



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0913; FRL-9775-7]

Partial Disapproval of State Implementation Plan; Arizona;

Regional Haze Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove in part revisions to the Arizona State Implementation Plan (SIP) to implement the regional haze program addressing visibility impairment in mandatory Class I areas covered by the requirements related to the Grand Canyon Visibility Transport Commission, an optional program for certain western states. These SIP revisions were submitted to address the requirements of the Clean Air Act (CAA or Act) requiring states to prevent any future and remedy any existing impairment of visibility in mandatory Class I areas caused by man-made pollution. We are taking comments on this proposal and plan to follow with a final action.

DATE: Any comments must be received on or before [Insert date 30 days from the date of publication in the Federal Register].

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2012-0913, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.

2. E-mail: steckel.andrew@epa.gov.

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available

only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947-4115.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Overview of Proposed Action

The Arizona Department of Environmental Quality (ADEQ) is the state agency in Arizona responsible for air quality planning.

ADEQ submitted a SIP revision on December 24, 2008 (which consisted of materials previously submitted on December 23, 2003 and December 30, 2004) to address the regional haze regulations

at 40 CFR 51.309 regarding visibility impairment in mandatory Class I areas covered by the Grand Canyon Visibility Transport Commission (GCVTC) Report. In this action, pursuant to CAA Section 110, EPA is proposing to disapprove in part this regional haze SIP submittal because it does not meet the requirements of 40 CFR 51.309. This proposed action is a partial disapproval because EPA previously approved certain burning and smoke management rules that were part of the 2008 SIP submittal.

II. Background

A. What is Regional Haze?

Regional haze is visibility impairment that is produced by a multitude of sources and activities that are located across a broad geographic area and emit fine particulates (e.g., sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust), and their precursors (e.g., sulfur dioxide (SO₂), nitrogen oxides (NO_x), and in some cases, ammonia (NH₃) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form particulate matter (PM), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. PM can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the

"Interagency Monitoring of Protected Visual Environments" (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national parks (NPs) and wilderness areas (WAs). The average visual range¹ in many Class I areas (i.e., NPs and memorial parks, WAs, and international parks meeting certain size criteria) in the western United States is 100-150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. 64 FR 35715 (July 1, 1999).

B. Clean Air Act, Visibility Impairment, and Regional Haze

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 Federal areas² which impairment results from

¹ Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

² Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR

manmade air pollution." EPA promulgated regulations on December 2, 1980, 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." 45 FR 80084 (December 2, 1980). These regulations at 40 CFR 51.300 - 307 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.

As part of the 1990 Amendments to the CAA, Congress added section 169B to focus attention on regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999. 64 FR 35714 (July 1, 1999) codified at 40 CFR part 51, subpart P (Regional Haze Rule). EPA's Regional Haze Rule provides two paths to address regional haze. One is through 40 CFR 51.308, which requires states to submit a SIP that establishes reasonable progress goals and a long-term strategy for achieving those goals. During the first implementation period for the Regional Haze Program (through 2018), states must also impose best

69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager." 42 U.S.C. 7602(i). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal

available retrofit technology ("BART") on "BART-eligible sources,"³ or adopt alternative measures that can be shown to achieve greater reasonable progress than source-specific BART controls. The other path for addressing regional haze is through 40 CFR 51.309, which is an option for certain western states as described below. In this notice, the regional haze regulations at 40 CFR 51.309 will be referred to as "the 309 regulations."

C. Grand Canyon Visibility Transport Commission and the Regional Haze Regulations

Pursuant to Section 169B(c)(1) and Section 169B(e) of the CAA, EPA established the GCVTC on November 12, 1991.⁴ The purpose of the GCVTC was to assess information about the adverse impacts on visibility in and around the 16 Class I areas on the Colorado Plateau⁵ region and to provide policy recommendations to EPA to address such impacts. The nine states that are part of the Grand Canyon Visibility Transport Region are Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah,

area."

³ Pursuant to 40 CFR 51.301, "BART-eligible source" means a source in one of 26 categories, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant.

⁴ See 56 FR 57522, November 12, 1991.

