



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2015-0189; FRL-9973-30-Region 6]**

**Approval and Promulgation of Implementation Plans; Arkansas; Approval of Regional Haze State Implementation Plan Revision for NO<sub>x</sub> for Electric Generating Units in Arkansas**

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is finalizing an approval of a revision to the Arkansas State Implementation Plan (SIP) submitted by the State of Arkansas through the Arkansas Department of Environmental Quality (ADEQ) that addresses regional haze for the first planning period. ADEQ submitted this revision to address certain requirements of the Clean Air Act (CAA) and the EPA's regional haze rules for the protection of visibility. The EPA is taking final action to approve the State's SIP revision, which addresses nitrogen oxide (NO<sub>x</sub>) best available retrofit technology (BART) requirements for the Arkansas Electric Cooperative Corporation (AECC) Bailey Plant Unit 1; AECC McClellan Plant Unit 1; the American Electric Power/Southwestern Electric Power Company (AEP/SWEPCO) Flint Creek Plant Boiler No. 1; Entergy Arkansas, Inc. (Entergy) Lake Catherine Plant Unit 4; Entergy White Bluff Plant Units 1 and 2 and the Auxiliary Boiler. The SIP revision also addresses reasonable progress requirements for NO<sub>x</sub> for the Entergy Independence Plant Units 1 and 2. In conjunction with this final approval, we are finalizing in a separate rulemaking, which is also being published in this **Federal Register**, our

withdrawal of federal implementation plan (FIP) emission limits for NO<sub>x</sub> that would otherwise apply to these nine units.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket No. EPA-R06-OAR-2015-0189. All documents in the dockets are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, 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 <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Dayana Medina, 214-665-7241.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

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## **I. Background**

### **A. The Regional Haze Program**

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 (PM<sub>2.5</sub>) (e.g., sulfates, nitrates, organic carbon (OC), elemental carbon (EC), 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 (NH<sub>3</sub>) and volatile organic compounds (VOCs)). Fine particle precursors react in the atmosphere to form PM<sub>2.5</sub>, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that can be seen. PM<sub>2.5</sub> can also cause serious adverse health effects and mortality in humans; it also contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, “Interagency Monitoring of Protected Visual Environments” (IMPROVE), shows that visibility impairment caused by air pollution occurs virtually all of the time at most national parks and wilderness areas. In 1999, the average visual range<sup>1</sup> in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States was 100-150 kilometers, or about one-half to two-thirds of the visual range that would exist under estimated natural conditions.<sup>2</sup> In most of the eastern Class I areas of the United States, the

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

<sup>2</sup> 64 FR 35715 (July 1, 1999).

average visual range was less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. CAA programs have reduced emissions of some haze-causing pollution, lessening some visibility impairment and resulting in partially improved average visual ranges.<sup>3</sup>

CAA requirements to address the problem of visibility impairment continue to be implemented. 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, man-made impairment of visibility in 156 national parks and wilderness areas designated as mandatory Class I Federal areas.<sup>4</sup> Congress added section 169B to the CAA in 1990 to address regional haze issues, and the EPA promulgated regulations addressing regional haze in 1999. The Regional Haze Rule<sup>5</sup> revised the existing visibility regulations to add 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 our visibility protection regulations at 40 CFR 51.300–51.309. The requirement to submit a regional haze SIP applies to all 50 states, the District of

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<sup>3</sup> An interactive “story map” depicting efforts and recent progress by EPA and states to improve visibility at national parks and wilderness areas may be visited at: <http://arcg.is/29tAbS3>.

<sup>4</sup> Areas designated as mandatory Class I Federal areas consist of National Parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 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 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 area.”

<sup>5</sup> Here and elsewhere in this document, the term “Regional Haze Rule,” refers to the 1999 final rule (64 FR 35714), as amended in 2005 (70 FR 39156, July 6, 2005), 2006 (71 FR 60631, October 13, 2006), 2012 (77 FR 33656, June 7, 2012), and January 10, 2017 (82 FR 3078).

Columbia, and the Virgin Islands. States were required to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.<sup>6</sup>

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often under-controlled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources<sup>7</sup> built between 1962 and 1977 procure, install and operate BART controls. Larger “fossil-fuel fired steam electric plants” are one of these source categories. Under the Regional Haze Rule, states are directed to conduct BART determinations for “BART-eligible” sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. The evaluation of BART for electric generating units (EGUs) that are located at fossil-fuel fired power plants having a generating capacity in excess of 750 megawatts must follow the “Guidelines for BART Determinations Under the Regional Haze Rule” at appendix Y to 40 CFR part 51 (hereinafter referred to as the “BART Guidelines”). Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides for greater progress towards improving visibility than BART.

## **B. Our Previous Actions**

Arkansas submitted a SIP revision on September 9, 2008, to address the requirements of the first regional haze implementation period. On August 3, 2010, Arkansas submitted a SIP

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<sup>6</sup> See 40 CFR 51.308(b). EPA's regional haze regulations require subsequent updates to the regional haze SIPs. 40 CFR 51.308(g)-(i).

<sup>7</sup> See 42 U.S.C. 7491(g)(7) (listing the set of “major stationary sources” potentially subject-to-BART).

revision with non-substantive revisions to the Arkansas Pollution Control and Ecology Commission (APCEC) Regulation 19, Chapter 15; this Chapter identified the BART-eligible and subject-to-BART sources in Arkansas and established BART emission limits for subject-to-BART sources. On September 27, 2011, the State submitted supplemental information to address the regional haze requirements. We are hereafter referring to these regional haze submittals collectively as the “2008 Arkansas Regional Haze SIP.” On March 12, 2012, we partially approved and partially disapproved the 2008 Arkansas Regional Haze SIP.<sup>8</sup> On September 27, 2016, we published a FIP addressing the disapproved portions of the 2008 Arkansas Regional Haze SIP (the Arkansas Regional Haze FIP).<sup>9</sup> Among other things, the FIP established NO<sub>x</sub> emission limits under the BART requirements for Bailey Unit 1; McClellan Unit 1; Flint Creek Boiler No. 1; Lake Catherine Unit 4; and White Bluff Units 1 and 2 and the Auxiliary Boiler. The FIP also established NO<sub>x</sub> emission limits under the reasonable progress requirements for Independence Units 1 and 2.

Following the issuance of the Arkansas Regional Haze FIP, the State of Arkansas and several industry parties filed petitions for reconsideration and an administrative stay of the final rule.<sup>10</sup> We announced in April 2017 our decision to convene a proceeding to reconsider several elements of the FIP, including the appropriate compliance dates for the NO<sub>x</sub> emission limits for Flint Creek Unit 1, White Bluff Units 1 and 2, and Independence Units 1 and 2.<sup>11</sup> EPA also published a document in the Federal Register on April 25, 2017, administratively staying the

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<sup>8</sup> 77 FR 14604.

<sup>9</sup> 81 FR 66332; *see also* 81 FR 68319 (October 4, 2016) (correction).

<sup>10</sup> See the docket associated with this proposed rulemaking for a copy of the petitions for reconsideration and administrative stay submitted by the State of Arkansas; Entergy Arkansas Inc., Entergy Mississippi Inc., and Entergy Power LLC (collectively “Entergy”); AECC; and the Energy and Environmental Alliance of Arkansas (EEAA).

<sup>11</sup> Letter from E. Scott Pruitt, Administrator, EPA, to Nicholas Jacob Bronni and Jamie Leigh Ewing, Arkansas Attorney General’s Office (April 14, 2017). A copy of this letter is included in the docket, <https://www.regulations.gov/document?D=EPA-R06-OAR-2015-0189-0240>.

effectiveness of the 18-month NO<sub>x</sub> compliance dates in the FIP for these units for a period of 90 days.<sup>12</sup> On July 13, 2017, the EPA published a proposed rule to extend the NO<sub>x</sub> compliance dates for Flint Creek Unit 1, White Bluff Units 1 and 2, and Independence Units 1 and 2, by 21 months to January 27, 2020.<sup>13,14</sup>

On July 12, 2017, Arkansas submitted a proposed SIP revision with a request for parallel processing, addressing the NO<sub>x</sub> requirements for Bailey Unit 1, McClellan Unit 1, Flint Creek Boiler No. 1, Lake Catherine Unit 4, White Bluff Units 1 and 2 and the Auxiliary Boiler, and Independence Units 1 and 2 (Arkansas Regional Haze NO<sub>x</sub> SIP revision or Arkansas NO<sub>x</sub> SIP revision). In our March 12, 2012 final action on the 2008 Arkansas Regional Haze SIP, we disapproved the State's source-specific NO<sub>x</sub> BART determinations for Bailey Unit 1; McClellan Unit 1; Flint Creek Boiler No. 1; Lake Catherine Unit 4; White Bluff Units 1 and 2 and its auxiliary boiler.<sup>15</sup> In that same action, we also made the determination that the State did not satisfy the statutory and regulatory requirements for the reasonable progress analysis. We promulgated a FIP on September 27, 2016, that established source-specific NO<sub>x</sub> BART emission limits for these seven EGUs and NO<sub>x</sub> emission limits under reasonable progress for Independence Units 1 and 2 to address the disapproved portions of the 2008 Arkansas Regional Haze SIP submittal.

Arkansas' proposed July 2017 Regional Haze NO<sub>x</sub> SIP revision addressed the NO<sub>x</sub> BART requirements for Arkansas' EGUs by relying on participation in the Cross State Air Pollution Rule (CSAPR) ozone season NO<sub>x</sub> trading program as an alternative to BART. The

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<sup>12</sup> 82 FR 18994.

<sup>13</sup> 82 FR 32284.

