

determine that the rule limits implement RACT.

### C. The EPA's Recommendations To Further Improve the Rule

The TSD includes a recommendation to clarify a testing requirement for the next time SDCAPCD modifies the rule.

### D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until August 25, 2023. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

### III. Incorporation by Reference

In this rule, the 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, the EPA is proposing to incorporate by reference the San Diego County Air Pollution Control District Rule 69.2.1, "Small Boilers, Process Heaters, Steam Generators, and Large Water Heaters," locally amended on July 8, 2020, which regulates NO<sub>x</sub> and CO from small boilers, process heaters, steam generators, and large water heaters, as described in Table 1 of this document. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. 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); 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 proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed 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);

- 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, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

Under the CAA, 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); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action

approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples. In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 17, 2023.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2023-15490 Filed 7-25-23; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2014-0754; FRL-10412-01-R6]

### Disapproval and Promulgation of Air Quality Implementation Plans; Texas and Oklahoma; Regional Haze State Implementation Plans; Federal Implementation Plan for Regional Haze; Completion of Remand

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or Act), the

Environmental Protection Agency (EPA) is proposing this action to address the voluntary remand of portions of a final rulemaking published in the **Federal Register** on January 5, 2016, addressing regional haze obligations for the first planning period in Texas and Oklahoma. Specifically, we are revisiting and again proposing disapproval of portions of the Texas Regional Haze State Implementation Plan (SIP) submission and portions of the Oklahoma Regional Haze SIP submission that relate to reasonable progress requirements for the first planning period from 2008 through 2018. We are also proposing to rescind the sulfur dioxide (SO<sub>2</sub>) emission limitations we promulgated as part of the Federal Implementation Plan (FIP) in the January 2016 Final Rule for 15 Texas electric generating units (EGUs) at eight facilities. We are proposing to determine that no additional controls are required for Texas or Oklahoma sources under these States' long-term strategies for making reasonable progress for the first planning period. We are leaving the portions of the Texas and Oklahoma Regional Haze SIPs that we approved in the January 2016 Final Rule in place and not reopening those determinations in this action.

#### DATES:

*Comments:* Comments must be received on or before September 25, 2023.

*Virtual Public hearing:* The EPA will hold a virtual public hearing to solicit comments on August 10, 2023. The last day to pre-register to speak at the hearing will be on August 8, 2023. On August 9, 2023, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at <https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal>. If you require the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing and describe your needs by August 2, 2023.

For more information on the virtual public hearing, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2014-0754 to the Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

*Instructions:* All submissions received must include the Docket ID No. for this

rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided.

*Docket:* The docket for this action is available electronically at <https://www.regulations.gov/>. Some information in the docket may not be publicly available via the online docket due to docket file size restrictions, or content (e.g., CBI). For questions about a document in the docket please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section.

*CBI:* Do not submit information containing CBI to the EPA through <https://www.regulations.gov/>. To submit information claimed as CBI, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* earlier. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

To pre-register to attend or speak at the virtual public hearing, please use the online registration form available at <https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal> or contact us via email at [R6TXRHReasonableProgress@epa.gov](mailto:R6TXRHReasonableProgress@epa.gov). For more information on the virtual public hearing, see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Michael Feldman, Air and Radiation Division, SO<sub>2</sub> and Regional Haze Section (ARSH), Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, Texas 75270; telephone number: 214-665-9793; or via email: [R6TXRHReasonableProgress@epa.gov](mailto:R6TXRHReasonableProgress@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

#### Virtual Public Hearing

The EPA is holding a virtual public hearing to provide interested parties the opportunity to present data, views, or arguments concerning the proposal. The EPA will hold a virtual public hearing to solicit comments on August 10, 2023. The hearing will convene at 3:00 p.m. Central Time (CT) with a 15-minute break from 5:00 to 5:15 p.m. CT. The hearing will conclude at 7:00 p.m. CT, or 15 minutes after the last pre-registered presenter in attendance has presented if there are no additional presenters. The EPA will announce further details, including information on how to register for the virtual public hearing, on the virtual public hearing website at <https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal>. The EPA will begin pre-registering speakers and attendees for the hearing upon publication of this document in the **Federal Register**. To pre-register to attend or speak at the virtual public hearing, please use the online registration form available at <https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal> or contact us via email at [R6TXRHReasonableProgress@epa.gov](mailto:R6TXRHReasonableProgress@epa.gov). The last day to pre-register to speak at the hearing will be on August 8, 2023. On August 9, 2023, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at <https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal>. Additionally, requests to speak will be taken on the day of the hearing as time allows.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Each commenter will have approximately 3 to 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically by including it in the registration form or emailing it to [R6TXRHReasonableProgress@epa.gov](mailto:R6TXRHReasonableProgress@epa.gov). The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the virtual public hearing. A transcript of the virtual public hearing, as well as