⁵ The Colorado Plateau is a high, semi-arid tableland in southeast Utah, northern Arizona, northwest New Mexico, and western Colorado. The 16 mandatory Class I areas are as follows: Grand Canyon National Park, Mount Baldy Wilderness, Petrified Forest National Park, Sycamore Canyon Wilderness, Black Canyon of the Gunnison National Park Wilderness, Flat Tops Wilderness, Maroon Bells Wilderness, Mesa Verde National Park, Weminuche Wilderness, West Elk Wilderness, San Pedro Parks Wilderness, Arches National Park, Bryce Canyon National Park, Canyonlands National Park, Capital Reef National Park, and Zion National Park.

and Wyoming.

The CAA called for the GCVTC to evaluate visibility research as well as other available information "pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the region." The GCVTC was required to issue a report to EPA recommending what measures, if any, should be taken to protect visibility. In June 1996, the GCVTC issued its policy recommendations to EPA.⁶ The GCVTC determined that all transport region states could potentially impact the 16 Class I areas on the Colorado Plateau. The GCVTC recommendations included: strategies for addressing smoke emissions from wildland fires and agricultural burning; provisions to prevent pollution by encouraging renewable energy development; and provisions to manage clean air corridors, mobile sources, and wind-blown dust, among other recommendations.

The GCVTC's recommendations were incorporated into EPA's Regional Haze Rule at 40 CFR 51.309. The 309 regulations provided states in the Grand Canyon Visibility Transport Region an alternative method of achieving reasonable progress for Class I areas that were covered by the GCVTC's analysis.⁷ States

⁶ See Grand Canyon Visibility Transport Commission, "Recommendations for Improving Western Vistas," Report of the Grand Canyon Visibility Transport Commission to the United States Environmental Protection Agency, June 10, 1996 (hereinafter referred to as the "GCVTC Report").

⁷ A SIP that is approved by EPA as meeting all of the requirements of section 309 is "deemed to comply with the requirements for reasonable progress with respect to the 16 Class I areas [on the Colorado Plateau] for the period from approval of the plan through 2018." 40 CFR 51.309(a).

electing to submit regional haze SIPs under the 309 regulations (309 SIPs) may have other Class I areas that are not on the Colorado Plateau. Such states must either address these additional Class I areas through the 309 SIP pursuant to 40 CFR 51.309(g), or submit a regional haze SIP under 40 CFR 51.308.

The 1999 Regional Haze Rule at 40 CFR 51.309(f) required the submittal of an Annex whose purpose was to provide the specific details needed to translate the GCVTC's general recommendations for stationary source sulfur dioxide (SO₂) reductions into an enforceable regulatory program. The GCVTC's recommendations for stationary sources included a declining SO₂ emissions cap and an enforceable market trading program that would serve as a "backstop" if voluntary measures did not result in meeting the SO₂ emissions cap. The Western Regional Air Partnership (WRAP), a regional planning body formed to implement the GCVTC recommendations, submitted the Annex and EPA approved the Annex on June 5, 2003 as 40 CFR 51.309(h) ("the Annex Rule").

D. Legal Challenge and Revision of 309 Regulations

In 2005, the D.C. Circuit Court granted a petition for review challenging EPA's revision to section 309 of the regional haze rule incorporating the recommendations in the Annex. The court concluded that EPA had established too high a bar in establishing the parameters for the SO₂ stationary source program. *Center for Energy & Economic Development v. EPA*, 398

F.3d 653 (D.C. Cir. 2005). In response to this ruling, EPA revised 40 CFR 51.309 on October 13, 2006, making a number of substantive changes. The regulations required, for those states electing to submit 309 SIPs, that 309 SIPs be submitted by December 17, 2007. See 71 FR 60612.

E. State Submittals and Previous EPA Actions

Since four of its twelve Class I areas are on the Colorado Plateau, Arizona had the option of submitting a regional haze SIP under section 309 of the Regional Haze Rule. When these regulations were first promulgated in 1999, 309 SIP submissions were due no later than December 31, 2003. Accordingly, ADEQ submitted to EPA on December 23, 2003, a 309 SIP for Arizona's four Class I Areas on the Colorado Plateau.⁸ On December 31, 2004, ADEQ submitted a revision to its 309 SIP, consisting of rules on emissions trading and smoke management, and a correction to the State's regional haze statutes

Following the court's 2005 ruling in *Center for Energy & Economic Development v. EPA* and EPA's subsequent October 2006 promulgation of revised 309 regulations, ADEQ sent a letter to EPA dated December 24, 2008, resubmitting the 309 SIPs that were previously submitted on December 31, 2003 and December 31, 2004.

