA to take additional measures to “ensure” that the State meets its reporting obligation.

Regarding the need to go beyond the URP analysis when establishing RPGs, EPA affirmed in the RHR that the URP is not a “presumptive target;” rather, it is an analytical requirement for setting RPGs. *See* 64 FR 35731. In determining RPGs for the North Carolina Class I areas, the State identified sources through its area of influence methodology for reasonable progress control evaluation and described those evaluations in its SIP. For its EGUs subject to CAIR, DAQ reviewed the statutory factors (i.e., the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources) as evaluated by EPA for CAIR.

**Comment 5:** The Commenter states that in exempting EGUs from a BART analysis for particulate matter “on the basis that their contribution to visibility impairment modeled less than 0.5 deciview, it does not appear that DAQ considered the cumulative impact of those sources that did not individually exceed the 0.5 dv threshold, but collectively may cause or contribute to impairment.” The Commenter cites to EPA guidelines in 70 FR 39161 to support its belief that this exemption threshold “applies when all visibility impairing pollutants are modeled together,

not one pollutant at a time, as used by DAQ.” According to the Commenter, when considering the modeling impacts from coarse particulate matter (PM<sub>10</sub>) alone for the exempted sources, their combined “contribution to visibility impairment greatly exceeds the 0.5 dv contribution threshold,” calling into question the “validity of DAQ’s exemptions of multiple sources from BART.”

**Response 5:** As discussed in the proposal, (*see* section IV.C.6.B.2, February 28, 2012, 77 FR 11873), North Carolina adequately justified its contribution threshold of 0.5 deciview. While states have the discretion to set an appropriate contribution threshold considering the number of emissions sources affecting the Class I area at issue and the magnitude of the individual sources’ impacts, the states’ analysis must be consistent with the CAA, the RHR, and EPA’s *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (BART Guidelines). Consistent with the regulations and EPA’s guidance, “the contribution threshold should be used to determine whether an individual source is reasonably anticipated to contribute to visibility impairment. You should not aggregate the visibility effects of multiple sources and compare their collective effects against your contribution threshold because this would inappropriately create a ‘contribution to contribution’ test.” *See also* 70 FR 39121. North Carolina’s analysis in the regional haze SIP revision was consistent with EPA’s regulations and guidance on the issue of cumulative analyses.

Regarding modeling in North Carolina’s submittal that uses PM only for its BART-eligible EGUs, EPA previously determined that this approach is appropriate for EGUs where the

State proposed to rely on CAIR to satisfy the BART requirements for SO<sub>2</sub> and NO<sub>x</sub>.<sup>5</sup>

**Comment 6:** The Commenter believes that “it is simply absurd for North Carolina to exempt” Blue Ridge Paper Products from the obligation to install BART and that the State “should work with the company to develop a facility-wide emissions reduction plan by 2013 and to implement the plan by 2018.”

**Response 6:** In accordance with the BART Guidelines, to determine the level of control that represents BART for each source, the State first reviewed existing controls on the five BART-eligible units at the Blue Ridge facility to assess whether these constituted the best controls currently available, then identified what other technically feasible controls are available, and finally, evaluated the technically feasible controls using the five BART statutory factors. The units subject to the BART requirements at Blue Ridge Paper include the two recovery furnaces, their associated smelt dissolving tanks, and the black liquor oxidation system. DAQ concluded that BART for all of these emissions sources is the existing emissions control systems currently in place. As discussed in the proposal (*see* section IV.C.6.C, February 28, 2012, 77 FR 11874), DAQ evaluated the available controls for BART and determined that these additional controls were either technically or economically infeasible. EPA has reviewed North Carolina’s analyses

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<sup>5</sup> *Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations*, EPA Memorandum from Joseph Paisie, Group Leader, Geographic Strategies Group, OAQPS, to Kay Prince, Branch Chief, EPA Region 4, July 19, 2006, located at: [http://www.epa.gov/visibility/pdfs/memo\\_2006\\_07\\_19.pdf](http://www.epa.gov/visibility/pdfs/memo_2006_07_19.pdf).

and concluded that they were conducted in a manner that is consistent with EPA's BART Guidelines and EPA's *Air Pollution Control Cost Manual* (<http://www.epa.gov/ttncaatl/products.html#cccinfo>). Therefore, the conclusions reflect a reasonable application of EPA's guidance to these sources.

**Comment 7:** The Commenter contends that EPA must require North Carolina to include “a retirement discussion that provides a realistic picture of future emissions from BART-subject sources” in its SIP pursuant to 40 CFR 51.308(d)(3)(v) as there is “no discussion of planned or potential EGU (or other source) retirements due to changes in energy markets, new regulations, and other factors.”

