



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2014-0214; FRL-9917-43-Region 6]

**Approval and Promulgation of Implementation Plans; New Mexico;
Regional Haze and Interstate Transport Affecting Visibility State Implementation Plan
Revisions; Withdrawal of Federal Implementation Plan for the San Juan Generating
Station**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to withdraw a Federal Implementation Plan (FIP) for New Mexico that became effective on September 21, 2011, that applies to the San Juan Generating Station (SJGS) in San Juan County, New Mexico, which is operated by the Public Service Company of New Mexico (PNM). We are removing the FIP requirements because we are taking final action today in a separate document in the *Federal Register* to approve revisions to the New Mexico State Implementation Plan (SIP), submitted by the New Mexico Environmental Department (NMED) to EPA, which address revised Best Available Retrofit Technology (BART) requirements for oxides of nitrogen (NO_x) and the requirements of the Clean Air Act (CAA) concerning non-interference with programs in other states to protect visibility.

DATES: This final rule is effective **[insert date 30 days after publication in the *Federal Register*].**

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2014-0214. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Feldman (6PD-L), Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-L), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-9793. Mr. Feldman can also be reached via electronic mail at feldman.michael@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. What Is the Background for This Action?

The State of New Mexico adopted and transmitted an Interstate Transport SIP revision on September 17, 2007 for the purpose of addressing the “good neighbor” provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the PM_{2.5} NAAQS. EPA disapproved a portion of that SIP submittal addressing the requirements with respect to visibility transport and concurrently promulgated a FIP establishing enforceable NO_x and SO₂ emission limits for the SJGS on August 22, 2011. EPA found that New Mexico sources, except the San Juan Generating Station, were sufficiently controlled to eliminate interference with the visibility programs of other states (see 76 FR 52388). EPA set SO₂ emission limits of 0.15 pounds per million British Thermal Units (lb/MMBtu) for the four units of the SJGS. EPA set enforceable NO_x emission limits of 0.05 lbs/MMBtu based upon EPA’s NO_x BART determination for SJGS, to ensure that its emissions would meet the “good neighbor” requirement for visibility protection, as well as the requirement for NO_x BART. (76 FR 52388, August 22, 2011). EPA’s NO_x BART emission limits can be met by the installation of selective catalytic reduction (SCR) at all four units of SJGS. Among other things, the FIP also included a sulfuric acid (H₂SO₄) emission limit

to minimize the contribution of this pollutant to visibility impairment, since emissions of this pollutant can potentially increase due to operation of SCR.

The background for today's final rule withdrawing that FIP and today's separate action approving the New Mexico SIP revisions is discussed in detail in our May 12, 2014 notice (see 79 FR 26909). The comment period on the proposed action was open for thirty days, and several comments were received.

II. What Final Action is EPA Taking?

We are withdrawing the New Mexico Regional Haze (RH) and Interstate Transport (IT) FIP at 40 CFR 52.1628, which applies to Units 1, 2, 3, and 4 of PNM's San Juan Generating Station. As explained in our May 12, 2014 proposal (see 79 FR 26909), this action is possible because of our separate action to approve the New Mexico SIP revisions, which update the New Mexico RH and Visibility Transport SIP to include a revised BART determination for the units at the PNM's San Juan Generating Station, as well as enforceable SO₂ and NO_x emission limits for the SJGS that sufficiently prevent emissions from sources in New Mexico from interfering with the visibility programs of other states. New Mexico's revised SIP includes a control scenario proposed by PNM that incorporates the shutdown of two of the four units at the SJGS by December 31, 2017—a new control scenario that had not been evaluated as part of the FIP. EPA has determined that when cost, energy and non-air quality environmental impacts, and anticipated visibility benefits are taken into consideration, New Mexico's revised determination of NO_x BART for the SJGS is reasonable. The revised BART determination in the New Mexico RH SIP revision results in substantial visibility benefits and energy and non-air quality environmental benefits, and is highly cost-effective. The incremental visibility benefit of the four-SCR scenario of the FIP over the State's revised BART determination is small at most

Class I areas, and New Mexico reasonably concluded that this small additional visibility benefit did not justify the increase in costs associated with installation of SCR on all four units. EPA's review of the New Mexico SIP revisions is discussed in detail in our May 12, 2014 document (see 79 FR 26909).

EPA has made the determination that the New Mexico RH and Visibility Transport SIP revisions are approvable because the plan's provisions meet all applicable requirements of the CAA and EPA implementing regulations. EPA is finalizing this action under section 110 and part C of the Act. The action to approve the SIP is in a separate action contained in today's *Federal Register*. Upon the effective date of the *Federal Register* documents, the requirements in the approved SIP apply and the FIP requirements for the SJGS are withdrawn.