⁸ADEQ also submitted provisions to address the regulations that pertain to reasonably attributable visibility impairment ("RAVI") at 40 CFR 51.302, 303, 304, 305, 306, and 307. Although these RAVI provisions were submitted along with Arizona's 309 Regional Haze SIP, EPA is only proposing action on Arizona's 309 Regional Haze SIP at this time.

ADEQ acknowledged, however, that it had not submitted a SIP revision to address the requirements of 309(d)(4) related to stationary sources and 309(g) which governs reasonable progress requirements for Class I areas outside of the Colorado Plateau.⁹

The stationary source provisions in 40 CFR 51.309(d)(4) are a central and fundamental part of the GCVTC's recommendations and of the 309 regional haze program. Of particular importance, 40 CFR 51.309(d)(4)(i) requires reductions in stationary source emissions of SO₂ sufficient to ensure greater reasonable progress than would be achieved by application of BART under 40 CFR 51.308(e)(2). In addition, 40 CFR 51.309(d)(4)(vii) requires implementation of any necessary long-term strategies and BART requirements for stationary source PM and NO_x emissions.

Pursuant to 40 CFR 51.309(a), each state electing to submit a 309 SIP must also address reasonable progress requirements for Class I areas that are outside of the Colorado Plateau, but are within the state or affected by emissions from the state. These areas may be addressed either under 40 CFR 51.308 or under 40 CFR 51.309(g). Arizona ultimately chose to address these other areas in a SIP submittal under 40 CFR 51.308.

For the purposes of this federal register notice, the Arizona regional haze SIP submitted by ADEQ on December 24, 2008 (which included the regional haze SIPs that were previously

⁹ Letter from Stephen A. Owens, ADEQ, to Wayne Nastri, EPA (December 24,

submitted on December 23, 2003 and December 30, 2004) will be referred to as "Arizona's 309 Regional Haze SIP."

EPA made a finding on January 15, 2009, that 37 states, including Arizona, had failed to make all or part of the required SIP submissions to address regional haze. See 74 FR 2392. Specifically, EPA found that Arizona failed to submit the plan elements required by 40 CFR 51.309(d)(4) and (g). EPA sent a letter to ADEQ on January 14, 2009, notifying the state of this failure to submit a complete SIP. ADEQ subsequently decided to submit a SIP to address the regional haze requirements in 40 CFR 51.308. Arizona's 308 SIP is not the subject of this proposed action.¹⁰

F. EPA's Approval of Burning and Smoke Management Rules

As part of ADEQ's December 30, 2004 309 SIP submittal, ADEQ submitted rules pertaining to fire, open and prescribed burning, and smoke management. In addition to its own rules, ADEQ submitted rules from three other local agencies: the Maricopa County Environmental Services Department (MCESD),¹¹ the Pima County Department of Environmental Quality (PCDEQ), and the Pinal County Air Quality Control District (PCAQCD).¹² ADEQ indicated

2008).

¹⁰ EPA recently took final action to approve in part and disapprove in part a portion of Arizona's 308 SIP. 77 FR 72512 (December 5, 2012). EPA has also proposed to approve in part and disapprove in part the remainder of Arizona's 308 SIP. 77 FR 75704 (December 21, 2012).

¹¹ The Maricopa County Environmental Services Department is currently known as the Maricopa County Air Quality Department.

¹² ADEQ, MCESD, PCDEQ, and PCAQCD regulate many sources of air pollution

that these rules were submitted to meet the requirements of Arizona's Enhanced Smoke Management Plan. These rules control PM emissions which may contribute to visibility impairment.

Although the burning rules were submitted as part of the 309 SIP, EPA determined that these rules were separable from the remainder of the 309 SIP submittals.¹³ Accordingly, EPA reviewed these burning rules to determine if the rules met the general criteria for approval into the SIP under CAA Section 110 and 40 CFR Part 51. EPA did not review the rules for purposes of meeting any of the requirements of the 309 regulations. On May 16, 2006 (71 FR 28270), EPA approved the rules from ADEQ, PCDEQ, and PCAQCD, and on May 8, 2007 (72 FR 25973), EPA approved the rules from MCESD.