<sup>14</sup> EPA has not taken final action on the July 13, 2017 proposed rule. This final action approving the Arkansas Regional Haze NO<sub>x</sub> SIP revision together with the separate final action that EPA is taking to withdraw the source-specific NO<sub>x</sub> emission limits for the nine EGUs in the Arkansas Regional Haze FIP, make it unnecessary to finalize our July 13, 2017 proposed rule to revise the NO<sub>x</sub> compliance dates in the Arkansas Regional Haze FIP.

<sup>15</sup> 77 FR 14604.

July 2017 Regional Haze NO<sub>x</sub> SIP revision proposal also made the determination that no additional NO<sub>x</sub> emission controls for Arkansas sources, beyond participation in CSAPR's ozone season NO<sub>x</sub> trading program, are required for ensuring reasonable progress in Arkansas. As noted above, the July 2017 Regional Haze SIP revision addresses NO<sub>x</sub> requirements for the same EGUs for which we established source-specific NO<sub>x</sub> emission limits in our September 27, 2016 FIP. In a document published in the Federal Register on September 11, 2017, we proposed to approve the Arkansas Regional Haze NO<sub>x</sub> SIP revision.<sup>16</sup> On October 31, 2017, we received ADEQ's final NO<sub>x</sub> SIP revision addressing BART and reasonable progress requirements for NO<sub>x</sub> for EGUs in Arkansas for the first implementation period. The final Arkansas Regional Haze NO<sub>x</sub> SIP revision we received on October 31, 2017, did not contain significant changes from the state's proposed SIP revision. Therefore, it is appropriate for us to take final action, as proposed, on the final SIP revision.

### **C. CSAPR as an Alternative to Source-Specific NO<sub>x</sub> BART**

In 2005, the EPA published the Clean Air Interstate Rule (CAIR), which required 27 states and the District of Columbia to reduce emissions of SO<sub>2</sub> and NO<sub>x</sub> from affected electric generating units (EGUs) that significantly contribute to or interfere with maintenance of the 1997 national ambient air quality standards (NAAQS) for fine particulates and/or 8-hour ozone in any downwind state.<sup>17</sup> EPA demonstrated that CAIR would achieve greater reasonable progress toward the national visibility goal than would BART; therefore, states could rely on CAIR as an alternative to BART for SO<sub>2</sub> and NO<sub>x</sub> at EGUs.<sup>18</sup> Although Arkansas was subject to certain NO<sub>x</sub> requirements of CAIR, including the state-wide ozone season NO<sub>x</sub> budget but not the annual

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<sup>16</sup> 82 FR 42627.

<sup>17</sup> 70 FR 25161 (May 12, 2005).

<sup>18</sup> 70 FR 39104, 39139 (July 6, 2005).

NO<sub>x</sub> budget, and although this would have been sufficient for Arkansas to rely on CAIR to satisfy NO<sub>x</sub> BART, it elected not to rely on CAIR in its 2008 Regional Haze SIP to satisfy the NO<sub>x</sub> BART requirement for its EGUs.

On July 11, 2008, the D.C. Circuit found CAIR was fatally flawed and on December 23, 2008, the Court remanded CAIR to EPA without vacatur to “preserve the environmental benefits provided by CAIR”.<sup>19</sup> In 2011, acting on the D.C. Circuit’s remand, we promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and issued FIPs to implement the rule in CSAPR-subject states.<sup>20</sup> Arkansas EGUs are covered under CSAPR for ozone season NO<sub>x</sub>.<sup>21</sup>

In 2012, we issued a limited disapproval of several states’ regional haze SIPs because of reliance on CAIR as an alternative to EGU BART for SO<sub>2</sub> and/or NO<sub>x</sub>.<sup>22</sup> We also determined that CSAPR would provide for greater reasonable progress than BART and amended the Regional Haze Rule to allow for CSAPR participation as an alternative to source-specific SO<sub>2</sub> and/or NO<sub>x</sub> BART for EGUs, on a pollutant-specific basis.<sup>23</sup> As Arkansas did not rely on CAIR to satisfy the NO<sub>x</sub> BART requirements in the 2008 Regional Haze SIP, Arkansas was not included in the EPA’s limited disapproval of regional haze SIPs that relied on CAIR to satisfy certain regional haze requirements.<sup>24</sup> As noted above, in the 2012 rulemaking in which we promulgated those limited disapprovals, the EPA also promulgated FIPs to replace reliance on CAIR with reliance on CSAPR in many of those regional haze SIPs; however, Arkansas was likewise not included in that FIP action.

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<sup>19</sup> *North Carolina v. EPA*, 531 F.3d 896, 901 (D.C. Cir. 2008), *modified*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

<sup>20</sup> 76 FR 48207 (August 8, 2011).

<sup>21</sup> 76 FR 82219 (December 30, 2011).

<sup>22</sup> The limited disapproval triggered the EPA’s obligation to issue a FIP or approve a SIP revision to correct the relevant deficiencies within 2 years of the final limited disapproval action. CAA section 110(c)(1); 77 FR 33642, at 33654 (June 7, 2012).

<sup>23</sup> See 40 CFR 51.308(e)(4).

<sup>24</sup> See 77 FR 33642, at 33654.

CSAPR has been subject to extensive litigation, and on July 28, 2015, the D.C. Circuit issued a decision generally upholding CSAPR but remanding without vacating the CSAPR emissions budgets for a number of states.<sup>25</sup> On October 26, 2016, we finalized an update to CSAPR that addresses the 1997 ozone NAAQS portion of the remand as well as the CAA requirements addressing interstate transport for the 2008 ozone NAAQS.<sup>26</sup> Additionally, three states, Alabama, Georgia, and South Carolina, have adopted or committed to adopt SIPs to continue their participation in the CSAPR program, including adoption on a voluntary basis of state SO<sub>2</sub> emission budgets equal to those state's remanded SO<sub>2</sub> emission budgets. On November 10, 2016, we proposed a rule intended to address the remainder of the court's remand as it relates to Texas.<sup>27</sup> This separate proposed rule included an assessment of the impacts of the set of actions that the EPA had taken or expected to take in response to the D.C. Circuit's remand on our 2012 demonstration that participation in CSAPR provides for greater reasonable progress than BART. Based on that assessment, the EPA proposed that states may continue to rely on CSAPR as an alternative to BART on a pollutant-specific basis. On September 29, 2017, we finalized our proposed finding that the EPA's 2012 analytical demonstration remains valid and that participation in CSAPR, as it now exists, meets the Regional Haze Rule's criteria for an alternative to BART.<sup>28</sup> In the October 2017 Arkansas Regional Haze NO<sub>x</sub> SIP revision, the state relies on CSAPR as an alternative to BART for control of NO<sub>x</sub> from EGUs.

## II. Summary of Final Action

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<sup>25</sup> Arkansas' ozone season NO<sub>x</sub> budgets were not included in the remand. *EME Homer City Generation v. EPA*, 795 F.3d 118, 138 (D.C. Cir. 2015).

<sup>26</sup> 81 FR74504 (October 26, 2016).

<sup>27</sup> 81 FR 78954 (November 10, 2016).

<sup>28</sup> 82 FR 45481 (September 29, 2017).

This action finalizes our proposed approval of the Arkansas Regional Haze NO<sub>x</sub> SIP revision, which relies on EPA's determination that CSAPR provides for greater reasonable progress than BART to address the NO<sub>x</sub> BART requirements for Arkansas EGUs. Consistent with 40 CFR 51.308(e)(4), Arkansas makes the determination that since the Arkansas EGUs are currently subject to the CSAPR requirements for ozone-season NO<sub>x</sub>, the State need not have source specific requirements for subject-to-BART EGUs to install, operate, and maintain BART for NO<sub>x</sub>. We find that it is appropriate for Arkansas to rely on participation in the CSAPR ozone season NO<sub>x</sub> trading program to satisfy the NO<sub>x</sub> BART requirements for Arkansas EGUs. EPA's 2012 determination and our September 29, 2017 final rulemaking make the finding that the EPA's 2012 analytical demonstration remains valid and that participation in CSAPR, as it now exists, meets the Regional Haze Rule's criteria for an alternative to BART.<sup>29</sup> Arkansas' reliance on CSAPR addresses the NO<sub>x</sub> BART requirements for Bailey Unit 1; McClellan Unit 1; Flint Creek Boiler No. 1; Lake Catherine Unit 4; White Bluff Units 1 and 2 and the Auxiliary Boiler.

We also find that Arkansas reasonably determined that additional NO<sub>x</sub> control measures are not needed to ensure reasonable progress for the first implementation period. Given the level of visibility impairment due to NO<sub>x</sub> emissions from Arkansas point sources at the state's two Class I areas, Caney Creek and Upper Buffalo, on the 20% worst days, additional NO<sub>x</sub> controls for Arkansas point sources are not anticipated to yield meaningful visibility improvements at Arkansas Class I areas on the 20% worst days.<sup>30</sup> In light of this, and considering that Arkansas

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<sup>29</sup> 82 FR 45481 (September 29, 2017).

<sup>30</sup> Arkansas also recognized that sources in Arkansas impact the two Class I areas in Missouri: Hercules Glade Wilderness Area and Mingo Wilderness Area. Arkansas provided the Missouri Department of Natural Resources with an opportunity for consultation on the proposed Arkansas NO<sub>x</sub> SIP revision, including an opportunity to discuss Missouri's assessment of the impact of the proposed SIP revision on reasonable progress at Missouri Class I areas. The Missouri Department of Natural Resources did not have comments on the proposed SIP revision and did not pursue consultation. Additionally, Arkansas looked at the most recent five-year rolling average of observed visibility impairment on the 20% haziest days for Missouri's Class I areas and concluded that the visibility progress

EGUs are participating in CSAPR for ozone season NO<sub>x</sub>, we are finalizing our determination that Arkansas' decision to screen out Arkansas point sources from further evaluation of additional NO<sub>x</sub> controls is reasonable and we are finalizing our approval of Arkansas' determination that no additional NO<sub>x</sub> controls, beyond Arkansas EGU participation in CSAPR for ozone season NO<sub>x</sub>, are necessary to satisfy the reasonable progress requirements for NO<sub>x</sub> in Arkansas for the first implementation period.