III. Responses to Comments Received

We received several comments on our proposed approval of the 2013 RH SIP revisions. Copies of the comments are available in the docket for this rulemaking. A summary of the issues raised in the comment letters and our responses to these comments is included in our notice of final rulemaking concerning the approval of the New Mexico SIP revisions and is reproduced below. (Please see Docket No. EPA-R06-OAR-2014-0214 in the regulations.gov website).

Comment: A commenter, identified as a part owner of SJGS Unit 4, requested a 12-month extension of the SIP's compliance period for meeting the new NO_x limits. The commenter referred to the EPA proposal, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," subsequently published at 79 FR 34829 (June 18, 2014), and asserted that an extension would allow for adequate consideration of the impacts of the proposal relative to the investment considerations of installing SNCRs at the SJGS. The

commenter stated that ownership of SJGS presently includes utilities from five Western states, and the interstate nature of ownership and emissions complicates a coordinated compliance planning process. Another commenter, identified as a part owner of SJGS Units 1 and 2, supported the costs, anticipated haze reduction, and other environmental benefits associated with the 2013 RH SIP revision, but similarly requested that EPA amend its approval and provide additional time for installation of SNCR on the basis that more time is needed to study the proposed standards for reducing carbon pollution at existing EGUs.

Response: EPA believes that CAA section 111(d) efforts and actions will tend to contribute to overall air quality improvements and thus should be complementary to criteria pollutant and regional haze SIP efforts but do not provide a basis for delaying implementation of these efforts. See 79 FR at 34931. The 111(d) proposal specifically mentions the next 10-year SIP revision for regional haze that is due by July 2018 and covers the time period through 2028, explaining that the timeframes proposed for submittal of the CAA section 111(d) state plans will allow considerable time for coordination by states in the development of their respective plans. The proposal does not suggest that further delays are warranted for implementing the regional haze requirements that were first due in December 2007. Indeed, states and affected sources will be able to take into account requirements of programs such as Regional Haze in considering the development of state plans under section 111(d).

More importantly here, EPA cannot alter an otherwise approvable SIP revision to extend a compliance date. The 2013 RH SIP revision submitted by New Mexico provides the compliance date. Moreover, the compliance dates that New Mexico set are as “expeditious as practicable,” as required by the CAA. See CAA section 169A(b)(2)(A), (g)(2). Because the

compliance dates meet CAA requirements, EPA cannot establish different compliance dates when taking action on the SIP revision. See CAA section 110(k)(3), (l).

Comment: A commenter stated that unit retirements and NO_x controls at SJGS would reduce regional haze and provide other significant environmental, economic, and health benefits, and states that “these additional benefits must be recognized.” The commenter requested, however, that EPA’s approval contain a statement reflecting EPA’s willingness to consider eliminating the NO_x emission control requirements on Units 1 and 4 if, by December 31, 2016, there is a commitment to permanently retire Unit 1 and/or 4 within a reasonably short time-frame. PNM responded to this request in its own comment (although it mistakenly cited the date of December 31, 2015 when paraphrasing the comment). PNM’s comment stated that EPA should reject the request for an EPA statement regarding the retirement of additional capacity because the Agency lacks any analysis or basis upon which to evaluate the efficacy or legality of the request.

Response: We decline to endorse a proposal not before us, as suggested by the commenter. Because the 2013 RH SIP revision meets CAA requirements, we are required to approve it. See CAA section 110(k)(3), (l).

Comment: PNM submitted a comment supporting the proposed rule, agreeing that the 2013 RH SIP revision is reasonable, even when EPA’s estimated SCR costs are used. PNM asserted, however, that its own estimated SCR capital costs were confirmed by detailed bids from engineering, procurement, and construction contractors, and that none of the bids were in the range of EPA’s estimated SCR costs. PNM believed that these bids should satisfy any

requirement for enhanced documentation to support higher SCR costs, but acknowledged that their cost estimates provide different treatment to items such as sorbent injection, apportionment of balanced draft costs, and fees and contingencies.

Response: We appreciate PMN's comment supporting approval. As identified by the comment, EPA's cost analysis for SCR was based on a different design (e.g., no costs for sorbent injection) than the design PNM used when soliciting bids from vendors. PNM's bids were not submitted with the comment and, based on the available documentation, we remain unable to conclude that certain line items in PNM's SCR cost estimates are well supported. While the BART Guidelines explain that data from vendor bids may be used in developing equipment cost estimates, this does not mean that bottom-line figures can serve as a substitute for a full cost analysis or that all costs included therein would be appropriate for making an assessment of cost-effectiveness. The expectation remains that the cost analysis maintain and improve consistency through adherence to the OAQPS Control Cost Manual, where possible. Moreover, the BART Guidelines state that documentation is expected, and indeed especially important, where a state believes that costs will be unreasonable even though other recent retrofits have cost-effectiveness values that are within what has been considered a reasonable range. As we established in our FIP, recent SCR retrofits at coal-fired power plants have been found to be cost-effective, and this cost effectiveness is generally validated by large emission reductions even when there are large capital costs.