The effect of these final actions taken in 2006 and 2007 is that EPA has approved part of Arizona's 309 regional haze SIP submittals, but has not taken action on the remainder of those submittals.¹⁴

III. The State's Submittal

A. What is the Purpose of the State's Submittal?

within their county boundaries, and in addition to ADEQ, develop and implement regulations that apply within their jurisdictions. The submitted rules are: ADEQ Rule R18-2-602, R18-2-1501 through 1513, PCDEQ Rule 17.12.480, PCAQCD Rule 3-8-700 and 3-8-710, and MCESD Rule 314.

¹³ Pursuant to Section 110(k)(3) of the CAA, EPA may approve a SIP revision in part, if a separable portion of a submittal meets all applicable requirements of the CAA. "By separable, EPA means that the action it anticipates taking will not result in the approved rule(s) being more stringent than the State anticipated." See Memo from John Calcagni entitled, Processing of State Implementation Plan (SIP) Submittals (July 21, 1992) at 2.

¹⁴ See CAA section 110(k)(3) "If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part."

While states are required to submit SIPs to assure reasonable progress toward meeting the national goal of preventing any future and remedying any existing impairment of visibility in Class I areas which impairment results from man-made pollution, the regulations at 40 CFR 51.309 are optional for certain western states. ADEQ elected to submit a SIP pursuant to 40 CFR 51.309, which address regional haze visibility impairment in the 16 Class I areas on the Colorado Plateau.

B. What Did the State Submit?

On December 24, 2008, ADEQ re-submitted Arizona's 309 SIP pursuant to 40 CFR 51.309. ADEQ previously submitted a 309 regional haze SIP on December 23, 2003 and a revision on December 30, 2004. As described above, following the court's ruling in *Center for Energy & Economic Development v. EPA*, EPA revised 40 CFR 51.309 on October 13, 2006 making a number of substantive changes. ADEQ resubmitted their regional haze SIP on December 24, 2008 and stated that its submittal consisted of SIPs that were previously submitted to EPA on December 23, 2003 and December 30, 2004. As stated earlier, the Arizona regional haze SIP submitted by ADEQ on December 24, 2008 (which included the regional haze SIPs that were previously submitted on December 23, 2003 and December 30, 2004) will be referred to as "Arizona's 309 Regional Haze SIP."

ADEQ also stated that the submittal did not include

provisions to address 40 CFR 51.309(d)(4) - provisions for the implementation of stationary source reductions, and 40 CFR 51.309(g) - provisions to address additional Class I areas other than the 16 Class I areas covered by the GCVTC.

ADEQ's December 24, 2008 letter identified the specific requirements of 40 CFR 51.309 that were addressed by the submittal.

Table 1 - 309 Requirements Addressed by ADEQ's Submittal

<u>Subsections of</u> <u>40 CFR 51.309</u>	<u>Description</u>
309(d)(1)	Time period covered
309(d)(2)	Projection of visibility improvement
309(d)(3)	Treatment of clean air corridors
309(d)(5)	Mobile sources
309(d)(6)	Programs related to fire
309(d)(7)	Area sources of dust emissions from paved and unpaved roads
309(d)(8)	Pollution prevention
309(d)(9)	Implementation of additional recommendations
309(d)(10)	Periodic implementation revision
309(d)(11)	State planning and interstate coordination

IV. EPA's Evaluation and Proposed Action

A. How is EPA Evaluating the Submittal?

The primary requirements applicable to Arizona's 309 Regional Haze SIP are the regional haze regulations at 40 CFR 51.309, which comprise a comprehensive long-term strategy for addressing sources that contribute to visibility impairment within the 16 Class I areas on the Colorado Plateau. The 309 regulations require that 309 SIPs include provisions to address the projection of visibility improvement, the treatment of clean-air corridors, emissions from mobile sources, fire programs, area sources of dust emissions from paved and unpaved roads, pollution prevention, and the implementation of a program for stationary source reductions. EPA's Technical Support Document (TSD) at sections 4 and 5 has more details on the 309 requirements.

Pursuant to 40 CFR 51.309(d)(4), the stationary source program must: establish quantitative SO₂ emission "milestones" (e.g., emission caps) that provide for continuing emission reductions for each year of the program through 2018, include provisions that allow states to determine whether the milestones have been met, and include provisions that implement the backstop trading program in the event that a milestone is exceeded and the trading program is triggered.

