



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2010-0406; FRL-10020-82-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Regional Haze State and Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of North Dakota on August 3, 2020, addressing regional haze. Specifically, EPA is proposing to approve Amendment No. 2 to the North Dakota SIP for Regional Haze to satisfy certain requirements for the first implementation period of the Clean Air Act's (CAA) regional haze program. Amendment No. 2 adopts the same regional haze requirements for the Antelope Valley Station promulgated by EPA in our 2012 Federal Implementation Plan (FIP). In conjunction with this proposed approval of Amendment No. 2, we also propose to withdraw the portions of our 2012 FIP that apply to the Antelope Valley Station. EPA is proposing this action pursuant to sections 110 and 169A of the CAA.

DATES: *Comments:* Written comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Public hearing: If anyone contacts us requesting a public hearing on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent *Federal Register* document. Contact Aaron Worstell at (303) 312-6073, or at worstell.aaron@epa.gov, to request a hearing or to determine if a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2010-0406, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online

instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Aaron Worstell, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6073, worstell.aaron@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, we mean EPA.

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I. Background

A. Requirements of the Clean Air Act and EPA’s Regional Haze Rule

In CAA section 169A, Congress created a program for protecting visibility in national parks and wilderness areas. This section of the CAA establishes “as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.”¹

¹ 42 U.S.C. 7491(a). Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in

EPA promulgated a rule to address regional haze on July 1, 1999.² The Regional Haze Rule revised the existing visibility regulations³ to integrate provisions addressing regional haze and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300-51.309. EPA most recently revised the Regional Haze Rule on January 10, 2017.⁴

The CAA requires each state to develop a SIP to meet various air quality requirements, including protection of visibility.⁵ Regional haze SIPs must assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. A state must submit its SIP and SIP revisions to EPA for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA; that is, the SIP is federally enforceable. If a state fails to make a required SIP submittal, or if we find that a state's required submittal is incomplete or not approvable, then we must promulgate a FIP to fill this regulatory gap, unless the state corrects the deficiency.⁶

B. Best Available Retrofit Technology

Section 169A of the CAA directs EPA to require states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires

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 section, we mean a "mandatory Class I Federal area."

² 64 FR 35714 (July 1, 1999) (amending 40 CFR part 51, subpart P).

³ EPA had previously promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, i.e., reasonably attributable visibility impairment (RAVI). 45 FR 80084, 80084 (December 2, 1980).

⁴ 82 FR 3078 (January 10, 2017). Under the revised Regional Haze Rule, the requirements 40 CFR 51.308(d) and (e) apply to first implementation period SIP submissions and 51.308(f) applies to submissions for the second and subsequent implementation periods. 82 FR 3087; see also 81 FR 26942, 26952 (May 4, 2016).

⁵ 42 U.S.C. 7410(a), 7491, and 7492(a).

⁶ 42 U.S.C. 7410(c)(1).

state implementation plans 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 built between 1962 and 1977 procure, install, and operate the “Best Available Retrofit Technology” (BART) as determined by the states. Under the Regional Haze Rule, states are directed to conduct BART determinations for such “BART-eligible” sources that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.⁷

Rather than requiring source-specific BART controls, states also have the flexibility to adopt alternative measures, as long as the alternative provides greater reasonable progress towards natural visibility conditions than BART (i.e., the alternative must be “better than BART”).⁸

C. Long-Term Strategy and Reasonable Progress Requirements

In addition to the BART requirements, the CAA’s visibility protection provisions also require that states’ regional haze SIPs contain a “long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal...”⁹ The long-term strategy must address regional haze visibility impairment for each mandatory Class I area within the state and for each mandatory Class I area located outside the state that may be affected by emissions from the state. It must include the enforceable emission limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals.¹⁰ The reasonable progress goals, in turn, are calculated for each Class I area based on the control measures states have selected by

⁷ 40 CFR 51.308(e). BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301. EPA designed the Guidelines for BART Determinations Under the Regional Haze Rule (Guidelines) “to help States and others (1) identify those sources that must comply with the BART requirement, and (2) determine the level of control technology that represents BART for each source.” 40 CFR part 51, appendix Y, section I.A. Section II of the Guidelines describes the four steps to identify BART sources, and section III explains how to identify BART sources (i.e., sources that are “subject to BART”).