Comment: NMED provided comments in support of approval and stated that they generally concur with our description and evaluation of the State Alternative for NO_x BART.

Response: We appreciate this comment.

Comment: NMED commented that states cannot be required to take a unit-specific (or unit-by-unit) approach to assessing the BART factors. In *American Corn Growers v. EPA*, 291 F.3d 1, 8 (D.C. Cir. 2002), a reviewing court held that it was invalid to consider visibility impacts on a multiple-source basis while employing a source-specific approach to the other four BART factors. The commenter stated that requiring states to assess visibility on a facility-wide basis while considering the other factors on a unit-by-unit basis would be similarly unsupported by the statute and would impermissibly constrain state authority.

Response: We disagree with this comment. In *American Corn Growers*, the D.C. Circuit held that EPA could not adopt a “group-BART approach” to the visibility factor because it could force states to require BART controls at some sources without any empirical evidence of a particular source’s contribution to visibility impairment in a Class I area. As a result, the Regional Haze Rule and BART Guidelines require states to analyze the five statutory factors for each BART-eligible source without reference to the benefits that BART will achieve at other sources. Beyond this, however, the court did not opine on how the BART factors should be analyzed or weighed by states, let alone proscribe a unit-specific or prescribe a facility-wide approach to BART.

As we recently explained in our action on the Wyoming regional haze SIP, see 79 FR 5031 (Jan. 30, 2014), the BART Guidelines prescribe that states “must conduct a visibility

improvement determination for the source(s) as part of the BART determination,”¹ and we interpret this language as requiring states to consider the visibility improvement from BART applied to the BART-eligible source as a whole. We do not believe that either the CAA or the BART Guidelines mandate either a unit-specific or a facility-wide approach to analyzing or weighing the remaining BART factors. In most circumstances, however, we believe that states should use a unit-specific approach to assessing the technical feasibility and costs of controls options, as well as the existing controls and remaining useful life of BART-eligible units. This approach is clearly contemplated by the BART Guidelines and has been used for decades in other CAA contexts, such as the evaluation of Best Available Control Technology (BACT) for new and modified major stationary sources.² A unit-specific approach to these factors is appropriate because the age, type, size, location, and emission characteristics of the various emission units at a source can differ greatly, and many control options by design apply to a single unit. However, in unique circumstances, such as in situations where a control strategy can be implemented facility-wide or where the benefits of unit shutdowns must be taken into account, then we believe that the CAA and BART Guidelines provide states with the flexibility to analyze and weigh the BART factors for the source as a whole, rather than for its constituent emission units.

Comment: NMED responded to a statement in the proposal that expressed some concern with the appropriateness of including SO₂ reductions from units 1 and 4 in one of the NO_x BART control options analyzed, rather than as part of the facility’s baseline emissions, by explaining

¹ 40 CFR pt. 51, app. Y, section IV.D.5.

² See New Source Review Workshop Manual (Oct. 1990), available at <http://www.epa.gov/ttn/nsr/gen/wkshpman.pdf>.

that the SO₂ limit of 0.10 lbs/MMBtu is required by the 2013 RH SIP revision alone and would not be required if the FIP continues to remain in force.

Response: While the inclusion of the SO₂ reductions in the SIP helps to further demonstrate non-interference with the visibility protection programs of other states, in keeping with the visibility transport requirements of CAA section 110(a)(2)(D)(i)(I), and helps in showing the overall visibility benefits of the 2013 RH SIP revision, we had noted that those reductions do not specifically lend support to a visibility improvement determination for NO_x BART through the application of NO_x controls. However, no commenters took issue with the inclusion of SO₂ reductions in the studied scenarios or insisted that refinements were necessary on this point, and it remains our view that the inclusion of the reductions did not meaningfully impact the evaluation of visibility benefits due to NO_x reductions at the facility.

Comment: The Navajo Nation submitted a comment supporting the proposal as the best scenario for meeting BART, endorsing it for having reasonable costs of compliance and a realistic timeframe. The comment also stated that the 2013 RH SIP revision addressed concerns regarding potential job losses faced by Navajo work forces at the SJGS and San Juan mine more effectively than EPA's FIP.

Response: We appreciate this comment supporting approval.