**Response 7:** Source retirement and replacement schedules are explicitly part of the emissions inventory that the State used to project future conditions. The projected inventories for 2009 and 2018 account for post-2002 emissions reductions from promulgated and proposed federal, state, local, and site-specific control programs. For EGUs, the Integrated Planning Model (IPM) was run to estimate emissions of the proposed and existing units in 2009 and 2018. These results were adjusted based on state and local air agencies' knowledge of planned emissions controls at specific EGUs. In the case of North Carolina, DAQ replaced all IPM 2009 results with emissions projections from Duke Power's and Progress Energy's North Carolina Clean Smokestacks Act Compliance Plan for 2006. For non-EGUs, Visibility Improvement State and Tribal Association of the Southeast (VISTAS) used recently updated growth and control data consistent with the data used in EPA's CAIR analyses and supplemented by state and local air

agencies' data and updated forecasts from the U.S. Department of Energy. These updates are documented in the MACTEC emissions inventory report "Documentation of the 2002 Base Year and 2009 and 2018 Projection Year Emission Inventories for VISTAS" dated February 2007 (Appendix D of the North Carolina regional haze SIP submittal). The technical information provided in the record demonstrates that the emissions inventory in the SIP adequately reflects projection 2018 conditions and that the LTS meets the requirements of the RHR and is approvable. EPA finds that these inventories provide a reasonable assessment of future emissions from North Carolina sources.

**Comment 8:** According to the Commenter, it was "inappropriate and arbitrary for DAQ to use the [State's Clean Smokestack's Act] cost per ton of SO<sub>2</sub> removed as the cost threshold for evaluating reasonable progress controls. The only rationale DAQ offered in support of this decision was that DAQ 'believes it is not equitable to require non-EGUs to bear a greater economic burden than EGUs for a given control strategy'. . . . EPA acknowledges that 'the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement,' but proposes to approve North Carolina's reasonable progress analysis anyway. EPA should re-evaluate this decision in its final action on this proposal, especially in light of the fact that DAQ determined that no additional reasonable controls were required at any of the sources affecting visibility in North Carolina's Class I areas."

**Response 8:** As noted in EPA’s Reasonable Progress Guidance,<sup>6</sup> the states have wide latitude to determine appropriate additional control requirements for ensuring reasonable progress, and there are many ways for a state to approach identification of additional reasonable measures. States must consider, at a minimum, the four statutory factors in determining reasonable progress, but states have flexibility in how to take these factors into consideration.

After reviewing DAQ’s methodology and analyses and the record prepared by DAQ, EPA finds North Carolina’s conclusion that no further controls are necessary at this time acceptable. As discussed in EPA’s February 28, 2012, proposal, the State adequately evaluated the control technologies available at the time of its analysis and applicable to this type of facility and consistently applied its criteria for reasonable compliance costs. *See* 77 FR 11872. The State also included appropriate documentation in its SIP of the technical analysis it used to assess the need for and implementation of reasonable progress controls. Although the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement, EPA believes that the North Carolina SIP ensures reasonable progress.

In approving North Carolina’s reasonable progress analysis, EPA is placing great weight on the fact that there is no indication in the SIP revision that North Carolina, as a result of using a specific cost effectiveness threshold, rejected potential reasonable progress measures that would have had a meaningful impact on visibility in its Class I areas.

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<sup>6</sup> *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program*, July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (“EPA’s Reasonable Progress Guidance”), page 4-2.

**Comment 9:** The Commenter believes that EPA should require the State to verify that units 3 and 4 at PCS Phosphate have been shut down.

**Response 9:** The construction permit for the new unit 7 required the shutdown of these two units as a condition of commencing operation. The new unit is operating, and units 3 and 4 have been shut down.

**Comment 10:** The Commenter states that “[a]ssurances of the State’s ‘intent’ to ‘have discussions’ and to ‘encourage’ pollution reduction measures” at Blue Ridge Paper, provided in response to the Federal Land Managers’ (FLMs’) request that the State describe a plan to consult with Blue Ridge Paper on potential control actions prior to 2018 that may warrant a higher cost of control for reasonable progress, “does not satisfy the requirement to demonstrate reasonable progress toward the State’s visibility goals.”

**Response 10:** North Carolina did not rely on additional controls at this facility to demonstrate that the State would meet its RPGs for this first implementation period, and DAQ stated in its SIP revision that additional controls are not required at the facility during the first implementation period. The State did not rely on the “discussions” and “encouragement” to contribute any emissions reductions to meeting the RPG goals for this first implementation period. It also made clear that conclusions reached regarding appropriate levels of control to

meet reasonable progress for this first implementation period did not extend to the next implementation period. In subsequent implementation periods, North Carolina will once again determine the pollutants and sources with the greatest impact on visibility and implement appropriate emissions reduction measures as part of North Carolina's LTS for future implementation periods.