⁸ 40 CFR 51.308(e)(2) and (3).

⁹ 42 U.S.C. 7491(b)(2)(B).

¹⁰ 40 CFR 51.308(d)(3).

analyzing the four statutory “reasonable progress” factors, which are “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 requirement.”¹¹ Thus, the four reasonable progress factors are considered by a state in setting the reasonable progress goal by virtue of the state having first considered them, and certain other factors listed in § 51.308(d)(3) of the Regional Haze Rule, when deciding what controls are to be included in the long-term strategy. Then, the numerical levels of the reasonable progress goals are the predicted visibility outcome of implementing the long-term strategy in addition to ongoing pollution control programs stemming from other CAA requirements.

Unlike BART determinations, which are required only for the first regional haze planning period SIPs,¹² states are required to submit updates to their long-term strategies, including updated reasonable progress analyses and reasonable progress goals, in the form of SIP revisions on July 31, 2021, and at specific intervals thereafter.¹³ In addition, each state must periodically submit a report to EPA at five-year intervals beginning five years after the submission of the initial regional haze SIP, evaluating the state’s progress towards meeting the reasonable progress goals for each Class I area within the state.¹⁴

D. Monitoring, Recordkeeping, and Reporting

CAA section 110(a)(2) requires that SIPs, including regional haze SIPs, contain monitoring, record keeping, and reporting provisions sufficient to ensure emission limits are practically enforceable.¹⁵ Accordingly, 40 CFR part 51, subpart K, Source Surveillance, requires the SIP to provide for monitoring the status of compliance with the regulations in it, including

¹¹ 42 U.S.C. 7491(g)(1); 40 CFR 51.308(d)(1)(i).

¹² Under the Regional Haze Rule, SIPs are due for each regional haze planning period, or implementation period. The terms “planning period” and “implementation period” are used interchangeably in this document.

¹³ 40 CFR 51.308(f). The deadline for the 2018 SIP revision was moved to 2021. 82 FR 3078 (January 10, 2017); see also 40 CFR 51.308(f). Following the 2021 SIP revision deadline, the next SIP revision is due in 2028. 40 CFR 51.308(f).

¹⁴ Id. §51.308(g); §51.309(d)(10).

¹⁵ 42 U.S.C. 7410(a)(2)(A), (C), and (F).

“[p]eriodic testing and inspection of stationary sources,”¹⁶ and “legally enforceable procedures” for recordkeeping and reporting.¹⁷ Furthermore, 40 CFR part 51, appendix V, Criteria for Determining the Completeness of Plan Submissions, states in section 2.2 that complete SIPs contain: “(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels”; and “(h) Compliance/enforcement strategies, including how compliance will be determined in practice.”

E. Consultation with Federal Land Managers

The Regional Haze Rule requires that a state consult with Federal Land Managers (FLMs) before adopting and submitting a required SIP or SIP revision. Under 40 CFR 51.308(i)(2), a state must provide an opportunity for consultation no less than 60 days prior to holding any public hearing or other public comment opportunity on a SIP or SIP revision for regional haze. Further, when considering a SIP or SIP revision, a state must include in its proposal a description of how it addressed any comments provided by the FLMs.¹⁸

F. Clean Air Act Section 110(l)

Under CAA section 110(l), EPA cannot approve a plan revision “if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.”¹⁹ CAA section 110(l) applies to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable or maintenance for one or more of the six criteria pollutants. EPA interprets section 110(l) as applying to all National Ambient Air Quality

¹⁶ 40 CFR 51.212(a).

¹⁷ Id. §51.211.

¹⁸ 40 CFR 51.308(i).

¹⁹ 42 U.S.C. 7410(l). Note that “reasonable further progress” as used in CAA section 110(l) is a reference to that term as defined in section 301(a) (i.e., 42 U.S.C. 7501(a)), and as such means reductions required to attain the National Ambient Air Quality Standards (NAAQS) set for criteria pollutants under CAA section 109. This term as used in section 110(l) (and defined in section 301(a)) is *not* synonymous with “reasonable progress” as that term is used in the regional haze program. Instead, section 110(l) provides that EPA cannot approve plan revisions that interfere with regional haze requirements (including reasonable progress requirements) insofar as they are “other applicable requirement[s]” of the CAA.