Comment: One commenter stated that the 2013 RH SIP revision appears to be an alternative consistent with the intent of 40 CFR 51.308(e)(2) and therefore needs to demonstrate greater

reasonable progress than EPA's BART determination. The fact that the 2013 RH SIP revision does not demonstrate greater reasonable progress than EPA's BART determination gave the commenter concern because the commenter considered it a departure from rules and guidance. The commenter also asserted that previous EPA decisions have required a source to demonstrate its proposed alternative is better than EPA's BART determination, citing actions for Idaho and the Four Corners Power Plant.³

Response: We disagree that the 2013 RH SIP revision appears to be a BART alternative under §51.308(e)(2). New Mexico explicitly stated that it was not evaluating a BART alternative when responding to comments during the state process and again when submitting comments to support our proposed approval. Therefore, New Mexico was not required to make a demonstration of greater reasonable progress. Instead, New Mexico evaluated a new, source-specific BART determination under §51.308(e)(1). To fully account for the source owner's proposed unit shutdowns, New Mexico chose to weigh the BART factors in light of source-wide considerations. As explained in our proposal and elsewhere in our responses to comments, we believe that this approach is permissible under the CAA and the BART Guidelines. The prior EPA actions cited by the commenter are not relevant to our action on New Mexico's NO_x BART determination for SJGS. While both the Four Corners and Idaho actions contained BART alternatives that demonstrated greater reasonable progress, we are not evaluating a BART alternative here. Moreover, while the Idaho action also involved two new BART determinations that happened to be more stringent than the state's original BART determinations, neither the

³The comment provided a citation to 79 FR 23273 (April 28, 2014) relating to the Tasco facility in Idaho, and one to "78 FR 24112," which we interpret as having intended to refer to 78 FR 60700 (October 2, 2013) (bearing "FR Doc. 2013-24112").

CAA nor our regulations require a new BART determination to be more stringent in every instance in order to supersede a prior BART determination.

Comment: One commenter argued that the CAA requires that any alternative regional haze strategy must outperform the visibility gains of the existing strategy or, in other words, be “better than BART,” and the 2013 RH SIP revision fails to accomplish this. Citing to CAA section 7410(a) and (l), the commenter argued that the characterization of the 2013 RH SIP revision as including a new BART determination is plainly unlawful because the State has not undertaken the BART analysis required by the CAA and BART Guidelines, and EPA did not provide any explanation for why the SIP revision is approvable when the FIP had a more stringent BART determination.

Response: As explained above, the 2013 RH SIP revision was not submitted to meet §51.308(e)(2) requirements, so it is not required to be better than BART. As we stated in the proposal, the 2013 RH SIP revision contains a new, source-specific BART analysis that is based on different underlying facts than those that were present when we evaluated our FIP. Thus, the commenter’s assertion that the state failed to undertake a BART analysis is clearly incorrect. Finally, contrary to the commenter’s assertion, CAA section 110(l) does not prohibit a state from submitting a SIP that is less stringent than a FIP. Our proposal provided an analysis conducted under section 110(l), which showed that the 2013 RH SIP revision would not interfere with the attainment or maintenance of any NAAQS or any other CAA requirement. See 79 FR at 26920. Because New Mexico complied with the CAA's visibility protection provisions, the Regional

Haze Rule, and the BART Guidelines, and made a reasonable control determination based on the weighing of the five factors, EPA is required to approve the 2013 RH SIP revision.

Comment: One commenter stated that the 2013 RH SIP revision does not comply with the mandatory unit-specific analytical approach required by the CAA. The commenter argued that the BART Guidelines require BART to be determined on a unit-specific basis because a BART emission limit must be established for each affected emission unit. The commenter also pointed out that the BART Guidelines provide an example of a unit-specific approach where they state that “control options must be analyzed for Units B through H as well as Unit A.” Consequently, the commenter concluded that New Mexico and EPA are required to follow the unit-specific approach.

Response: We disagree with this comment. The portion of the BART Guidelines cited by the commenter explains how all BART units at the subject to BART source must be included in the BART analysis. The 2013 SIP revision implements BART at each BART-subject unit by requiring either shutdowns or controls. Also, while the BART Guidelines clearly contemplate that states will analyze technical feasibility and cost-effectiveness on a unit-specific basis, they do not explicitly require such an approach, nor do they provide guidance for situations in which a source proposes unit shutdowns as an emission-reduction strategy. Moreover, contrary to the commenter’s assertion, the CAA does not mandate any specific analytical approach.