Arizona must also demonstrate that its stationary source program will provide greater reasonable progress than would be achieved by application of BART under 40 CFR 51.308(e)(1). Pursuant to 40 CFR 51.309(d)(4)(vii), Arizona's 309 Regional Haze

SIP must also address NO_x and PM emissions at stationary sources and require the implementation of any necessary long term strategies and BART requirements for stationary source PM and NO_x emissions.

Lastly, regional haze SIP submittals must also meet general criteria for SIP approval under CAA Section 110 and 40 CFR Part 51.

B. Does the Submittal Meet the Evaluation Criteria?

As stated earlier, the 309 regulations comprise an optional program and provide an alternative method for GCVTC states to meet the regional haze reasonable progress requirements. The 309 regulations include the GCVTC recommendations and cover a wide range of control strategies and approaches. The regulations recognized that the 309 program is one that must be taken together as a whole and evaluated collectively." ¹⁵

Arizona's 309 Regional Haze SIP did not include provisions to address 40 CFR 51.309(d)(4), i.e., provisions for the implementation of stationary source reductions. As described in the preceding section, the stationary source provisions in 40 CFR 51.309(d)(4) are a central and fundamental part of the GCVTC's recommendations and of the 309 regional haze program. Based on

¹⁵ See 40 CFR 51.309(d): ("Except as provided for in paragraph (e) of this section, each Transport Region State must submit an implementation plan that meets the following requirements . . ."). See also 64 FR 35754, July 1, 1999 (explaining that "the requirements of Section 51.309 . . . are not severable. States that wish to take advantage of the GCVTC's efforts and EPA's acceptance thereof are obligated to meet *all* of the requirements of section

this deficiency alone, Arizona's 309 Regional Haze SIP is not approvable. EPA's TSD has more details on our evaluation.

In addition to lacking provisions to address 309(d)(4), Arizona's 309 Regional Haze SIP also did not address the requirements of 40 CFR 51.309(g) pertaining to Class I areas that are not on the Colorado Plateau. However, Arizona ultimately chose to address these other areas in a SIP submittal under 40 CFR 51.308. Therefore, the absence of these provisions from the 309 SIP does not form part of the basis for today's proposed disapproval.

C. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a partial disapproval of Arizona's 309 Regional Haze SIP. The proposed action is a partial disapproval because EPA had previously approved, in 2006 and 2007, the burning and smoke management rules from ADEQ, MCESD, PCDEQ, and PCAQCD.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171-193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. Arizona's 309 Regional Haze SIP was not submitted to meet either of these requirements. Therefore, any action we take to finalize the

51.309." (emphasis added)).

described partial disapproval will not trigger mandatory sanctions under CAA section 179.

In addition, CAA section 110(c)(1) requires EPA to promulgate a Federal Implementation Plan (FIP) within two years after finding that a State has failed to make a required submission or disapproving a SIP submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. Due to our previous finding that Arizona had failed to make part of the required regional haze submission,¹⁶ EPA is already subject to a "FIP duty" under section 110(c)(1) with respect to the regional haze requirements for Arizona. We are also subject to a set of court-ordered deadlines for approval of a SIP and/or promulgation of a FIP that collectively meet the regional haze implementation plan requirements for Arizona.¹⁷ Thus, our proposed partial disapproval of Arizona's 309 Regional Haze SIP, if finalized, will not create a new FIP obligation.¹⁸

We will accept comments from the public on the proposed partial disapproval for the next 30 days.

¹⁶ 74 FR 2392 (January 15, 2009).

¹⁷ *National Parks Conservation Association v. Jackson* (D.D.C. Case 1:11-cv-01548).

¹⁸ We note that Arizona is appealing the district court's entry and modification of the consent decree that sets the deadlines for EPA action on regional haze plans for Arizona. *National Parks Conservation Association v. EPA* (USCA Case #12-5211). If this challenge ultimately results in any limitations on the scope of EPA's current FIP duty with respect to regional haze in Arizona, then today's action, if finalized, could result in a new or altered FIP duty.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR

121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences may flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on

issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector." EPA has determined that the proposed disapproval 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 action proposes to disapprove 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

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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.”

This action does not have federalism implications. It 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 disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or

safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This proposed rule is not subject to Executive Order 13211 (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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide

Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

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

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

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Jared Blumenfeld,
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