Standards (NAAQS) that are in effect, including those for which SIP submissions have not been made.²⁰ However, the level of rigor needed for any CAA section 110(l) demonstration will vary depending on the nature and circumstances of the revision.

G. Regulatory and Legal History of the North Dakota Regional Haze State Implementation Plan

The Governor of North Dakota originally submitted a Regional Haze SIP to EPA on March 3, 2010, followed by SIP Supplement No. 1 submitted on July 27, 2010, and SIP Amendment No. 1 submitted on July 28, 2011 (collectively, the “2010 Regional Haze SIP”). The State’s 2010 Regional Haze SIP was submitted to meet the requirements of the regional haze program for the first regional haze planning period. Among other things, the 2010 Regional Haze SIP included North Dakota’s determination under the reasonable progress requirements found at 40 CFR 51.308(d)(1) that no additional nitrogen oxide (NO_x) emissions controls were warranted at Antelope Valley Station Units 1 and 2.

On April 6, 2012, EPA promulgated a final rule titled, “Approval and Promulgation of Implementation Plans; North Dakota; Regional Haze State Implementation Plan; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Regional Haze; Final Rule,” (2012 Final Rule).²¹ The 2012 Final Rule approved in part and disapproved in part the 2010 Regional Haze SIP. As relevant here, EPA disapproved North Dakota’s reasonable progress determination that no additional NO_x emissions controls were warranted at Antelope Valley Station.

Concurrent with disapproving North Dakota’s NO_x reasonable progress determination for Antelope Valley Station, EPA promulgated a FIP in the 2012 Final Rule that imposed a NO_x reasonable progress emission limit of 0.17 lb/MMBtu (30-day rolling average) each for Units 1

²⁰ In general, a section 110(l) demonstration should address all pollutants whose emissions and/or ambient concentrations would change as a result of a plan revision.

²¹ 77 FR 20894 (April 6, 2012).

and 2 based on the emission reductions achievable through the installation and operation of new low-NO_x burners and changes to the overfire air system. The FIP required Basin Electric Power Cooperative, the owner of Antelope Valley Station, to comply with the emission limit and related monitoring, record keeping, and reporting requirements as expeditiously as practicable, but no later than July 31, 2018.²²

Subsequently, several petitioners challenged various aspects of the 2012 Final Rule in the United States Court of Appeals for the Eighth Circuit. Pertinent to this proposal, the State of North Dakota challenged EPA's disapproval of the State's reasonable progress determination that no additional NO_x emissions controls were warranted at Antelope Valley Station Units 1 and 2. The State also challenged EPA's determination in its FIP that an emission limit of 0.17 lb/MMBtu (30-day rolling average) was necessary to satisfy the reasonable progress requirements.

On September 23, 2013, the Eighth Circuit concluded that EPA properly disapproved portions of the 2010 Regional Haze SIP, including the reasonable progress determination for Antelope Valley Station Units 1 and 2. The court also upheld EPA's FIP promulgating an emission limit of 0.17 lb/MMbtu (30-day rolling average) for Antelope Valley Station Units 1 and 2. However, the court vacated and remanded EPA's FIP promulgating an emission limit of 0.13 lb/MMbtu (30-day rolling average) for Coal Creek Station, which is another coal-fired power plant located in North Dakota and was addressed in the 2010 Regional Haze SIP and the 2012 Final Rule.²³

²² Basin Electric began operating the new NO_x controls at Antelope Valley Station Units 1 and 2 in May of 2014 and June of 2016, respectively, as reported to EPA Air Markets Program Data, available at <http://ampd.epa.gov/ampd/>.

²³ *North Dakota v. EPA*, 730 F.3d 750 (8th Cir. 2013), *cert. denied*, 134 S. Ct. 2662 (2014).

On August 3, 2020, North Dakota submitted Amendment No. 2 to the Regional Haze SIP, which incorporates the 2012 FIP requirements for Antelope Valley Station.²⁴ Amendment No. 2 is the subject of this proposed action.

Sections 110(a)(2) and 110(l) of the CAA, 40 CFR 51.102, and appendix V to part 51 require that a state provide reasonable notice and a public hearing before adopting a SIP revision and submitting it to EPA. North Dakota provided notice, held a public hearing on February 7, 2020, and accepted comments on Amendment No. 2 from December 17, 2019 through February 17, 2020.