Consequently, in situations where a state is contemplating a novel control scenario not contemplated by the BART Guidelines, such as one that involves unit shutdowns, we believe that states have the flexibility to tailor their BART analyses by evaluating and weighing the BART

factors on a facility-wide (i.e., “source”) basis rather than on a unit-specific basis in order to account for the emission reductions and benefits that would directly result from the shutdowns. Moreover, while BART emission limits are also typically established for each unit that comprises the BART-eligible source, as New Mexico chose to do here, nothing in the CAA or BART Guidelines prevents a state from setting an emission limit that averages emissions across multiple units, so long as that limit is “based on the degree of reduction achievable through the best system of continuous emission reduction for each pollutant.” See 40 CFR 51.301.

Comment: One commenter stated that a facility-wide BART determination is inconsistent with other EPA actions. The commenter cited to EPA actions in Indiana and Montana to support this contention.⁴ The commenter also pointed out that EPA used a unit-specific approach to analyzing the first four factors when promulgating its FIP for SJGS. The commenter called EPA’s proposal an unexplained departure from EPA’s past practice in implementing its binding guidelines.

Response: We disagree with this comment for the same reasons explained above. EPA’s actions in Indiana, Montana, and our FIP for SJGS did not involve unit shutdowns and therefore are not determinative of how the BART statutory factors should be considered and weighed in this context. Also, contrary to the commenter’s assertion, we explained in our proposal why New Mexico’s approach was reasonable in light of the unique circumstances presented and, on that basis, cannot validly be seen as any departure from past actions. As was stated, the state’s

⁴ Specifically, the commenter cited our Indiana regional haze SIP action (77 FR 3975, 3982 (Jan. 26, 2012)) for its statement that a source needs to “implement BART at each BART-subject unit,” and the Montana regional haze FIP (77 FR 57864, Sept. 18, 2012) for discussing statutory BART factors for units at a BART source.

approach reasonably takes into account the visibility, energy, and non-air quality environmental benefits associated with unit shutdowns. See 79 FR 26918. Furthermore, the 2013 SIP revision implements BART at each BART-subject unit by requiring either shutdowns or controls.

Comment: A commenter stated that EPA's proposal arbitrarily rejected SCR in favor of less effective pollution controls even though EPA found that an emission limitation based on SCR was BART in the FIP. The commenter explained that SCR provides the best visibility outcomes and is cost-effective.

Response: Under different factual circumstances, we determined that SCR for the four SJGS units had reasonable average cost-effectiveness values and would promote significant visibility improvements, thereby supporting the basis for the emission limits set forth in the FIP. In the 2013 RH SIP revision, New Mexico demonstrated that SNCR in tandem with shutdowns has visibility benefits on par with those anticipated from the FIP at much lower overall costs, while also reducing overall energy and non-air quality environmental impacts. Although we continue to believe that SCR is a cost-effective control and are not abandoning the legal and technical basis for our FIP, we believe that when cost, energy and non-air quality environmental impacts, and anticipated visibility benefits are all taken into consideration, New Mexico's determination that the State Alternative is BART is reasonable. While SCR remains cost-effective on a \$/ton basis, the incremental visibility benefit of the four-SCR scenario of the FIP over the State Alternative is small at most Class I areas, and New Mexico reasonably concluded that this small additional visibility benefit, when considered with the difference in the energy and non-air

quality environmental impacts, did not justify the large increase in costs associated with the installation of SCR on all four units.

Comment: One commenter stated that the visibility impacts of the State Alternative are significantly worse than the four-SCR scenario in the FIP. The commenter explained that the difference in visibility impacts between the two scenarios will be 0.47 dv at Mesa Verde, 0.24 dv at Canyonlands, and 0.13 dv at Weminuche. The sum of these visibility differences is 0.84 dv, which is above the 0.5 dv threshold that is used to determine “significance.” Also, the State Alternative will result in five more days with impacts over 1 dv at Mesa Verde, three more days at Arches, and two more days at both Canyonlands and La Garita when compared to the four-SCR scenario in the FIP.

Response: As we stated in the proposal when comparing the two scenarios, while we have some concern with the modeled visibility differences between the two control scenarios for Mesa Verde and Canyonlands, we find that the State’s decision to select the State Alternative was ultimately reasonable, especially considering the costs of compliance and the energy and non-air quality environmental impacts of the two scenarios. We noted that the difference in visibility impacts between the two scenarios are negligible at most of the Class I areas examined. The average difference at the 13 other Class I areas (other than Mesa Verde, Canyonlands, and Weminuche) is less than 0.1 dv between the two control scenarios. In considering the number of days impacted, eleven Class I areas show no difference in the number of days with impacts over 1 dv. We also note that the typical application of 0.5 dv as a contribution threshold comes in the

context of assessing impacts at a single Class I area, not cumulative impacts across multiple Class I areas.