copies of oral presentations submitted to the EPA, will be included in the docket for this action.

The EPA is asking all hearing attendees to pre-register, even those who do not intend to speak. The EPA will send information on how to join the public hearing to pre-registered attendees and speakers.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/tx/texas-and-oklahoma-regional-haze-sip-disapproval-and-revision-regional-haze-federal>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact us via email at

[R6TXRHReasonableProgress@epa.gov](mailto:R6TXRHReasonableProgress@epa.gov) to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing and describe your needs by August 2, 2023. The EPA may not be able to arrange accommodations without advance notice.

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## I. Executive Summary

The CAA's visibility protection program was created in response to a national goal set by Congress in 1977 to remedy and prevent visibility impairment in certain national parks, such as Big Bend, and national wilderness areas, such as the Wichita Mountains Wilderness. Vistas in these areas (referred to as Class I areas) are often obscured by visibility impairment such as regional haze, which is caused by emissions from numerous sources located over a wide geographic area.

In response to this Congressional directive, the EPA promulgated regulations to address visibility impairment in 1999. These regulations, which are commonly referred to as the Regional Haze Rule (RHR), established an iterative process for achieving Congress's national goal by providing for multiple, approximately 10-year "planning periods" in which state air agencies must submit to EPA plans that address sources of visibility-impairing pollution in their states. The first state plans were due in 2007 for the planning period that ended in 2018. The second state plans were due in 2021 for the period that ends in 2028. This proposal focuses on obligations from the first planning period of the regional haze program.

The CAA and RHR require States to submit a long-term strategy that includes such measures as are necessary to achieve reasonable progress for each Class I area. A central element of the long-term strategy for the first planning period state plans was the requirement for certain older stationary sources to install the Best Available Retrofit Technology (BART) for the purpose of making reasonable progress towards Congress's national goal of eliminating visibility impairment within our nation's most treasured lands. The other central element of a state's long-term strategy is the requirement to include any additional control measures that are necessary to make "reasonable

progress" towards the national goal. To determine what control measures are necessary to make reasonable progress and therefore must be included in the long-term strategy, states must consider four statutory factors: (1) the costs of compliance, (2) the time necessary for compliance, (3) the energy and nonair quality environmental impacts of compliance, and (4) the remaining useful life of any existing source subject to such requirements. This statutory requirement is often referred to as a "four-factor analysis." Additionally, when visibility-impairing emissions from multiple states impact the same national park or wilderness area, the RHR requires those states to coordinate and consult with one another to ensure that each state is making reasonable progress toward the national goal.

Texas is home to numerous power plants and industrial sources, many of which operate without modern pollution controls. As a result, several of these plants are among the highest emitters of visibility-impairing pollutants, such as sulfur dioxide (SO<sub>2</sub>), in the nation. These emissions cause or contribute to visibility impairment in such iconic places as Big Bend National Park (Big Bend) and Guadalupe Mountains National Park (Guadalupe Mountains) in Texas, and Wichita Mountains Wilderness Area (Wichita Mountains) in Oklahoma. To address this visibility impairment, Texas submitted its first regional haze state implementation plan (SIP) in 2009. After reviewing the SIP, the EPA determined that Texas did not analyze and weigh the four statutory factors in a reasonable way such that the SIP did not provide for reasonable progress towards eliminating visibility-impairing pollutants at these national parks and wilderness areas. Additionally, the EPA determined that Oklahoma and Texas did not adequately justify why additional reductions from Texas's sources were not necessary to address impacts at the Wichita Mountains as part of the consultation process required under the RHR despite information showing that impacts from Texas's sources were several times greater than the impact from Oklahoma's own sources. Therefore, in 2016, the EPA promulgated a final rule disapproving these portions of Texas's SIP and Oklahoma's SIP (while approving other aspects of both SIPs). The partial disapprovals triggered the requirement under the CAA for the EPA to promulgate a federal implementation plan (FIP) to remedy the deficiencies in the SIPs. Consequently, in the same action, EPA finalized a FIP that required

cost-effective emissions control technologies that would have resulted in improved visibility at the Class I areas impacted by sources in Texas. However, Texas and several industry groups filed a petition for review challenging the final rule in the Fifth Circuit where they obtained a stay that prevented the rule from taking effect.