We are finalizing our approval of the Arkansas Regional Haze NO<sub>x</sub> SIP revision as we have found it to meet the applicable provisions of the Act and EPA regulations and it is consistent with EPA guidance. We received comments from three commenters on our proposed approval. Our response to the substantive comments we received are summarized in Section III. We have fully considered all significant comments on our proposed action on the SIP revision submittal, and have concluded that no changes to our final determination are warranted.

We are approving the October 2017 Arkansas Regional Haze NO<sub>x</sub> SIP revision submitted by ADEQ as we have determined that it meets the regional haze SIP requirements, including the reasonable progress requirements in §51.308(d) and the BART requirements in §51.308(e). In conjunction with this final approval, we are finalizing in a separate rulemaking, which is also being published in this Federal Register, our withdrawal of FIP emission limits for NO<sub>x</sub> that would otherwise apply to the nine affected units.

### **III. Response to Comments**

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observed at the IMPROVE monitors indicates that sources in Arkansas are not interfering with the achievement of Missouri's 2018 RPGs for Hercules Glades and Mingo. Taking these things into consideration, Arkansas made the determination that no additional NO<sub>x</sub> reductions from Arkansas sources are required to improve visibility in Missouri Class I areas for the first implementation period.

The public comments received on our proposed rule are included in the publicly posted docket associated with this action at *www.regulations.gov*. We reviewed all public comments that we received on the proposed action. Below, we provide a summary of certain comments and our responses. The comments and our responses thereto are contained in a separate document titled the Arkansas Regional Haze NO<sub>x</sub> SIP Revision Response to Comments.

#### **A. Reliance on CSAPR-Better-than-BART Rule**

**Comment:** ADEQ proposes to rely on ozone-season NO<sub>x</sub> reductions under the updated CSAPR in lieu of the source-specific BART emission limits that EPA finalized as part of its 2016 regional haze FIP. ADEQ relies on a “back-of-the-envelope” calculation of anticipated emission reductions, and asserts that EPA’s updated 2018 Arkansas ozone season NO<sub>x</sub> emission budgets under the CSAPR update achieve a greater reduction in NO<sub>x</sub> emissions than do implementation of NO<sub>x</sub> BART controls included in the Arkansas Regional Haze FIP. Without any further analysis, ADEQ suggests that compliance with the 2018 CSAPR ozone season allocations for Arkansas EGUs satisfies the BART requirements of the Regional Haze Rule.

**Response:** This comment is in relation to ADEQ’s comparison of anticipated NO<sub>x</sub> emissions reductions based on the CSAPR emission budgets versus the anticipated NO<sub>x</sub> emissions reductions from the Arkansas Regional Haze FIP. We did not base our proposed approval of the Arkansas NO<sub>x</sub> SIP revision on the state’s comparison of the anticipated NO<sub>x</sub> reductions in Arkansas from CSAPR against those anticipated from the FIP. Furthermore, in response to comments that the state received during its state rulemaking process, ADEQ proceeded to remove from its final SIP revision the comparison of anticipated NO<sub>x</sub> emissions reductions under the FIP versus CSAPR because such information is not necessary for EPA

approval of the SIP.<sup>31</sup> With regard to the comment that ADEQ did not adequately support its determination that compliance with the 2018 CSAPR ozone season allocations for Arkansas EGUs satisfies the BART requirements, we disagree that ADEQ was required to undertake a state-specific analysis of whether reliance on CSAPR provides for greater reasonable progress than BART; as allowed under 40 CFR 51.308(e)(4), Arkansas is relying on EPA's determination that CSAPR provides for greater reasonable progress than BART to address the NO<sub>x</sub> BART requirements for its EGUs. Arkansas' EGUs are currently subject to the CSAPR requirements for ozone-season NO<sub>x</sub>, the State need not require subject-to-BART EGUs to install, operate, and maintain BART for NO<sub>x</sub>. As explained above, although the D.C. Circuit remanded the CSAPR emissions budgets of certain states in 2015, we recently reaffirmed our determination that participation in CSAPR, as it now exists, continues to meet the Regional Haze Rule's criteria for an alternative to BART.<sup>32</sup>

**Comment:** Arkansas' proposal unlawfully exempts sources from installing BART controls without going through the exemption process Congress prescribed. The visibility protection provisions of the Clean Air Act include a "requirement" that certain sources "install, and operate" BART controls. Congress specified the standard by which sources could be exempted from the BART requirements, which is that the source is not "reasonably anticipated to cause or contribute to a significant impairment of visibility" in any Class I area. Appropriate federal land managers must concur with any proposed exemption. Neither EPA nor Arkansas has demonstrated that the Arkansas EGUs subject to BART meet the standards for an exemption.

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<sup>31</sup> See final Arkansas NO<sub>x</sub> SIP revision, Tab E (Public Comment Period Documentation, Responsive Summary for State Implementation Plan Revision, p. 20).

<sup>32</sup> 82 FR 45481 (September 29, 2017).

Nor has EPA or the state obtained the concurrence of federal land managers. Therefore, Arkansas must require source-specific BART for each power plant subject to BART.

**Response:** To the extent the comment is directed to prior final agency actions allowing states to rely on alternatives to BART generally or on CSAPR specifically to meet the BART requirements, this comment falls outside of the scope of our action here. Objections that the use of BART alternatives does not comply with 42 U.S.C. 7491(b)(2)(A ) do not properly pertain to this action, but instead to our past regulatory actions that provided for BART alternatives.<sup>33</sup> We do note that the Arkansas SIP does not exempt the EGUs from BART but rather relies on EPA’s determination that states may rely on CSAPR as an alternative means of meeting the BART requirements.

**Comment:** Even if Arkansas could meet a BART statutory exemption test, the state cannot rely on CSAPR because of flaws in the rule that purport to show that CSAPR makes more reasonable progress than BART (the “Better than BART” rule). EPA’s regulations purport to allow the use of an alternative program in lieu of source-specific BART only if the alternative makes “greater reasonable progress” than would BART. To demonstrate greater reasonable progress, a state or EPA must show that the alternative program does not cause visibility to decline in any Class I area and results in an overall improvement in visibility relative to BART at all affected Class I areas. Here, EPA claims that its 2012 “Better than BART” rule demonstrated that CSAPR achieves greater reasonable progress than BART.

EPA compared CSAPR to BART in the Better than BART rule by using CSAPR allocations that are more stringent than now required as well as by using presumptive BART

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<sup>33</sup> See the June 7, 2012 final rulemaking where we made the determination that CSAPR provides for greater reasonable progress than BART (77 FR 33642). See also our September 29, 2017 final rulemaking where we made the finding that the EPA’s 2012 analytical demonstration remains valid and that participation in CSAPR, as it now exists, meets the Regional Haze Rule’s criteria for an alternative to BART (82 FR 45481).

limits that are less stringent than required under the statute. These assumptions tilted the scales in favor of CSAPR. It would be arbitrary and capricious for EPA to rely on such an inaccurate, faulty comparison to conclude that CSAPR will achieve greater reasonable progress than will BART. Even under EPA's skewed comparison, CSAPR achieves barely more visibility improvement than BART at the Breton and Caney Creek National Wilderness Areas. If EPA had modeled accurate BART limits and up-to-date CSAPR allocations, then EPA would likely find that CSAPR would lead to less visibility improvement than BART.

EPA cannot lawfully rely on the Better than BART rule because the rule is based on a version of CSAPR that no longer exists. Accordingly, any conclusion that EPA made in the 2012 Better than BART rule regarding whether CSAPR achieves greater reasonable progress than BART is no longer valid. Since 2012, EPA has significantly changed the allocations and the compliance deadlines for CSAPR. Of particular relevance here, after 2012, EPA increased the total ozone season CSAPR allocations for every covered EGU in Arkansas. EPA also extended the compliance deadlines by three years, such that the phase 1 emissions budgets take effect in 2015-2016 and the phase 2 emissions budgets take effect in 2017 and beyond.

In addition to EPA's increased emissions budgets and extended compliance timeline, the D.C. Circuit's decision in *EME Homer City Generation v. EPA*, 795 F.3d 118, 130-32 (D.C. Cir. 2015), which invalidated the SO<sub>2</sub> or NO<sub>x</sub> emission budgets for thirteen states, has fundamentally undermined the rationale underlying EPA's Better than BART rule. Specifically, the Court invalidated the 2014 SO<sub>2</sub> emission budgets for Alabama, Georgia, South Carolina, and Texas, and the 2014 NO<sub>x</sub> emission budgets for Florida, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, and West Virginia. As explained in our initial brief in the still-pending challenge to the CSAPR Better than BART rule, the effect

of *Homer City* is to pull the rug out from under EPA's BART exemption rule. EPA's finding that CSAPR would produce better visibility improvement than BART was premised on the existence of all the state-specific emission budgets adopted in the Transport Rule. Because the D.C. Circuit has now invalidated many of those budgets, the BART exemption rule is left without the factual basis on which it relied.

**Response:** As we had proposed, our finalized determination that CSAPR participation will resolve the NO<sub>x</sub> BART requirements for Arkansas EGUs is based on a separately proposed and recently finalized action that affirms that participation in CSAPR, as it now exists, continues to meet the Regional Haze Rule's criteria for an alternative to BART.<sup>34</sup> This comment is directed to the separately proposed action that was finalized on September 29, 2017, and therefore, falls outside of the scope of our action here.