Comment: One commenter stated that the CAA requires EPA to either improve the State Alternative or reject it altogether.

Response: We disagree with this comment. As we explained earlier, EPA is required to approve any SIP revision that meets CAA requirements. See CAA section 110(k)(3), (l). EPA does not have authority to improve a SIP revision that is otherwise approvable, and the commenter has provided no basis for EPA to disapprove the 2013 RH SIP revision.

Comment: One commenter stated that EPA based its proposed approval on a fundamentally flawed cost-benefit analysis that artificially inflated the cost and artificially reduced the benefits of SCR. The commenter also thought that New Mexico underestimated the costs of SNCR. The commenter argued that EPA had no rational basis for concluding that cost refinements would not change the result. The commenter cited to *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1201-03 (9th Cir. 2008), for the proposition that EPA must re-calculate a cost value that would significantly alter the analysis. With cost corrections, the commenter believed that New Mexico's capital cost assumptions for SCR would be cut in half, demonstrating that SCR remains cost-effective at Units 1 and 4. The commenter provided an attachment that highlighted how New Mexico's cost range for SCR at SJGS was well above the cost per kilowatt for SCR demonstrated by other cost studies for comparable retrofits.

Response: We maintain our view that SCR has favorable and reasonable average cost-effectiveness values at SJGS under the technical record developed for the FIP, and we agree with the comment that New Mexico's cost range for SCR is still high compared to other cost studies. Even so, as discussed in response to comments from PNM concerning cost, the state's BART selection in this case is reasonable. New Mexico was advantaged with the full technical record that we developed to promulgate the FIP, and the state declared that it would favor the 2013 RH SIP revision even if it were to adopt and utilize the lower costs for SCR that we had relied on in promulgating the FIP. In addition, in our proposed action, we recalculated the annual cost and incremental cost-effectiveness of the four-SCR option using the cost estimates presented in the FIP. Thus, there is a significant record basis for our finding that lower SCR costs would not change the result of our action.

As to the state's alleged underestimation of SNCR costs, the comment does not provide any details to enable us to provide a response. We also considered the Ninth Circuit's decision in *Center for Biological Diversity v. National Highway Traffic Safety Administration* and do not see how it has any bearing on the issue of costs in this case. In that case, the Ninth Circuit faulted NHTSA for its failure to monetize the value of carbon emissions in setting fuel economy standards. In addition to the fact that the case did not concern BART determinations, the comment does not identify any particular line item in the state's analysis of SCR costs that has not been monetized.

Comment: One commenter stated that our proposal failed to consider the prospect of installing SCR on Units 1 and 4, while still shutting down Units 2 and 3. The commenter noted that such a

scenario would lead to even greater visibility benefits. The commenter provided modeled visibility results and estimates of the level of emission reductions that would result from this scenario and concluded that the State Alternative was inferior.

Response: While we acknowledge that a scenario at SJGS involving two shutdowns and two SCRs would result in superior visibility benefits than the State Alternative or even the FIP, the state did not present this scenario to us in the 2013 RH SIP revision. As we explained above, we are required to evaluate the SIP revision that is before us. Moreover, in situations that involve the voluntary retirement of units, states need the flexibility to analyze control scenarios that have the support of the source owner. There is no evidence in the record indicating that PNM would have volunteered to retire two of its units if SCR were required on the remaining units.

Comment: One commenter stated that the NMED's BART analysis contains a flawed visibility analysis. The commenter argued that NMED arbitrarily ignored fourteen Class I areas between 300 km and 440 km from SJGS in its cumulative visibility analysis, which was an arbitrary and unexplained departure from EPA's analytical approach that was followed in analyzing the Big Stone and Colstrip power plants. The commenter concluded that the failure to assess impacts at more distant Class I areas masked the full visibility benefit of SCR. Finally, the commenter referred to comments submitted by the National Park Service to New Mexico on their proposed SIP revision, which stated that the visibility modeling was not done according to the BART Guidelines.

Response: We disagree with this comment. In regard to selecting a model and developing a modeling protocol, the BART Guidelines refer to our Guideline on Air Quality Models⁵ and the Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 report.⁶ The IWAQM report reviewed model-performance evaluations of CALPUFF as a function of distance from the source and recommended the use of CALPUFF for transport distances of order 200 km and less. The report also recommended that the use of CALPUFF for characterizing transport beyond 200 to 300 km should be done cautiously with an awareness of the likely problems involved. Consistent with this recommendation, we believe that it is reasonable to use CALPUFF to evaluate visibility impacts up to 300 km. While we agree with the commenter that emissions from SJGS may impact Class I areas at distances greater than 300 km, the IWAQM report cautions that CALPUFF results are less reliable at distances greater than 300 km. Therefore, we do not think that it is arbitrary to exclude more distant receptors from a visibility analysis or to base the visibility assessment for a BART determination on visibility impacts within 300 km from the source.