In response to the Fifth Circuit motion panel's non-binding stay opinion, the EPA sought and received a voluntary remand of portions of the final rule to reconsider its action. After considering the non-binding stay opinion and other relevant facts, the EPA is again proposing to disapprove the portions of the Texas and Oklahoma Regional Haze SIPs that the Agency disapproved in 2016. The EPA is also proposing to amend the FIP to account for recent developments, such as the retirements of previously covered sources and the EPA's recently proposed action to address the BART requirements for Texas's power plants, which, if finalized as proposed, would reduce SO<sub>2</sub> emissions in Texas by more than 80,000 tons per year (tpy), improving visibility across a wide range of scenic vistas in both Texas and nearby states. Based on these developments, the EPA proposes to determine that no additional controls are necessary to make reasonable progress for the first planning period, which ended in 2018.

It has been 14 years since Texas submitted its first planning period Regional Haze SIP to EPA for review. Since that time, the first planning period ended, the second planning period began, and Texas submitted its Regional Haze SIP for the second planning period. Texas remains one of the few states in the nation that does not have a complete first planning period regional haze plan in place to protect the national parks and wilderness areas impacted by sources within the state. With this action, while also taking into consideration various power plant shutdowns in Texas and the recently proposed BART action, the EPA is proposing to find that the requirements for the first planning period are fulfilled. In a separate future action, EPA will evaluate Texas's second planning period Regional Haze SIP to determine whether that SIP satisfies the relevant statutory and regulatory requirements.

## II. Background

### A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area. These

sources and activities emit fine particulate matter (PM<sub>2.5</sub>) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and its precursors (e.g., 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, in addition to direct sources of PM<sub>2.5</sub>, impairs visibility by scattering and absorbing light. Visibility impairment (i.e., light scattering) reduces the clarity, color, and visible distance that one can see.

In section 169A of the 1977 Amendments to the Clean Air Act (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, anthropogenic (manmade) impairment of visibility in 156 national parks and wilderness areas designated as mandatory Class I areas.<sup>1</sup> Congress added section 169B to the CAA in 1990 to address regional haze issues, and the EPA promulgated the Regional Haze Rule (RHR), codified at 40 CFR 51.308,<sup>2</sup> on July 1, 1999.<sup>3</sup> The RHR established a requirement for all States to submit a regional haze SIP, including the District of Columbia, and the Virgin Islands.<sup>4</sup>

To address regional haze visibility impairment, the RHR established an iterative planning process that requires States to periodically submit SIP revisions (each periodic revision

<sup>1</sup> Areas designated as mandatory Class I 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>2</sup> In addition to the generally applicable regional haze provisions at 40 CFR 51.308, EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are not relevant here.

<sup>3</sup> See 64 FR 35714 (July 1, 1999). On January 10, 2017, EPA promulgated revisions to the Regional Haze Rule that apply for the second and subsequent implementation periods. See 82 FR 3078 (Jan. 10, 2017).

<sup>4</sup> 40 CFR 51.300(b).

referred to as a "planning period") to address regional haze visibility impairment at Class I areas.<sup>5</sup> Under the CAA, each SIP submission must contain "a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal," and the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility-impairing pollutants install and operate Best Available Retrofit Technology (BART).<sup>6</sup> States' first regional haze SIPs were due by December 17, 2007, with subsequent SIP submissions containing revised long-term strategies originally due July 31, 2018, and every ten years thereafter.<sup>7</sup> This action addresses first planning period reasonable progress requirements.<sup>8</sup>