**Comment:** Arkansas's reliance on CSAPR as an alternative to BART is unlawful because the emissions reductions achieved by CSAPR in Arkansas are limited to five months of the year—the ozone season. Under the Regional Haze Rule, BART represents a year-round limit on emissions. Given that CSAPR does not limit annual NO<sub>x</sub> emissions from Arkansas sources, but instead only applies to Arkansas sources for five months out of the year, CSAPR cannot satisfy the Regional Haze Rule's requirement that sources meet the “best system of continuous emission reduction” for NO<sub>x</sub>. In fact, as noted in EPA's Technical Support Document for the proposed disapproval of Arkansas's 2008 SIP, the adverse impacts of Arkansas NO<sub>x</sub> emissions on visibility “tend to be a large component of visibility impairment during the winter months”—*i.e.*, outside of the ozone season. Thus, NO<sub>x</sub> emissions reductions that are effective only during

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<sup>34</sup> 82 FR 45481 (September 29, 2017).

the ozone season will not address the visibility impact due to wintertime ammonium nitrate at Breton Island or other Class I areas in neighboring states.

Even within the five-month ozone season, CSAPR allows for temporal variability such that a facility could emit at high levels within a shorter time period, creating higher than anticipated visibility impacts. Because of the high degree of variability and flexibility, power plants may exercise options that would lead to little or no emission reductions. For example, a facility in Arkansas might purchase emission credits from a source beyond the air shed of the Class I area the Arkansas source impairs. Because CSAPR requirements only pertain to the Arkansas source for a fraction of the year, that source may be even more incentivized to purchase emission credits from elsewhere than a source in a fully covered CSAPR state. Thus, without knowing which Arkansas EGUs will reduce pollutants by what amounts under CSAPR, or when they will do so, and because these emissions reductions are applicable for less than half the year, Arkansas simply cannot know the impact of CSAPR upon Breton and other affected Class I areas.

For these reasons, reliance on CSAPR to satisfy the NO<sub>x</sub> BART requirements is unlawful. EPA should disapprove Arkansas' reliance on CSAPR to satisfy the NO<sub>x</sub> requirements.

**Response:** These comments fall outside the scope of this rulemaking. In 2012, when we finalized our determination that CSAPR provides for greater reasonable progress than BART, we considered comments that the imposition of BART would require year-round operation of NO<sub>x</sub> controls but that under CSAPR there would be no assurance that controls would operate outside of the ozone season. The basis for our decision to allow Arkansas and other states covered by

CSAPR for ozone season only to rely on participation in that program to satisfy NO<sub>x</sub> BART is explained in that rulemaking.<sup>35</sup>

**Comment:** Arkansas purports to satisfy the regulatory requirements for a BART alternative by relying on ozone-season budgets for NO<sub>x</sub> that no longer exist. To rely on CSAPR as an alternative to BART, Arkansas must demonstrate that the version of CSAPR that is now in effect, and will be in effect at the time of the final rule, makes greater reasonable progress than BART. Having failed to make that demonstration, Arkansas has not met its burden to show that CSAPR will achieve greater reasonable progress than source-specific BART. More troubling, Arkansas' reliance on the CSAPR "Better than BART" rule fails to account for, or even mention, the possibility that CSAPR or the "Better than BART" rule will not exist in any form when the SIP is finalized.

**Response:** As we had proposed, our finalized determination that CSAPR participation will resolve NO<sub>x</sub> BART requirements for Arkansas EGUs is based on a separately proposed and finalized action taken in 2012. On September 29, 2017, we affirmed our proposed finding that the EPA's 2012 analytical demonstration remains valid and that participation in CSAPR, as it now exists, meets the Regional Haze Rule's criteria for an alternative to BART.<sup>36</sup> This comment falls outside of the scope of our action here.

**Comment:** When evaluating a state's BART determination, the EPA looks at existing requirements and cannot rely on potential future actions in its decision to approve or disapprove a state SIP. As EPA recognizes in the proposed approval, the agency cannot finalize Arkansas' proposed SIP until EPA finalizes its finding that CSAPR continues to be better than BART as an alternative to source-specific EGU BART for NO<sub>x</sub>. Although EPA, on September 29, 2017,

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<sup>35</sup> 77 FR at 33650.

<sup>36</sup> 82 FR 45481 (September 29, 2017).

finalized a rule purporting to conclude that ozone-season NO<sub>x</sub> limitations under CSAPR continue to be “better than BART” for eligible EGUs in Arkansas, EPA failed to include any of the documentation or analyses supporting that finding in this docket. As such, EPA cannot approve Arkansas’s SIP proposal unless and until those analyses are included in the docket and the public has a meaningful opportunity to comment on those materials.

**Response:** We included the notice of proposed rulemaking addressing whether CSAPR continues to be better than BART following changes to the budgets of certain states in our docket for this action because of its relevance to Arkansas’ proposed SIP revision.<sup>37</sup> As explained in our proposed approval of Arkansas’ SIP revision, EPA would be able to approve regional haze SIP submissions that rely on participation in CSAPR as an alternative to BART only if it were to finalize its proposed rule or to otherwise determine that participation in CSAPR remains a viable BART alternative.<sup>38</sup> We accordingly made clear that a final determination that CSAPR participation will resolve the NO<sub>x</sub> BART requirements for Arkansas’ EGUs is based on a separately proposed and finalized action. The supporting materials and analyses underlying that action are contained in the docket for that action, and the public has had a meaningful opportunity to comment on that determination.

**Comment:** EPA should approve the Arkansas Regional Haze NO<sub>x</sub> SIP revision because it satisfies the criteria of the Regional Haze program. The states, not EPA, play the lead role in designing and implementing [the] regional haze programs. EPA may disapprove a SIP only if it does not satisfy the minimum criteria of Section 110 of the Clean Air Act. Accordingly, EPA has no authority to question the wisdom of a State’s choices of emission limitations if they are part

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<sup>37</sup> See the document in the docket titled “AR020.0250 CSAPR Better than BART Proposed Rulemaking, dated November 10, 2016.”

<sup>38</sup> 82 FR at 42629.

of a plan which satisfies the standards of Section 110(a)(2), and has no authority to disapprove of a SIP “simply on a preference for a particular control measure. The SIP revision meets the requirements of the Regional Haze Program and must be approved. ADEQ’s determination that compliance with the CSAPR ozone season NO<sub>x</sub> trading program requirements satisfies NO<sub>x</sub> BART and any reasonable progress obligations for the state’s EGUs is consistent with the Regional Haze Rule, is appropriate considering the minimal role that NO<sub>x</sub> emissions play in visibility impairment in Arkansas’ Class I areas, and would eliminate the unnecessary and duplicative requirements currently imposed by the Arkansas Regional Haze FIP.

**Response:** We appreciate the commenter’s support of our proposed approval of the Arkansas Regional Haze NO<sub>x</sub> SIP revision. As we had proposed, we are finalizing our approval of the Arkansas Regional Haze NO<sub>x</sub> SIP revision.

#### **B. Reasonable Progress**

**Comment:** The State attempts to justify the elimination of reasonable progress controls on Independence by claiming that the CSAPR allocations for NO<sub>x</sub> will result in greater reductions in NO<sub>x</sub> emissions than the FIP would. The State’s rationale has no basis in law or in fact. To begin, there is no statutory or regulatory provision which allows states to rely on CSAPR in lieu of conducting a four-factor analysis of reasonable progress. While EPA has issued a rule that purports to allow states to rely on CSAPR in lieu of imposing source-specific controls on BART sources, EPA has not issued a comparable rule for reasonable progress.

Moreover, the State’s comparison of NO<sub>x</sub> reductions under CSAPR versus the FIP is flawed. The State compares CSAPR allocations to binding reductions which must occur under the FIP, based on legally enforceable emissions limits. This compares apples to oranges. As the name suggest, CSAPR allocations are not emissions limits, they are initial entitlements to emit

certain amounts of pollution. Sources can emit more than their initial allocations, because CSAPR allows both intra- and inter-state trading of allowances. Thus, it is highly misleading to treat CSAPR allocations as binding emission limits which can be compared directly to the emission limits and reductions under the Arkansas Regional Haze FIP.

ADEQ further claims in its SIP that it “anticipates that some EGUs will choose to install combustion controls to comply with CSAPR that would reduce emissions year-round, not just in the ozone season.” ADEQ provides no evidence for this assumption. More importantly, ADEQ wrongly conflates installation of controls with operation and optimized operation of controls. Even if it were true that some EGUs will install controls to comply with CSAPR, ADEQ provides no reason to assume that EGUs will operate those controls when they are not legally required to do so. ADEQ has advanced no basis for assuming that Arkansas EGUs will spend additional money to run NO<sub>x</sub> controls or optimize them to reduce NO<sub>x</sub> when they are not required to do so, *i.e.*, outside of the CSAPR ozone season. Thus, there is no record basis for assuming that CSAPR will reduce NO<sub>x</sub> emissions in Arkansas outside of the ozone season.

**Response:** We disagree with the commenter that Arkansas is relying on CSAPR in lieu of conducting an appropriate reasonable progress analysis. In assessing the need for additional NO<sub>x</sub> controls to address reasonable progress, Arkansas focused its reasonable progress assessment on the Central Regional Air Planning (CENRAP)<sup>39</sup> Comprehensive Air Quality Model with extensions (CAMx) source apportionment modeling,<sup>40</sup> and observed that a small portion of total light extinction is due to nitrate (NO<sub>3</sub>) from Arkansas sources and that this

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<sup>39</sup> In developing their Regional Haze SIP and RPGs, Arkansas and potentially impacted States collaborated through CENRAP. Each State developed its Regional Haze Plans and RPGs based on the CENRAP modeling. The CENRAP modeling was based in part on the emissions reductions each state intended to achieve by 2018.