Contrary to the commenter's suggestion, this was the same approach followed when modeling the visibility benefits associated with various control scenarios at the Colstrip power plant. See 77 FR 57867-68. In regard to the Big Stone power plant, South Dakota performed modeling for Class I areas beyond 300 km only because there were no Class I areas within 300 km of the source. As a result, South Dakota worked with EPA to develop a special modeling protocol that incorporated CALPUFF's puff-splitting option despite the IWAQM report's

⁵ Appendix W to 40 CFR Part 51 "Guideline to Air Quality Models" states: "It was concluded from these case studies that the CALPUFF dispersion model had performed in a reasonable manner, and had no apparent bias toward over or under prediction, so long as the transport distance was limited to less than 300 km."

⁶ Environmental Protection Agency, 1998. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. Publication No. EPA-454/R-98-019. Office of Air Quality Planning & Standards, Research Triangle Park, NC.(NTIS No. PB 99-121089)

conceptual concerns with that feature. Moreover, South Dakota expressly acknowledged that it was departing from EPA's guidance. Consequently, we believe that Big Stone presented an exception to the general rule that CALPUFF be applied to assess visibility impacts only on those Class I areas within 300 km of the source. Finally, in regard to NPS's comments concerning the visibility analysis during the state process, we agree with the response provided at the time by NMED⁷ and note that NPS did not raise these concerns again in their comments on our proposed action.

Comment: A commenter stated that the proposed 0.23 lb/MMBtu limit does not apply to each unit due to a cross-unit averaging provision, so the emissions from a given unit could be higher than 0.23 lb/MMbtu.

Response: In this case, it is appropriate for the 2013 RH SIP revision to allow SJGS to average emissions across its BART-eligible emission units within the fence line. The BART Guidelines allow this approach when, as here, the reductions would be equal to those reductions that would be obtained by simply controlling each of the BART-eligible units that constitute the BART source. Because SJGS is required to demonstrate continuous compliance over a reasonable averaging time, the reductions associated with the assigned limit are assured. As part of its five-factor analysis, New Mexico evaluated the control effectiveness of SNCR and determined that SNCR could achieve an emission rate of 0.23 lb/MMBtu on each unit based on tests and an updated performance guarantee from the vendor.⁸ Consistent with the BART Guidelines, the

⁷ Available as NMED Ex. 14 of the 2013 RH SIP revision.

⁸ Public Service Company of New Mexico, San Juan Generating Station, Revised SNCR Analysis, February 11,

permit conditions at A112C specify the averaging time and calculation methodology for the enforceable emission limit, which must be calculated on a 30-boiler-operating-day basis, averaged across the two units. While we agree with the commenter that emissions from either unit may exceed 0.23 lb/MMBtu on a given day, the combined emissions from both units cannot exceed 0.23 lb/MMBtu over the course of the averaging period, so total emission reductions will be equal to those that would be obtained under two separate limits.

Comment: One commenter alleged that our proposal implied that PNM's decision to retire Units 2 and 3 was solely taken for the purpose of meeting BART. The commenter suggested that EPA should explicitly state whether this was the case for the record or discuss whether independent reasons would require or motivate the shutdown of the units.

Response: We fail to see how this comment is relevant to our evaluation of the 2013 RH SIP revision. Nevertheless, we note that, when developing the FIP, we assumed that the remaining useful life of all four units at SJGS exceeded 30 years, and the 2013 RH SIP revision provides no information that would change that assumption. Nor does the SIP revision provide any information to suggest that PNM had motivations other than creating a more cost-effective BART-compliance scenario when volunteering to shut down Units 2 and 3.

Comment: A commenter stated that, while our proposal implied that there will be no capacity increase elsewhere or at the SJGS to replace the lost capacity from Units 2 and 3, the final rule should make this explicit to properly give weight to the benefits from their retirement.

Response: We disagree with this comment. As an initial matter, our proposal did not imply that the retirement of Units 2 and 3 could be undertaken without the possible need to address lost capacity. Most likely, the lost capacity will be replaced through some combination of conservation, efficiency, and new capacity. More importantly, however, the CAA does not require an analysis of the statutory factors to include the consideration of hypothetical emissions increases at other facilities or even at the same facility due to lost capacity. We also note that any emissions units that might be constructed at SJGS in the future would likely be subject to both BACT and any applicable new source performance standards. Moreover, all emission units would be subject to analysis under the regional haze requirements for reasonable progress in future planning periods.