II. EPA's Evaluation of Amendment No. 2 to the North Dakota Regional Haze State Implementation Plan

A. Reasonable Progress Requirements for the Antelope Valley Station

Antelope Valley Station Units 1 and 2 are tangentially-fired boilers, each having a generating capacity of 435 megawatts (MW). These boilers are not BART-eligible because they commenced operation in the 1980s, after the 15-year period specified in the CAA and the Regional Haze Rule. The boilers burn North Dakota lignite. In the 2010 Regional Haze SIP, North Dakota identified Antelope Valley Station Units 1 and 2 as sources that potentially affect visibility in Class I areas that should be evaluated for reasonable progress controls.²⁵

The requirements of the 2012 FIP for Antelope Valley Station Units 1 and 2, including the emission limit of 0.17 lb/MMBtu (30-day rolling average), and associated monitoring, recordkeeping, and reporting, are the same requirements incorporated into the State's Permit to Construct number PTC 20031, which is part of Amendment No. 2.²⁶ Thus, for the same reasons we concluded in our 2012 Final Rule that this emission limit and the corresponding monitoring,

²⁴ Letter dated July 28, 2020, from Doug Burgum, Governor, North Dakota, to Gregory Sopkin, Regional Administrator, EPA Region 8, Subject: Revisions to North Dakota Regional Haze SIP for control of air pollution; North Dakota, Final Revisions to Implementation Plan for Control of Air Pollution, Amendment No. 2 to North Dakota State Implementation Plan First Planning Period for Regional Haze (July 2020) (Amendment No. 2).

²⁵ 76 FR 58570, 58624 (September 21, 2011).

²⁶ Amendment No. 2, Appendix D.6.

recordkeeping, and reporting requirements are appropriate and reasonable under 40 CFR 51.308(d), we continue to find that they satisfy reasonable progress requirements for NO_x for the first planning period at Antelope Valley Station.²⁷ Accordingly, we propose to approve Amendment No. 2.

B. Consultation with Federal Land Managers

As described in section I.E of this proposed rule, the Regional Haze Rule grants the FLMs a special role in the review of regional haze SIPs. Under 40 CFR 51.308(i)(2), North Dakota was required to provide the FLMs with an opportunity for consultation in development of the State's proposed SIP revision. By e-mail correspondence on December 4, 2019, North Dakota provided the FLMs the opportunity to comment on Amendment No. 2.²⁸ The National Park Service responded by e-mail on January 6, 2020, indicating its intent to comment on the State's review of control measures for Antelope Valley Station as part of the second regional haze planning period. No other FLMs commented. EPA proposes to find that North Dakota fulfilled its requirement to consult with the FLMs on the SIP revision.

III. EPA's Proposed Action

A. Amendment No. 2 to the North Dakota Regional Haze State Implementation Plan

We are proposing to approve the following elements of Amendment No. 2 to the North Dakota Regional Haze SIP:

- A NO_x emission limit of 0.17 lb/MMBtu (30-day rolling average) each for Antelope Valley Station Units 1 and 2 with the emission limit to apply at all times including during periods of startup, shutdown, emergency, and malfunction.
- The associated monitoring, recordkeeping, and reporting requirements for Antelope Valley Station Units 1 and 2.

²⁷ 76 FR 58630-32, 77 FR 20898-99.

²⁸ Amendment No. 2, Appendix J.1.6. Note that North Dakota provided the opportunity for FLM consultation although it did not believe consultation was needed because the requirements of the SIP revision are the same as the FIP.

- Compliance with the emission limit and monitoring, recordkeeping, and reporting requirements in the SIP revision no later than when EPA finalizes this proposed action.
- Related nonregulatory provisions as reflected in additions and changes to the 2010 Regional Haze SIP in section 9.5.1 (Antelope Valley Station), Appendix J.1.6 (FLM Comments on Amendment No. 2 and Department's Response), and Appendix J.3.4 (U.S. Environmental Protection Agency Comments on Amendment No. 2 and Department's Response).