**Comment 11:** The Commenter claims that there is no information in the docket supporting the cost estimates for Blue Ridge Paper Products used by the State to determine that “there are no cost-effective controls available for these units at this time within the cost threshold established for this reasonable progress assessment. . . . Without supporting data in the docket, neither we nor EPA can determine that the proper costing methodology was followed.”

**Response 11:** Blue Ridge Paper Products submitted supporting materials to the State for the BART determination that adequately document the cost methodology for the control equipment (included in Appendix L.10 of North Carolina's regional haze SIP submittal). North Carolina also summarized its evaluation methodology for lower sulfur coal options for two additional units evaluated for reasonable progress (Appendix H of the North Carolina's regional haze SIP submittal). Since this analysis involved the use of alternative coals, it is based on the cost premium for these coals and no costs for additional control equipment are projected. EPA has reviewed the supporting materials provided by DAQ and finds no reason to question the estimates or the conclusions reached by the State.

**Comment 12:** The Commenter recommends that EPA defer action on the Reasonable Progress analysis for Blue Ridge Paper Products until the State conducts a “valid four-factor analysis” and provides that analysis for public review. Specifically, the Commenter “could find no information in the docket to support any of the ‘cost of compliance’ estimates presented by EPA” and without such documentation, the Commenter is “unable to provide informed comments on their validity or on the conclusions upon which they were based.”

**Response 12:** See the response to Comment 11. In addition, EPA notes that the Commenter was provided a draft of the North Carolina’s regional haze SIP for review prior to the State’s release of the SIP revision for public comment, and that the SIP revision went through public notice and comment rulemaking before the State submitted it to EPA. The Commenter raised no concerns with the adequacy of the documentation prior to EPA’s proposed limited approval action.

### **III. What is the Effect of This Final Action?**

Under CAA sections 301(a) and 110(k)(6), and EPA’s long-standing guidance, a limited approval results in approval of the entire SIP revision, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision.<sup>7</sup> Today, EPA is finalizing a limited approval of North Carolina’s December 17, 2007, regional haze SIP revision. This

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<sup>7</sup> 1992 Calcagni Memorandum.

limited approval results in approval of North Carolina's entire regional haze submission and all its elements. EPA is taking this approach because North Carolina's SIP will be stronger and more protective of the environment with the implementation of those measures by the State and having federal approval and enforceability than it would without those measures being included in its SIP.

#### **IV. Final Action**

EPA is finalizing a limited approval of a revision to the North Carolina SIP submitted by the State of North Carolina on December 17, 2007, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308.

#### **V. Statutory and Executive Order Reviews**

##### **A. Executive Order 12866, Regulatory Planning and Review**

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

##### **B. Paperwork Reduction Act**

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for answers to "... identical reporting or recordkeeping requirements imposed on ten or more persons...". 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to

this action.

**C. Regulatory Flexibility Act (RFA)**

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the CAA, preparation of flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### **D. Unfunded Mandates Reform Act (UMRA)**

Under sections 202 of the UMRA of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today’s action does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

#### **E. Executive Order 13132, Federalism**

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between

the national government and the states, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

**F. Executive Order 13175, Coordination with Indian Tribal Governments**

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications, as

specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

**G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks**

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

**H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use**

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

**I. National Technology Transfer and Advancement Act (NTTAA)**

Section 12 of the NTTAA of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

**J. Congressional Review Act**

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 rule 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).

**K. 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 **[INSERT DATE 60 days from publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 13, 2012

A. Stanley Meiburg

Acting Regional Administrator,

Region 4.

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 II--North Carolina**

2. Section 52.1770(c) is amended:

a. By adding a new entry to Table 1 in paragraph (c) for “Sect .0543” in numerical order, and

b. By adding a new entry to the table in paragraph (e) for “Regional Haze Plan” at the end of the table.

**§52.1770 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

Table 1 - EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Subchapter 2D Air Pollution Control Requirements</b>				
**	**	*	*	*
<b>Section .0500 Emission Control Standards</b>				
**	**	*	*	*
Sect .0543	Best Available Retrofit Technology	9/6/2006	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
**	**	*	*	*

(e) \* \* \*

EPA Approved North Carolina Non-regulatory Provisions

Provision	State effective date	EPA approval date	Federal Register Citation
**	**	**	*
Regional Haze Plan	11/17/2007	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication]

[FR Doc. 2012-15468 Filed 06/26/2012 at 8:45 am; Publication Date: 06/27/2012]