### 1. Determination of Baseline, Natural, and Current Visibility Conditions

The Regional Haze Rule establishes the deciview (dv) as the principal metric for measuring visibility.<sup>9</sup> This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is also sometimes expressed in terms of the visual range or light extinction. Visual range is the greatest distance, in kilometers or miles, at which a dark object can just be distinguished against the sky. Light extinction, expressed in units of inverse megameters (Mm<sup>-1</sup>), is the amount of light lost as it travels over distance. The haze index, in units of deciviews (dv), is calculated directly from the total light extinction. The deciview is a useful measure for tracking progress in improving

<sup>5</sup> See 42 U.S.C. 7491(b)(2); 40 CFR 51.308(b) and (f); see also 64 FR at 35768. EPA established in the Regional Haze Rule that all states either have Class I areas within their borders or "contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area;" therefore, all states must submit regional haze SIPs. See 64 FR at 35721. In addition to each of the 50 states, EPA also concluded that the Virgin Islands and District of Columbia contain a Class I area and/or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. See 40 CFR 51.300(b) and (d)(3).

<sup>6</sup> See 42 U.S.C. 7491(b)(2)(A); 40 CFR 51.308(d) and (e).

<sup>7</sup> See 40 CFR 51.308(b). The 2017 Regional Haze Rule revisions changed the second period SIP due date from July 31, 2018, to July 31, 2021, and maintained the existing schedules for the subsequent implementation periods. See 40 CFR 51.308(f).

<sup>8</sup> In a separate action, we proposed to withdraw the Texas SO<sub>2</sub> Trading Program and proposed to address the SO<sub>2</sub> and PM BART requirements for Texas BART eligible sources with source-specific SO<sub>2</sub> and PM emission limits. See generally 88 FR 28918 (May 4, 2023).

<sup>9</sup> See 64 FR 35714, 35725–27 (July 1, 1999).

visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility of one deciview.<sup>10</sup>

The deciview is used in expressing Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions and tracking changes in visibility. The regional haze SIPs must contain measures that ensure “reasonable progress” toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requirements for the first planning period<sup>11</sup> provide that states must determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (“best”) and 20 percent most impaired (“worst”) visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. We have provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in the first planning period.<sup>12</sup>

<sup>10</sup> The preamble to the Regional Haze Rule provides additional details about the deciview. 64 FR at 35725.

<sup>11</sup> The applicable requirements of the Regional Haze Rule for the first planning period are found in 40 CFR 51.308(d).

<sup>12</sup> *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule*, September 2003, EPA-454/B-03-005, available at [https://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/20030901\\_oaqps\\_epa-454\\_b-03-005\\_estimating\\_natural%20visibility\\_regional\\_haze.pdf](https://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/20030901_oaqps_epa-454_b-03-005_estimating_natural%20visibility_regional_haze.pdf) (hereinafter referred to as “our 2003 Natural Visibility Guidance”); and *Guidance for Tracking Progress Under the Regional Haze Rule*, EPA-454/B-03-004, September 2003, available at <https://www.epa.gov/sites/default/files/2021-03/documents/tracking.pdf> (hereinafter referred to as our “2003 Tracking Progress Guidance”).

For the regional haze SIPs for the first planning period, “baseline visibility conditions” were the starting points for assessing “current” visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area on the 20 percent least and most impaired days, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured in the first planning period.

## 2. Reasonable Progress Requirements

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the States that include a long-term strategy, as discussed in the subsection that follows, and establish two RPGs (*i.e.*, one for the “best” and one for the “worst” days) for each Class I area within the State for each (approximately) 10-year planning period.<sup>13</sup> The Regional Haze Rule does not mandate specific milestones or rates of progress, but instead calls for States to establish goals that provide for “reasonable progress” toward achieving natural visibility conditions. In establishing RPGs, States must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP and ensure no degradation in visibility for the least impaired days over the same period.<sup>14</sup>

States have discretion in establishing RPGs for their Class I areas, but in doing so must consider the following factors established in section 169A of the CAA and in our Regional Haze Rule at 40 CFR 51.308(d)(1)(i)(A): (1) The costs 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 any potentially affected sources. States must demonstrate in

their SIPs how they considered these four factors when establishing the RPGs for the best and worst days for each of their Class I areas. As noted in our Reasonable Progress Guidance for the first planning period, States have flexibility in how they take these factors into consideration, but must exercise that discretion in a manner consistent with the CAA and the Regional Haze Rule.<sup>15</sup> In establishing the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to hereafter as the “Uniform Rate of Progress (URP)”) and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress, which States are to use for analytical comparison to the amount of progress they expect to achieve. In establishing RPGs, each State with one or more Class I areas must also consult with potentially “contributing states,” *i.e.*, other nearby states with emission sources that may be affecting visibility impairment at Class I areas.<sup>16</sup>