<sup>40</sup> CENRAP utilized CAMx with its Particulate Source Apportionment Technology (PSAT) tool to provide estimated contributions to visibility impairment at Class I areas by source region (e.g., states) and major source category for both the baseline and future case (*i.e.*, 2018) visibility modeling.

portion is driven by on-road sources and not point sources. Arkansas notes that the source apportionment data show that  $\text{NO}_3$  from Arkansas point sources contributes less than 0.5% of the total light extinction at Caney Creek and Upper Buffalo on the 20% worst days in 2002, and that, for the first implementation period,  $\text{NO}_x$  is not a key pollutant contributing to visibility impairment at Arkansas' Class I areas on those days. Based on the above observations, Arkansas reached the conclusion that, for the first implementation period, additional  $\text{NO}_x$  controls for Arkansas point sources are not anticipated to yield meaningful visibility improvements at Arkansas Class I areas on the 20% worst days in view of the amount of visibility impairment attributed to these sources. Given the level of visibility impairment due to  $\text{NO}_x$  from Arkansas point sources at Caney Creek and Upper Buffalo on the 20% worst days and considering that Arkansas EGUs are participating in CSAPR for ozone season  $\text{NO}_x$ , Arkansas decided to screen out Arkansas point sources from further evaluation of additional  $\text{NO}_x$  controls, thereby not evaluating the four reasonable progress factors for point sources with respect to  $\text{NO}_x$  in the first implementation period.

With regard to the comment that “the State’s comparison of  $\text{NO}_x$  reductions under CSAPR versus the FIP is flawed,” we note that we did not base our proposed approval of the Arkansas  $\text{NO}_x$  SIP revision on the state’s comparison of these  $\text{NO}_x$  reductions. In its draft SIP revision, ADEQ compared anticipated  $\text{NO}_x$  emission reductions under CSAPR as compared to the source-specific BART determinations required by EPA’s FIP in assessing the need for additional reductions in  $\text{NO}_x$  to ensure reasonable progress. However, in its final SIP, ADEQ did not include this information as part of its rationale. We note that our proposed approval of Arkansas’ SIP revision did not rely on this comparison of emissions. As a result, the adequacy of ADEQ’s assessment is irrelevant to their final action or to our review of the final SIP. The

commenter's statements questioning ADEQ's assumptions that Arkansas EGUs will install and operate NO<sub>x</sub> combustion controls to comply with CSAPR for ozone-season NO<sub>x</sub> and operate those controls year-round appear to be in the context of the commenter's contention that ADEQ's comparison of NO<sub>x</sub> reductions under CSARP versus the Arkansas FIP is flawed. As noted above, the adequacy of ADEQ's comparison of NO<sub>x</sub> emissions reductions in the proposed SIP revision is irrelevant to their final action or to our review of the final SIP.

**Comment:** The State failed to consider any of the four statutory factors for reasonable progress and the reasonable progress analysis is therefore unlawful and not approvable. Arkansas recognizes that "the RHR requires states to consider four factors: (1) cost of compliance, (2) the time necessary for compliance, (3) the energy and non-air quality environmental impacts of compliance, and (4) the remaining useful life of potentially affected sources," but then the State proceeds to ignore all four reasonable progress factors for point sources in its reasonable progress analysis for NO<sub>x</sub>. The Clean Air Act provides that in determining reasonable progress there shall be taken into consideration the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements. The Act contains no exception to this requirement. The SIP fails to consider these four statutory factors, and therefore violates the Clean Air Act. In particular, for NO<sub>x</sub> emissions, the SIP contains no analysis of the four factors. For emissions of other pollutants, the SIP contains only a single sentence claiming that the cost effectiveness for control of POA and CM species from many individual small sources is difficult to quantify.

The SIP's failure to consider any of the four factors for NO<sub>x</sub> controls is particularly egregious given that the State acknowledges that EPA has already issued a final rule containing a

four-factor analysis for the Independence plant, which resulted in a requirement that Independence install and operate low-NO<sub>x</sub> burners. The State has produced no evidence that EPA's four-factor analysis was incorrect in any way, because the State does not analyze any of the four factors which EPA considered.

**Response:** We agree that the CAA and the Regional Haze Rule provide that in determining reasonable progress, states "shall take into consideration 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 existing source subject to such requirements."<sup>41</sup> However, in cases where it has been demonstrated that a particular pollutant or source category does not contribute significantly to visibility impairment at affected Class I areas, it may be appropriate to end the analysis at that point, without the need to evaluate the four statutory factors for potential controls to address that pollutant and/or source category. For example, EPA's "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program" provides that the reasonable progress analysis involves identification of key pollutants and source categories that contribute to visibility impairment at the Class I area; the guidance provides that once the key pollutants contributing to visibility impairment at each Class I area have been identified, the sources or source categories responsible for emitting these pollutants or pollutant precursors can also be determined.<sup>42</sup> The reasonable progress factors are then to be applied to the key pollutants and sources or source categories contributing to visibility impairment at each affected Class I area. As we discussed on our proposed action on the Arkansas Regional Haze NO<sub>x</sub> SIP revision, taking into consideration that states have significant

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<sup>41</sup> 42 U.S.C. 7491(g)(1). See also 40 CFR 51.308(d)(1)(i)(A).

<sup>42</sup> EPA's "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," p. 3-1 (June 1, 2007).

discretion in determining what sources to analyze for controls under reasonable progress, we proposed to agree with the state that it is reasonable for Arkansas to reach the conclusion that, for the first implementation period, additional NO<sub>x</sub> controls for Arkansas point sources are not anticipated to yield meaningful visibility improvements at Arkansas Class I areas in view of the amount of visibility impairment attributed to these sources.<sup>43</sup> Given the level of visibility impairment due to NO<sub>x</sub> from Arkansas point sources at Caney Creek and Upper Buffalo on the 20% worst days and considering that Arkansas EGUs are participating in CSAPR for ozone season NO<sub>x</sub>, we find that it is reasonable for Arkansas to screen out Arkansas point sources from further evaluation of additional NO<sub>x</sub> controls and therefore not have to evaluate the four reasonable progress factors for point sources with respect to NO<sub>x</sub> in the first implementation period.

Arkansas' conclusions with regard to the percentage contribution to light extinction from NO<sub>3</sub> on the 20% worst days is generally consistent with the findings we made in the Arkansas Regional Haze FIP.<sup>44</sup> In the FIP, we made the finding that NO<sub>3</sub> due to NO<sub>x</sub> emissions from point sources is not considered a driver of regional haze at Caney Creek and Upper Buffalo on the 20% worst days, contributing only approximately 3% of the total light extinction, as projected by CENRAP's CAMx source apportionment modeling.<sup>45</sup> We also stated in the FIP proposal that because of the small contribution of NO<sub>3</sub> from point sources to the total light extinction at Caney Creek and Upper Buffalo on the 20% worst days, we did not expect that NO<sub>x</sub> controls under the reasonable progress requirements would offer as much improvement on these days compared to

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<sup>43</sup> 82 FR 42633.

<sup>44</sup> 81 FR 66332; *see also* 81 FR 68319 (October 4, 2016) (correction).

<sup>45</sup> 80 FR 18996.

SO<sub>2</sub> controls.<sup>46</sup> However, in the FIP, we decided to look at 2011 National Emissions Inventory (NEI) data for NO<sub>x</sub> for Arkansas point sources to determine if there are any large point sources that are reasonable candidates for evaluation under the four reasonable progress factors. Based on this assessment, we proceeded with an analysis of the four reasonable progress factors for NO<sub>x</sub> controls for the Independence facility as we reasoned that it is the second largest point source of NO<sub>x</sub> emissions in the state and potentially one of the largest single contributors to visibility impairment at Class I areas in Arkansas.<sup>47</sup> We also conducted CALPUFF modeling to determine the maximum 98th percentile visibility impacts from the Independence facility and the predicted visibility improvement due to NO<sub>x</sub> controls at the facility. That analysis revealed that low NO<sub>x</sub> burner controls would be cost-effective and would result in an improvement of the 98th percentile visibility impacts from the Independence facility at Caney Creek and Upper Buffalo, and we finalized NO<sub>x</sub> controls for the Independence facility under the reasonable progress requirements.<sup>48</sup> In the Arkansas NO<sub>x</sub> SIP revision, the state takes a different approach in arriving at its decision that no additional NO<sub>x</sub> controls for Arkansas point sources are necessary under reasonable progress for the first implementation period. In its evaluation, Arkansas places greater emphasis on its assessment of the relative contributions to light extinction of sources within the State than it does on its assessment of the relative contributions of all sources (i.e., sources both in and outside Arkansas). Arkansas focused its assessment on the CENRAP's CAMx source apportionment modeling and reaches the conclusion that, for the first implementation period, additional NO<sub>x</sub> controls for Arkansas point sources are not anticipated to yield meaningful visibility improvements at Arkansas Class I areas on the 20% worst days in view of the amount

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<sup>46</sup> 80 FR 18996.

<sup>47</sup> 80 FR 18995.

<sup>48</sup> 81 FR 66332.

of visibility impairment attributed to these sources. Therefore, Arkansas determined that no additional NO<sub>x</sub> controls beyond EGU participation in CSAPR for ozone season NO<sub>x</sub> are necessary to satisfy the reasonable progress requirements for Arkansas sources in the first planning period. In future planning periods, Arkansas will have to reevaluate the benefit of NO<sub>x</sub> reductions, which will likely become more important as other pollutants are reduced. We believe Arkansas is within its discretion to take a different approach than we did in the Arkansas FIP, and that the approach Arkansas has taken to determine whether additional NO<sub>x</sub> controls are necessary under reasonable progress is reasonable and therefore, approvable. The Clean Air Act gave EPA the power to identify pollutants and set air quality standards. Congress gave states “the primary responsibility for implementing those standards.” *Luminant Generation Co. v. EPA*, 675 F.3d 917, 921 (5th Cir. 2012). (internal quotation marks omitted); *see* 42 U.S.C. 7407(a) (“Each State shall have the primary responsibility for assuring air quality within [its] entire geographic area.”); *id.* section 7401(a)(3) (“[A]ir pollution prevention . . . is the primary responsibility of States and local governments.”). The states have “wide discretion” in formulating SIPs. *Union Elec. Co. v. EPA*, 427 U.S. 246, 250 (1976).