We are also proposing to restore certain other nonregulatory text amendments under 40 CFR 52.1820(e). The proposed amendments include incorporation of those previously approved in our 2012 Final Rule. EPA partially approved these provisions as meeting the requirements of the CAA and applicable regulations in previous actions;²⁹ however, we inadvertently deleted all approved provisions relevant to regional haze in 40 CFR 52.1820(e) when updating the paragraph in 2015.³⁰ We are proposing to remedy that error here; however, in this proposed action, we are not otherwise addressing or reopening for comment any of the previously approved provisions. We will deem any comments on these provisions beyond the scope of this action.

B. Federal Implementation Plan Withdrawal

Because we are proposing to find that Amendment No. 2 satisfies the reasonable progress requirements for NO_x at Antelope Valley Station Units 1 and 2 for the first regional haze planning period, we are also proposing to withdraw the corresponding portions of the North Dakota Regional Haze FIP at 40 CFR 52.1825.

In addition, EPA plans to remove from the Code of Federal Regulations the FIP requirements for Coal Creek Station that the Eighth Circuit vacated in the *North Dakota*

²⁹ 77 FR 20894.

³⁰ 80 FR 76211 (December 8, 2015).

decision.³¹ Because this is a purely ministerial action to ensure that the Code of Federal Regulations reflects current case law, we are not inviting public comment on our removal of the vacated language. Note that North Dakota's BART obligation for Coal Creek Station remains outstanding.

We are not proposing any other changes to our 2012 Final Rule because no other changes were addressed in Amendment No. 2 or required by the *North Dakota* decision. Accordingly, all other parts of our 2012 FIP, including our determinations regarding North Dakota's reasonable progress goals, long-term strategy, and interstate transport obligations under CAA section 110(a)(2)(D)(i)(II) concerning visibility protection,³² remain in place.³³ We are not reopening or taking comment on these aspects of our 2012 Final Rule. We will deem any comments on these issues beyond the scope of this action.

C. *Clean Air Section 110(l)*

Under CAA section 110(l), EPA cannot approve a plan revision "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter."³⁴ The previous sections of this document and our 2011 proposed rule and 2012 Final Rule explain how the proposed SIP revision will comply with applicable regional haze requirements and general implementation plan requirements, such as enforceability.³⁵ Additionally, there are no NAAQS nonattainment or maintenance areas in North Dakota.³⁶ Approval of Amendment No. 2 would merely transfer the emission limit and associated monitoring, recordkeeping, and reporting requirements for Antelope Valley Station Units 1 and 2 currently found in EPA's 2012

³¹ *North Dakota*, 730 F.3d at 764.

³² 42 U.S.C. 7410(a)(2)(D)(i)(II).

³³ 77 FR 20896, 20899-900; see also 85 FR 20165, 20177 (April 10, 2020) (regarding the status of North Dakota's obligations under CAA section 110(a)(2)(D)(i)(II) concerning visibility protection).

³⁴ 42 U.S.C. 7410(l).

³⁵ 76 FR 58630-32, 77 FR 20898-99.

³⁶ See Current Nonattainment Counties for All Criteria Pollutants, <https://www3.epa.gov/airquality/greenbook/ancl.html> (last visited Jan. 11, 2021).

FIP³⁷ into North Dakota's Regional Haze SIP. Thus, there will be no change in air quality requirements or to actual emissions from the Antelope Valley Station. As such, the SIP revision will not interfere with attainment of the NAAQS, reasonable further progress, or other CAA requirements. Accordingly, we propose to find that an approval of Amendment No. 2 and concurrent withdrawal of the corresponding FIP, are not anticipated to interfere with applicable requirements of the CAA and therefore CAA section 110(l) does not prohibit approval of this SIP revision.

IV. Incorporation by Reference

In this rule, EPA is proposing to include, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the amendments described in sections II and III. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

This action is not a "significant regulatory action" under the terms of Executive Order 12866³⁸ and was therefore not submitted to the Office of Management and Budget (OMB) for review. This proposed rule applies to only a single facility in North Dakota: Antelope Valley Station. It is therefore not a rule of general applicability.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

³⁷ 40 CFR 52.1825.

³⁸ 58 FR 51735, 51738 (October 4, 1993).

C. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA).³⁹ A “collection of information” under the PRA means “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.”⁴⁰ Because this proposed rule revises regional haze requirements reporting requirements for a single facility, the PRA does not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small

³⁹ 44 U.S.C. 3501 *et seq.*

⁴⁰ 5 CFR 1320.3(c) (emphasis added).

entities under the RFA. This proposed rule does not impose any requirements or create impacts on small entities as no small entities are subject to the requirements of this proposed rule.

E. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for final rules with “Federal mandates” that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory actions with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA

threshold of \$100 million⁴¹ by state, local, or tribal governments or the private sector in any one year. The proposed approval of Amendment No. 2, and simultaneous withdraw of corresponding portions of our FIP, would not result in private sector expenditures. Additionally, we do not foresee significant costs (if any) for state and local governments. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

Executive Order 13132, *Federalism*,⁴² revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.”⁴³ “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”⁴⁴ Under Executive Order 13132, EPA may not issue a regulation “that has federalism implications, that imposes substantial direct compliance costs, . . . and that is not required by statute, unless [the Federal Government provides the] funds necessary to pay the direct [compliance] costs incurred by the State and local governments,” or EPA consults with state and local officials early in the process of developing the final regulation.⁴⁵ EPA also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the final regulation.

⁴¹ Adjusted to 2019 dollars, the UMRA threshold becomes \$164 million.

⁴² 64 FR 43255, 43255-43257 (August 10, 1999).

⁴³ 64 FR 43255, 43257.

⁴⁴ *Id.*

⁴⁵ *Id.*

This action does not have federalism implications. The proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments,” requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”⁴⁶ This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997). EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

⁴⁶ 65 FR 67249, 67250 (November 9, 2000).

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. Section 12(d) of NTTAA, Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to consider and use “voluntary consensus standards” in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898, establishes federal executive policy on environmental justice.⁴⁷ Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

In 2012, we determined that our final action would “not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increased the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population,

⁴⁷ 59 FR 7629 (February 16, 1994).

including any minority or low-income population.”⁴⁸ Because this proposed rule does not alter requirements for Antelope Valley Station, and only transfers them from the FIP to the SIP, our determination is unchanged from that in 2012. EPA, however, will consider any input received during the public comment period regarding environmental justice considerations.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

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

Dated: February 25, 2021.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

⁴⁸ 77 FR 20941 (April 6, 2012).

40 CFR part 52 is proposed to be 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 JJ--North Dakota

2. In §52.1820:

a. The table in paragraph (d) is amended by adding the center heading “Antelope Valley Station Units 1 and 2.” and the entry “PTC20031” at the end of the table;

b. The table in paragraph (e) is amended by adding the center heading “North Dakota State Implementation Plan for Regional Haze.” and the entry “North Dakota State Implementation Plan for Regional Haze” at the end of the table.

The additions read as follows:

§52.1820 Identification of plan.

* * * * *

(d) * * *

| Rule No. | Rule title | State effective date | EPA effective date | Final rule citation/date | Comments |
|---|---|---|--|--|--|
| * * * * * | | | | | |
| Antelope Valley Station Units 1 and 2. | | | | | |
| PTC20031 | Air pollution control permit to construct for Federal Implementation Plan Replacement | [Date of publication of the final rule in the Federal Register] | [Date 30 days after date of publication of the final rule in the Federal Register] | [Federal Register citation of the final rule], [Date of publication of the final rule in the Federal Register] | Only: NO _x BART emission limit for Units 1 and 2 and corresponding monitoring, recordkeeping, and reporting requirements. |

(e) * * *

| Rule No. | Rule title | State effective date | EPA effective date | Final rule citation/date | Comments |
|--|--|-----------------------------|--|--|---|
| * * * * * | | | | | |
| North Dakota State Implementation Plan for Regional Haze. | | | | | |
| North Dakota State Implementation Plan for Regional Haze | North Dakota State Implementation Plan for Regional Haze | 7/8/20 | [Date 30 days after date of publication of the final rule in the Federal Register] | [Federal Register citation of the final rule], [Date of publication of the final rule in the Federal Register] | Excluding provisions disapproved on April 6, 2012, 77 FR 20894. |

§52.1825 [Removed and Reserved]

3. Remove and reserve §52.1825.

[FR Doc. 2021-04402 Filed: 3/11/2021 8:45 am; Publication Date: 3/12/2021]