Comment: One commenter asserted that our proposal failed to explain how New Mexico could permissibly reach a conclusion that directly opposes EPA's conclusion in the FIP. The commenter stated that the voluntary retirement of Units 2 and 3 did not change the fact that SCR remains cost-effective at the Units 1 and 4.

Response: We disagree that the 2013 RH SIP reached a conclusion that directly opposes the conclusion we made in promulgating the FIP. Under different factual circumstances, we determined that SCR for the four SJGS units had reasonable average cost-effectiveness values and would promote significant visibility improvements, thereby supporting the basis for the emission limits set forth in the FIP. As we stated in the proposal, the 2013 RH SIP revision contains a new, source-specific BART analysis that is based on different underlying facts than

those that were present when we evaluated our FIP. We were not presented with the retirement of Units 2 and 3 when we promulgated the FIP. With this information in hand, New Mexico permissibly conducted a new BART analysis using a facility-wide approach that allowed the full range of visibility, energy, and non-air quality environmental benefits associated with the shutdowns to be taken into account. While the average cost-effectiveness of SCR on Units 1 and 4 remains reasonable, New Mexico demonstrated that the incremental cost-effectiveness of the four-SCR scenario in our FIP over the State Alternative was high when compared against the additional visibility improvements from the former, while also considering the energy, and non-air quality environmental benefits associated with the State Alternative.

Comment: One commenter thought that the timeline for the installation of SNCR was too long because SNCR is a simpler technology to install than SCR.

Response: We agree that SNCR is a simpler technology to install than SCR and requires less time for installation. New Mexico determined, and we agree, that the compliance timeframe in the 2013 RH SIP revision is as expeditious as practicable, as required under 40 CFR 51.308(e)(1)(iv).

Comment: One commenter thought that the 0.05 lb/MMBtu rate used for the study of SCR as a BART control option was likely too high. The commenter suggested that many units, such as those in Dry Fork, WY and Morgantown, MD, are routinely achieving emission rates in the range of 0.02-0.04 lb/MMBtu. Reducing the studied emission limit for SCR to 0.04 lb/MMBtu would show the option to be even more cost-effective.

Response: We disagree that lower control rates needed to be evaluated for SCR. We evaluated the monthly emission data from these two facilities for the past several years (available at EPA's Air Market Program data website: www.epa.gov/ampd). All three units have monthly emission rates that sometimes exceed 0.04 lb/MMBtu. Indeed, the Morgantown units have months where the monthly emission rate is 0.05 lb/MMBtu or higher. In promulgating the FIP, we evaluated the performance of both new and retrofit SCRs and determined that 0.05 lb/MMBtu on a 30-boiler-operating-day average was the appropriate emission limit for SCR at the SJGS units. See 76 FR 491 and 76 FR 52388. New Mexico appropriately used this same rate in their cost and visibility analyses for the four-SCR scenario as part of its BART evaluation.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866 – Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This FIP withdrawal 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 FIP amendment under section 110 and part C of the Clean Air Act will not in-and-of itself create any new information collection burdens. Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

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.

This rule withdraws the FIP for PNM's San Juan Generating Station, which is not a small entity, and does not create any new requirements. After considering the economic impact of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This FIP withdrawal 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. This action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This FIP withdrawal action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action removes a Federal plan for PNM's San Juan Generating Station. Small governments are not impacted.

E. Executive Order 13132 – Federalism

This FIP withdrawal 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. The CAA establishes the scheme whereby states take the lead in developing SIPs including SIPs to attain the NAAQS and to meet other applicable CAA requirements including the Best Available Retrofit requirements in CAA section 169(b)(2)(A) and the Visibility Impairment requirements in CAA section 110(a)(2)(D)(i)(II). This action will not modify this relationship. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175 – Consultation and Coordination With Indian Tribal Governments

This FIP withdrawal action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is not addressing any Tribal Implementation Plans. This action is limited to the withdrawal of the New Mexico RH and IT FIP for PNM's San Juan Generating Station. Thus, Executive Order 13175 does not apply to this action. Consistent with EPA policy, EPA offered consultation to tribes regarding this rulemaking action.

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

EPA interprets Executive Order 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 executive order has the potential to influence the regulation. This action is not subject to EO 13045 because EPA in withdrawing the New Mexico RH and IT FIP for PNM's San Juan Generating Station, as authorized by the CAA, EPA considers visibility and not health or safety risks.

H. Executive Order 13211 – Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This FIP withdrawal action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is exempt from review 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 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. This FIP withdrawal action for PNM's San Juan Generating Station does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

This final rule 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).

K. 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 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).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide, and Visibility.

Dated: September 26, 2014.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

§ 52.1628 [Removed and Reserved]

2. Section 52.1628 is removed and reserved.