## 3. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that States include in their regional haze SIP a 10-to-15-year strategy for making reasonable progress, section 51.308(d)(3) of the Regional Haze Rule requires that States include a LTS that addresses regional haze visibility impairment for each mandatory Class I area within the State and for each mandatory Class I area located outside the State which may be affected by emissions from the State. The LTS in each implementation period is the compilation of all control measures a State has determined are necessary to make reasonable progress towards achieving natural visibility conditions. The LTS must include “enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals” for all Class I areas within, or affected by emissions from, the state.<sup>17</sup>

When a State’s emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another State, the Regional Haze Rule requires the

<sup>15</sup> *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program*, June 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1).

<sup>16</sup> 40 CFR 51.308(d)(1)(iv).

<sup>17</sup> 40 CFR 51.308(d)(3).

<sup>13</sup> See 64 FR at 35730–37.

<sup>14</sup> *Id.*

impacted state to coordinate with the contributing States in order to develop coordinated emissions management strategies.<sup>18</sup> In such cases, the contributing State must demonstrate that it has included in its SIP submission all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. A State must also consult with any State having emissions that are reasonably anticipated to contribute to visibility impairment in any of its mandatory Class I areas.<sup>19</sup> Where other States cause or contribute to impairment in a mandatory Class I area, the State must demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the area.<sup>20</sup> The State must document the technical basis on which the State is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I area it affects.<sup>21</sup> Regional planning organizations (RPOs) have provided forums for significant interstate consultation, but additional consultations between States may be required to sufficiently address interstate visibility issues. This is especially true where two States belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources.<sup>22</sup> At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address “reasonably attributable visibility impairment” (RAVI); (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source

emissions over the period addressed by the LTS.<sup>23</sup>

*B. Previous Actions Related to Texas and Oklahoma Regional Haze Reasonable Progress Requirements for the First Planning Period*

On March 31, 2009, Texas submitted a regional haze SIP (the 2009 Regional Haze SIP) to the EPA to address regional haze requirements for the first planning period. On December 16, 2014, we proposed an action to partially approve this SIP revision as meeting certain requirements of the regional haze program (2014 Proposed Rule).<sup>24</sup> We also proposed to partially disapprove the Texas SIP revision for not adequately addressing other requirements of the regional haze program related to reasonable progress, the long-term strategy, and the calculation of natural visibility conditions. Given the large visibility impairment at Oklahoma’s Class I area<sup>25</sup> due to emissions from Texas and the requirements to develop emission control strategies in consultation with impacting States,<sup>26</sup> we proposed in the same action to partially disapprove a revision to the Oklahoma SIP submitted on February 19, 2010, which also addressed regional haze for the first planning period.<sup>27</sup> We proposed a FIP for Texas and Oklahoma to remedy the deficiencies we identified in the SIPs.

In January 2016, we took final action to partially approve and partially disapprove portions of Texas’s 2009 Regional Haze SIP and Oklahoma’s 2010 Regional Haze SIP (2016 Final Rule).<sup>28</sup> We approved the Texas SIP revision as meeting certain requirements of the regional haze program, including BART requirements for facilities other than Electric Generating Units (EGUs).<sup>29</sup> We disapproved Texas’s RPGs for Big Bend and the Guadalupe Mountains and found that Texas did not satisfy several

of the requirements of the Regional Haze Rule at 40 CFR 51.308(d)(1) with regard to establishing RPGs, most notably the four-factor analysis required under section 51.308(d)(1)(i)(A) and the requirement to adequately justify RPGs that are less stringent than the URP under section 51.308(d)(1)(ii). We disapproved Texas’s calculation of natural visibility conditions for Big Bend and Guadalupe Mountains under section 51.308(d)(2)(iii) and other calculations that are dependent on the calculation of natural visibility conditions, including the calculation of the emission reductions needed to achieve the URP for these Class I areas under section 51.308(d)(1)(i)(B) and the calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions under section 51.308(d)(2)(iv)(A). We also disapproved a majority of the portions of Texas’s 2009 Regional Haze SIP that address the long-term strategy requirements under section 51.308(d)(3), including the long-term strategy consultations with Oklahoma. In the 2016 Final Rule, we also disapproved Oklahoma’s RPGs for the Wichita Mountains and disapproved the portions of the Oklahoma SIP addressing the requirements of section 51.308(d)(1) with regard to setting RPGs, with the exception of section 51.308(d)(1)(vi), which we approved.