We are finalizing our approval of Arkansas’ determination that Arkansas EGU participation in CSAPR for ozone season NO<sub>x</sub> is sufficient to satisfy the reasonable progress requirements for NO<sub>x</sub> in Arkansas for the first implementation period.

**Comment:** The State’s reasonable progress analysis unlawfully fails to consider whether measures are needed to make reasonable progress at Class I areas outside Arkansas. The State’s analysis is unlawful, regardless of whether the old or new version of the Regional Haze rule applies here. The prior version of the Regional Haze rule required each state to make an independent determination of the measures needed to make reasonable progress at out-of-state

Class I areas. After noting the statutory goal to eliminate all human-caused visibility impairment, EPA observed that “it would be impossible to achieve this goal if upwind states did not have the same responsibility to address their visibility impairing emissions and achieve reasonable progress in downwind Class I areas as the downwind states themselves.”

The current version of the regional haze rule clarifies, but does not alter, this obligation. As EPA noted in the 2017 revisions to the regional haze rule, states have an “independent obligation to include in their SIPs enforceable emission limits and other measures that are necessary to make reasonable progress at all affected Class I areas, as determined by considering the four factors.” Despite the requirement to consider whether measures are needed to make reasonable progress at out of state Class I areas, the State’s analysis focuses exclusively on the two Class I areas within Arkansas. Yet the State acknowledges that emissions from Arkansas sources impact visibility at Class I areas in Missouri. EPA’s analysis of the SIP revision commits the same mistake as the SIP revision itself. EPA fails to analyze whether the State has complied with Clean Air Act requirements to determine whether measures are needed to make reasonable progress at out-of-state Class I areas. By failing to consider whether measures are necessary to make reasonable progress at Missouri Class I areas, the draft SIP violates the Regional Haze Rule, and is unapprovable.

**Response:** We disagree with the commenter that Arkansas failed to consider whether additional controls are necessary to make reasonable progress in Class I areas outside the state. The Arkansas NO<sub>x</sub> SIP revision recognizes that sources in Arkansas impact the two Class I areas in Missouri: Hercules Glade Wilderness Area and Mingo Wilderness Area. Arkansas also explains that “[t]he most recent five-year rolling average of observed visibility impairment on the twenty percent haziest days at Hercules Glades Wilderness Area beat Missouri’s 2018 RPG

for that Class I area and the most recent five year-rolling average of observed visibility impairment on the twenty percent haziest days at Mingo Wilderness Area is on track to beat Missouri's RPG for that Class I area."<sup>49</sup> Arkansas concludes that the visibility progress observed at the IMPROVE monitors indicates that sources in Arkansas are not interfering with the achievement of Missouri's 2018 RPGs for Hercules Glades and Mingo Wilderness Areas, and that no additional controls are therefore needed on Arkansas sources to ensure reasonable progress at Missouri's Class I areas.<sup>50</sup> Furthermore, Arkansas provided Missouri with an opportunity for consultation on the Arkansas NO<sub>x</sub> SIP revision.<sup>51</sup> Arkansas sent a letter dated June 14, 2017, to the Missouri Department of Natural Resources (DNR) providing notification and electronic access to the proposed SIP revision, and providing an opportunity to discuss Missouri's assessment of the impact of the proposed SIP revision on reasonable progress at Missouri Class I areas.<sup>52</sup> Missouri DNR did not have comments on Arkansas' proposed SIP revision.

**Comment:** The Arkansas Regional Haze NO<sub>x</sub> SIP revision determines that controls for reasonable progress are not necessary for the first planning period. The Clean Air Act requires that regional haze implementation plans contain measures "necessary to make reasonable progress toward meeting the national goal" of no manmade visibility impairment. In its regulations implementing the Regional Haze program, EPA established that, in setting a reasonable progress goal, the State must consider the uniform rate of improvement in visibility and the emission reduction measures needed to achieve it for the period covered by the implementation plan. EPA has further explained in its guidance for setting reasonable progress

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<sup>49</sup> See final Arkansas NO<sub>x</sub> SIP revision, Section IV.C, p. 23.

<sup>50</sup> See final Arkansas NO<sub>x</sub> SIP revision, Section IV.C, p. 23.

<sup>51</sup> See final Arkansas NO<sub>x</sub> SIP revision, Section V.C, p. 25.

<sup>52</sup> See final Arkansas NO<sub>x</sub> SIP revision, Tab E.

goals that states should take into account the fact that the long-term goal of no manmade impairment encompasses several planning periods and that it is reasonable for the state to defer reductions to later planning periods in order to maintain a consistent glidepath toward the long-term goal. Mandating emissions controls that are not necessary to make reasonable progress during the planning period contradicts this statutory and regulatory scheme.

Reasonable progress controls during the first planning period clearly are not necessary for Arkansas sources. Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring data show that the haze index has been consistently below the glidepath in Arkansas' Class I areas – Caney Creek and Upper Buffalo – and Entergy's analysis demonstrates that it is projected to remain so through the end of the second planning period.

Even if controls were required for reasonable progress during the first planning period, NO<sub>x</sub> controls on Arkansas EGUs are not necessary, as they will provide minimal visibility improvement in Arkansas' Class I areas. As EPA's own analysis indicates, the contribution of Arkansas point sources' nitrate emissions to visibility impairment in Arkansas' Class I areas is insignificant. According to EPA's analysis, nitrate from all point sources included in the regional modeling is projected to account for only 3% of the total light extinction at the Caney Creek and Upper Buffalo Class I areas, with nitrate from Arkansas point sources being responsible for only 0.27% of the total light extinction at Caney Creek and 0.14% at Upper Buffalo. As a result, NO<sub>x</sub> controls on Arkansas EGUs during the first planning period are not necessary to make reasonable progress towards natural visibility conditions.

**Response:** We appreciate the commenter's support of our proposed approval of Arkansas' reasonable progress determination for NO<sub>x</sub>. As we had proposed, given the level of visibility impairment due to NO<sub>x</sub> from Arkansas point sources at Caney Creek and Upper

Buffalo on the 20% worst days and considering that Arkansas EGUs are participating in CSAPR for ozone season NO<sub>x</sub>, we are finalizing our determination that Arkansas' decision to screen out Arkansas point sources from further evaluation of additional NO<sub>x</sub> controls is reasonable and we are finalizing our approval of Arkansas' determination that Arkansas EGU participation in CSAPR for ozone season NO<sub>x</sub> is sufficient to satisfy the reasonable progress requirements for NO<sub>x</sub> in Arkansas for the first implementation period.

### **C. Clean Air Act Section 110(l)**

**Comment:** EPA asserts that in the SIP revision, Arkansas takes a different, but nonetheless equally reasonable, approach to determine whether additional controls are necessary under reasonable progress. But EPA ignores that the State's "different" approach would result in more air pollution and worse air quality relative to the existing FIP. As a result, the State's reasonable progress determination violates the Clean Air Act's "anti-backsliding" requirement under 42 U.S.C. 7410(l), and is therefore unapprovable.

In the 2016 FIP, EPA determined that reasonable progress requires that Independence Units 1 and 2 meet NO<sub>x</sub> emission limits based on the use of low-NO<sub>x</sub> burners and separated over-fire air controls. Now, the State proposes a SIP that would replace those NO<sub>x</sub> emission limits with nothing. Eliminating the requirement that a source meet an emission limit necessarily would result in greater air pollution and worse visibility impairment at affected Class I areas. Section 110(l) of the Clean Air Act prevents a plan revision that would weaken the existing FIP requirements in this manner.

Section 110(l) states that the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this chapter. Section 110(l) is the Act's

“anti-backsliding” provision. The anti-backsliding provision prohibits plan revisions that would interfere with attainment of the NAAQS or other “applicable requirements” of the Act. Section 110(l) prohibits plan revisions that would interfere with an existing requirement to make reasonable further progress, including a BART determination, as the Act’s “applicable requirement[s]” include the regional haze program’s BART requirements. When determining whether a plan revision interferes with NAAQS attainment, EPA has interpreted section 110(l) as preventing plan revisions that would increase overall air pollution or worsen air quality. For example, the Eleventh Circuit has upheld EPA’s section 110(l) interpretation as prohibiting plan revisions that would increase emissions or worsen air quality. In *Kentucky Resources Council, Inc. v. EPA*, 467 F.3d 986 (6th Cir. 2006), EPA interpreted section 110(l) as allowing the agency to approve a plan revision that weakened some existing control measures while strengthening others, but only “[a]s long as actual emissions in the air are not increased.” The court upheld EPA’s interpretation, which “allow[ed] the agency to approve a [state implementation plan] SIP revision unless the agency finds it will make the air quality worse.” The Seventh Circuit has also upheld EPA’s interpretation in *Indiana v. EPA*, 796 F.3d 803, 812 (7<sup>th</sup> Cir. 2015). Moreover, in a short discussion regarding a challenge to the Nevada regional haze plan in *WildEarth Guardians v. EPA*, 759 F.3d 1064, 1074 (9th Cir. 2014), the Ninth Circuit suggested that a haze plan that “weakens or removes any pollution controls” would violate section 110(l).

The existing reasonable progress determination in the FIP requires Independence Units 1 and 2 to meet emission limits based on the use of low-NO<sub>x</sub> burners and separated over-fire air. These pollution reductions must occur by April 27, 2018. EPA has proposed to extend the compliance deadline for this requirement, but has not proposed to alter the emission limits themselves. Even if the deadline extension is finalized, the final FIP for Arkansas requires

Independence Units 1 and 2 to reduce NO<sub>x</sub> emissions. The draft SIP would eliminate the FIP requirements for Independence without imposing any other requirement that would achieve equal or greater reductions in NO<sub>x</sub> emissions from Independence.

**Response:** We disagree that the Arkansas NO<sub>x</sub> SIP revision violates the CAA's requirements under section 110(l). As discussed in our proposed approval of the Arkansas NO<sub>x</sub> SIP revision, we believe an approval of the SIP revision and concurrent withdrawal of the corresponding parts of the FIP, as proposed, will meet the Clean Air Act's 110(l) provisions. Generally, a SIP revision may be approved under section 110(l) if EPA finds that it will at least preserve status quo air quality, particularly where the pollutants at issue are those for which an area has not been designated nonattainment.<sup>53</sup> Approval of the Arkansas NO<sub>x</sub> SIP revision is not expected to interfere with attainment and maintenance of any of the NAAQS within the state of Arkansas. No areas in Arkansas are currently designated nonattainment for any NAAQS pollutants. The SIP revision we are approving would allow Arkansas to rely on compliance with CSAPR for ozone-season NO<sub>x</sub> to satisfy the NO<sub>x</sub> BART requirement for Arkansas EGUs and makes the determination that no additional NO<sub>x</sub> controls beyond EGU participation in CSAPR for ozone season NO<sub>x</sub> are necessary to satisfy the reasonable progress requirements for NO<sub>x</sub> for Arkansas sources. While the commenter is correct that the Arkansas NO<sub>x</sub> SIP revision we are approving does not require source-specific NO<sub>x</sub> controls under reasonable progress for Independence Units 1 and 2, as was required by the FIP, we note that those units are subject to CSAPR for ozone season NO<sub>x</sub> and their NO<sub>x</sub> emissions will thus be addressed through participation in the CSAPR ozone season NO<sub>x</sub> program. Further, the CSAPR 2018 NO<sub>x</sub> ozone season allocations for Arkansas sources are more stringent than the 2017 allocations. As all areas

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<sup>53</sup> 78 FR 51686 at 51694 (August 21, 2013).

in Arkansas are attaining all the NAAQS even with current emissions levels, compliance with the CSAPR 2018 NO<sub>x</sub> ozone season more stringent allocations will not interfere with any applicable requirement concerning attainment or reasonable further progress toward attainment of the NAAQS. We are not aware of any basis for concluding or demonstrating that the Arkansas NO<sub>x</sub> SIP revision, when implemented, would interfere with the continued attainment of all the NAAQS in Arkansas.

We also do not find that our approval of the Arkansas NO<sub>x</sub> SIP revision, as proposed, will interfere with the applicable CAA regional haze requirements for BART or reasonable progress because our action is supported by an evaluation that those CAA regional haze requirements for BART and reasonable progress are met. Specifically, EPA has made the determination that Arkansas EGU participation in CSAPR for ozone-season NO<sub>x</sub> satisfies the NO<sub>x</sub> BART requirements for Arkansas EGUs, consistent with 40 CFR 51.308(e)(4). On September 29, 2017, we affirmed our proposed finding that the EPA's 2012 analytical demonstration remains valid and that participation in CSAPR, as it now exists, meets the Regional Haze Rule's criteria for an alternative to BART. With regard to reasonable progress for regional haze, the Arkansas NO<sub>x</sub> SIP revision includes an assessment of anthropogenic sources of visibility impairment and arrives at the determination that given the level of contribution to light extinction from NO<sub>x</sub> due to Arkansas point sources, Arkansas EGU participation in CSAPR for ozone season NO<sub>x</sub> is sufficient to satisfy the reasonable progress requirements for NO<sub>x</sub> in Arkansas for the first implementation period. The Independence facility, on which the FIP imposed source specific NO<sub>x</sub> controls under the reasonable progress requirements, is subject to CSAPR for ozone season NO<sub>x</sub>. Even though we are approving the Arkansas NO<sub>x</sub> SIP revision and concurrently withdrawing the source-specific NO<sub>x</sub> controls in the FIP for the Independence

facility, the NO<sub>x</sub> emissions from the Independence facility will still be addressed under the regional haze reasonable progress requirements through participation in the CSAPR ozone season NO<sub>x</sub> emissions trading program. In addition, all Arkansas EGUs with a nameplate capacity of 25 megawatts or greater participate in the CSAPR ozone season NO<sub>x</sub> emissions trading program. This means that many EGUs that were not subject to control requirements under the FIP are required under the CSAPR trading program to comply with specific NO<sub>x</sub> emissions allocations during the ozone season.

#### **D. Legal**

**Comment:** To be approvable, any SIP must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals. The agency recognized in disapproving Arkansas's 2011 SIP package, that when evaluating a state's BART determination, the EPA looks at existing requirements and cannot rely on potential future actions in its decision to approve or disapprove a state SIP. Here, EPA's proposed approval is impermissibly based on future contingencies that have not occurred. Indeed, the agency recognized in the proposal that it cannot take a final action until the state completes its rulemaking process, adopts its final regulations, and submits these final adopted regulations as a revision to the Arkansas SIP. Because EPA's proposed action relies on potential future state actions, it cannot be approved.

**Response:** We disagree with comments that we are relying on potential future state actions in taking final action. CSAPR is an existing program that the state of Arkansas is participating in for NO<sub>x</sub>. The Arkansas SIP revision relies on participation in CSAPR to meet the requirements of NO<sub>x</sub> BART, as well as the fact that NO<sub>x</sub> is not the driver of visibility impairment on the 20% worst days, in their determination under reasonable progress, that no

other NO<sub>x</sub> controls are needed. Future decisions on trading as part of its current participation in CSAPR are not considered future state actions. Current participation in CSAPR is the state action that EPA's proposed action is based upon.

Further, our proposed approval was based on a proposed SIP revision submitted by ADEQ on July 12, 2017, with a request for parallel processing. As we explained in our September 11, 2017 proposal, we proposed action on the SIP revision at the same time that ADEQ was completing the corresponding public comment and rulemaking process at the state level.<sup>54</sup> We explained that the July 2017 SIP revision request would not be complete and would not meet all the SIP approvability criteria until the state completes the public process and submits the final, adopted SIP revision with a letter from the Governor or Governor's designee to EPA.<sup>55</sup> In our September 11, 2017 proposal, we proposed to approve the SIP revision request after completion of the state public process and final submittal of the SIP revision. On October 31, 2017, we received ADEQ's final SIP revision addressing BART and reasonable progress requirements for NO<sub>x</sub> for EGUs in Arkansas for the first implementation period. The final Arkansas Regional Haze NO<sub>x</sub> SIP revision we received on October 31, 2017 did not contain significant changes from the state's proposed SIP revision. Therefore, it is appropriate for us to take final action, as proposed, on the final SIP revision.

#### **E. General**

**Comment:** The proposed rule contains certain calculation errors, which, although sufficiently minor that they do not affect EPA's conclusions, should be corrected. EPA states that total light extinction on the 20% worst days in 2002 was 115.87 Mm<sup>-1</sup> for Caney Creek and 115 Mm<sup>-1</sup> for Upper Buffalo. These values are inconsistent with CENRAP PSAT results, which are

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<sup>54</sup> 82 FR at 42629.

<sup>55</sup> Id.

133.93  $\text{Mm}^{-1}$  and 131.79  $\text{Mm}^{-1}$ , respectively. EPA's values appear to exclude certain source categories, namely Initial Conditions, Boundary Conditions, Secondary Organic Aerosols – Anthropogenic, and Secondary Organic Aerosols – Biogenic. EPA does not explain why these categories are or should be excluded when calculating light extinction on the 20% worst days in 2002. Further, EPA does include these categories in its calculation of other values, such as the 87.05  $\text{Mm}^{-1}$  value for the  $\text{SO}_4$  contribution at Caney Creek, which accounts for 3.32  $\text{Mm}^{-1}$  from the Boundary Conditions source category. Because the total light extinction values form the basis for many other values in EPA's analysis, errors in the total light extinction values carry over into the derivative values.

The proposed rule also contains a number of miscalculations unrelated to the total light extinction error. These miscalculations relate to EPA's characterization of the CENRAP PSAT results. While sufficiently minor that they do not affect the outcome of EPA's determination, Entergy lists these errors here in the interest of correcting the record:

- EPA states that the remaining source categories each contribute between 2% and 6% of total light extinction at Arkansas' Class I areas. The high-end rounded value should be changed from 6% to 7%, as the true range is 1.83% to 6.72%, pursuant to the CENRAP PSAT results.
- EPA states that the PSAT results show that natural, on-road, and non-road sources are projected to continue to contribute a very small portion of total light extinction at Arkansas' Class I areas on the 20% worst days in 2018. According to the CENRAP PSAT results, the contribution of natural, on-road, and non-road sources is 8.5% to 9.4% of the total light extinction. This amount should not be characterized as "a very small portion."
- EPA states that the other species (i.e.,  $\text{NO}_3$ , POA, EC, soil, and CM) are also projected to have reductions in their contribution to total light extinction at Caney Creek and Upper

Buffalo in 2018. This statement is true for all the species except soil, which actually increases in 2018 for both Class I areas according to the CENRAP PSAT results.

- EPA states that the other source categories in Arkansas each contribute between 7% and 14% to light extinction attributed to Arkansas sources at Caney Creek and Upper Buffalo.

According to the CENRAP PSAT results, the correct range is 7% to 8%.

- EPA states that CM from Arkansas sources, primarily area sources, contribute approximately 1 and 2% of total light extinction at Caney Creek and Upper Buffalo, respectively. According to the CENRAP PSAT results, the value for Upper Buffalo is 2.68% (which would round to 3%).

**Response:** We appreciate the commenter pointing out errors and other mischaracterizations of light extinction values presented in our proposed action. We acknowledge these errors. As pointed out by the commenter, these errors are minor in nature and do not affect our proposed and final determinations on the Arkansas Regional Haze NO<sub>x</sub> SIP revision.

- The commenter is correct that our proposed action stated that total light extinction on the 20% worst days in 2002 was 115.87 Mm<sup>-1</sup> for Caney Creek and 115 Mm<sup>-1</sup> for Upper Buffalo.<sup>56</sup> However, as pointed out by the commenter, these cited values did not include initial conditions, boundary conditions, and secondary organic matter. As we noted in our proposed action on the 2008 Arkansas Regional Haze SIP,<sup>57</sup> the correct total visibility extinction on the 20% worst days in 2002, including contributions from initial conditions,

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<sup>56</sup> 82 FR at 42630.

<sup>57</sup> 76 FR at 64186 (October 17, 2011).

boundary conditions, and secondary organic matter, is  $133.93 \text{ Mm}^{-1}$  at Caney Creek<sup>58</sup> and  $131.79 \text{ Mm}^{-1}$  at Upper Buffalo.<sup>59</sup>

- The commenter pointed out that we stated in our proposal that the PSAT results show that natural, on-road, and non-road sources are projected to contribute a very small portion of total light extinction at Arkansas' Class I areas on the 20% worst days in 2018.<sup>60</sup> The commenter further points out that the combined contribution of these three source categories is 8.5% and 9.4% at Caney Creek and Upper Buffalo, which the commenter says should not be characterized as “a very small portion.” While we agree with the commenter that the combined contribution of the three source categories is not “very small,” we would like to clarify that the statement made in our proposal referred to the contribution of each individual source category at each Class I area. For example, the natural source category contributes approximately 2.47% of the total light extinction at Caney Creek and 2.6% at Upper Buffalo on the 20% worst days in 2018; the on-road source category contributes approximately 1.68% of the total light extinction at Caney Creek and 1.82% at Upper Buffalo; and the on-road source category contributes approximately 4.38% of the total light extinction at Caney Creek and 4.93% at Upper Buffalo.
- The commenter pointed out that our statement that the light extinction due to species other than  $\text{SO}_4$  is projected to decrease in 2018 on the 20% worst days at Caney Creek and Upper Buffalo is correct for all species except soil. The commenter is correct, as the light extinction due to soil is projected to increase slightly in 2018 on the 20% worst days at both Class I

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<sup>58</sup> 76 FR at 64214.

<sup>59</sup> 76 FR at 64215.

<sup>60</sup> 82 FR 42631.

areas.<sup>61</sup> The commenter points out that according to the CENRAP PSAT results, CM from Arkansas sources contribute approximately 2.68% of the total light extinction at Upper Buffalo, not 2%, as stated in our proposal.<sup>62</sup> The commenter is correct. The CM contribution from all Arkansas source categories is  $3.53 \text{ Mm}^{-1}$ , out of a total light extinction of  $131.79 \text{ Mm}^{-1}$ , which is a contribution of approximately 2.68%.

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

We are approving a revision to the Arkansas SIP submitted on October 31, 2017, as meeting the regional haze requirements for the first implementation period. This action includes the finding that the submittal meets the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and 40 CFR 51.300-51.308. The EPA is approving the SIP revision submittal as meeting the following: the core requirements for regional haze SIPs found in 40 CFR 51.308(d) such as the reasonable progress requirement for  $\text{NO}_x$ ; the  $\text{NO}_x$  BART requirements for regional haze visibility impairment with respect to emissions of visibility impairing pollutants from EGUs in 40 CFR 51.308(e); and the requirement for coordination with state and Federal Land Managers in §51.308(i). We are approving ADEQ's reliance on CSAPR participation for ozone season  $\text{NO}_x$  to meet the  $\text{NO}_x$  BART requirement for EGUs. Arkansas' reliance on CSAPR addresses the  $\text{NO}_x$  BART requirements for Bailey Unit 1; McClellan Unit 1; Flint Creek Boiler No. 1; Lake Catherine Unit 4; White Bluff Units 1 and 2 and the Auxiliary Boiler.

We also agree that Arkansas' conclusion that given the relatively small level of visibility impairment due to  $\text{NO}_x$  from Arkansas point sources at Caney Creek and Upper Buffalo on the

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<sup>61</sup> 76 FR at 64214-64215; see Tables 8 and 10.

<sup>62</sup> 82 FR at 42631.

20% worst days, for the first implementation period, additional NO<sub>x</sub> controls for Arkansas point sources are not anticipated to yield meaningful visibility improvements at Arkansas Class I areas on the 20% worst days is reasonable. In light of the level of visibility impairment due to NO<sub>x</sub> from Arkansas point sources at Caney Creek and Upper Buffalo and considering that Arkansas EGUs are participating in CSAPR for ozone season NO<sub>x</sub>, we are finalizing our determination that Arkansas' decision to screen out Arkansas point sources from further evaluation of additional NO<sub>x</sub> controls is reasonable and we are finalizing our approval of Arkansas' determination that no additional NO<sub>x</sub> controls, beyond Arkansas EGU participation in CSAPR for ozone season NO<sub>x</sub>, are necessary to satisfy the reasonable progress requirements for NO<sub>x</sub> in Arkansas for the first implementation period.

Concurrent with our final approval of the Arkansas Regional Haze NO<sub>x</sub> SIP revision, we are finalizing in a separate rulemaking our final action to withdraw those portions of the Arkansas Regional Haze FIP at 40 CFR 52.173 that impose NO<sub>x</sub> requirements on Bailey Unit 1; McClellan Unit 1; Flint Creek Boiler No. 1; Lake Catherine Unit 4; White Bluff Units 1 and 2 and the Auxiliary Boiler; and Independence Units 1 and 2.<sup>63</sup>

We find that an approval of the SIP revision meets the Clean Air Act's 110(1) provisions. No areas in Arkansas are currently designated nonattainment for any NAAQS pollutants. Approval of the Arkansas NO<sub>x</sub> SIP revision will not interfere with continued attainment of all the NAAQS within the state of Arkansas. The SIP revision we are approving would allow Arkansas to rely on compliance with CSAPR for ozone-season NO<sub>x</sub> to satisfy the NO<sub>x</sub> BART requirement for Arkansas EGUs and makes the determination that no additional NO<sub>x</sub> controls beyond EGU participation in CSAPR for ozone season NO<sub>x</sub> are necessary to satisfy the

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<sup>63</sup> Our final action withdrawing part of the Arkansas Regional Haze FIP is also being published in this Federal Register.

reasonable progress requirements for NO<sub>x</sub> for Arkansas sources. We also find that our approval of the Arkansas NO<sub>x</sub> SIP revision will not interfere with the applicable CAA regional haze requirements for BART because our action is supported by an evaluation EPA made in a separate rulemaking<sup>64</sup> that the CAA requirement for BART can be satisfied through participation in CSAPR. We also find that our approval of the Arkansas NO<sub>x</sub> SIP revision will not interfere with the applicable CAA regional haze requirements for reasonable progress because the Arkansas NO<sub>x</sub> SIP revision includes an assessment of anthropogenic sources of visibility impairment and arrives at the determination that given the level of contribution to light extinction from NO<sub>x</sub> due to Arkansas point sources, Arkansas EGU participation in CSAPR for ozone season NO<sub>x</sub> is sufficient to satisfy the reasonable progress requirements for NO<sub>x</sub> in Arkansas for the first implementation period. The Independence facility, on which the FIP imposed source specific NO<sub>x</sub> controls under the reasonable progress requirements, is subject to CSAPR for ozone season NO<sub>x</sub>. Even though we are approving the Arkansas NO<sub>x</sub> SIP revision and concurrently withdrawing the source-specific NO<sub>x</sub> controls in the FIP for the Independence facility, the NO<sub>x</sub> emissions from the Independence facility will still be addressed under the regional haze reasonable progress requirements through participation in the CSAPR ozone season NO<sub>x</sub> emissions trading program.

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

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

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<sup>64</sup> On September 29, 2017, we finalized our proposed finding that the EPA's 2012 analytical demonstration remains valid and that participation in CSAPR, as it now exists, meets the Regional Haze Rule's criteria for an alternative to BART.

40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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).

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 AFTER 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**

Air pollution control, Best available retrofit technology, Environmental protection, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Regional haze, Reporting and recordkeeping requirements, Visibility.

Dated: January 24, 2018.

**Anne Idsal,**  
*Regional Administrator, Region 6.*

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.*

#### **Subpart E – Arkansas**

2. In § 52.170, paragraph (e) is amended by adding the entry “Arkansas Regional Haze NO<sub>x</sub> SIP Revision” at the end of the third table titled “EPA-Approved Non-Regulatory Provisions and Quasi-Regulatory Measures in the Arkansas SIP” to read as follows:

#### **§ 52.170 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE  
Arkansas SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* * * * *				
Arkansas Regional Haze NO <sub>x</sub> SIP Revision	Statewide	10/31/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Regional Haze SIP submittal addressing NO <sub>x</sub> BART requirements for Arkansas EGUs and reasonable progress requirements for NO <sub>x</sub> for the first implementation period.

3. In § 52.173, paragraphs (e) and (f) are added to read as follows:

§ 52.173 Visibility protection.

\* \* \* \* \*

(e) Measures addressing best available retrofit technology (BART) for electric generating unit (EGU) emissions of nitrogen oxides (NO<sub>x</sub>). The BART requirements for EGU NO<sub>x</sub> emissions are satisfied by § 52.184 and the Arkansas Regional Haze NO<sub>x</sub> SIP Revision approved [Insert date of publication in the Federal Register], [Insert Federal Register citation].

(f) *Other measures addressing reasonable progress.* The reasonable progress requirements for NO<sub>x</sub> emissions are satisfied by the Arkansas Regional Haze NO<sub>x</sub> SIP Revision approved [**Insert date of publication in the Federal Register**], [**Insert Federal Register citation**].

[FR Doc. 2018-02147 Filed: 2/9/2018 8:45 am; Publication Date: 2/12/2018]