We also finalized a FIP for Texas and Oklahoma to remedy the deficiencies we identified in their SIPs (2016 FIP).<sup>30</sup> The FIP included our own four factor analysis for Texas and implemented SO<sub>2</sub> emission limits on fifteen Texas EGUs at eight different facilities as part of a long-term strategy for making reasonable progress at the Class I areas in Texas and Oklahoma;<sup>31</sup> established revised natural conditions on the 20 percent best and worst days for the Guadalupe Mountains and Big Bend Class I areas; recalculated the number of deciviews by which baseline visibility conditions exceed natural visibility conditions for the Guadalupe Mountains and Big Bend Class I areas; and established new RPGs for the Big Bend, the Guadalupe Mountains, and Wichita Mountains Class I areas.<sup>32</sup> The FIP did not establish any additional requirements on sources within Oklahoma.

<sup>23</sup> 40 CFR 51.308(d)(3)(v).

<sup>24</sup> 79 FR 74818 (Dec. 16, 2014).

<sup>25</sup> Wichita Mountains is the only Class I area in Oklahoma. 40 CFR 81.424.

<sup>26</sup> 79 FR at 74821–74822.

<sup>27</sup> Specifically, we proposed to disapprove the portion of the Oklahoma Regional Haze SIP that addresses the requirements of section 51.308(d)(1), except for section 51.308(d)(1)(vi). 79 FR 74818 (Dec. 16, 2014).

<sup>28</sup> 81 FR 296 (Jan. 5, 2016).

<sup>29</sup> For EGU facilities, we addressed the BART requirements in a separate rulemaking in 2017 (and affirmed in 2020), which, in part, created the Texas SO<sub>2</sub> Trading Program. See 82 FR 48324 (October 17, 2017) and 85 FR 49170 (Aug. 12, 2020). We recently proposed to withdraw the Texas SO<sub>2</sub> Trading Program and proposed to replace the program with source-specific SO<sub>2</sub> emission limits for BART eligible sources. See generally 88 FR 28918 (May 4, 2023). We are not addressing BART for Texas EGUs in this proposed rule.

<sup>30</sup> See 81 FR at 346–47.

<sup>31</sup> The Class I areas in Texas are Big Bend and Guadalupe Mountains. The Class I area in Oklahoma is Wichita Mountains.

<sup>32</sup> 81 FR at 346–47.

<sup>18</sup> 40 CFR 51.308(d)(3)(i).

<sup>19</sup> 40 CFR 51.308(d)(3)(i).

<sup>20</sup> 40 CFR 51.308(d)(3)(ii).

<sup>21</sup> 40 CFR 51.308(d)(3)(iii).

<sup>22</sup> 40 CFR 51.308(d)(3)(iv).

*C. Litigation, Stay Order, and EPA's Motion for Voluntary Remand*

On March 1, 2016, the State of Texas, the Public Utility Commission of Texas, and the Texas Commission on Environmental Quality (Texas) filed a petition for review of the 2016 Final Rule in the United States Court of Appeals for the Fifth Circuit. Additional parties added as petitioners include Luminant Generation Company, L.L.C., and other Utilities.<sup>33</sup> On March 28, 2016, the Court granted motions to intervene filed by IBEW Local Union 2337 in support of petitioners and by Sierra Club and National Parks Conservation Association (NPCA) in support of the EPA.<sup>34</sup>

On March 3, 2016, and March 17, 2016, the Utilities and Texas respectively filed motions to stay the 2016 Final Rule in the Fifth Circuit. The EPA filed a response to these motions on April 7, 2016, and the Utilities and Texas filed separate reply briefs on April 18, 2016. The motions panel rendered a non-binding opinion on July 15, 2016 (2016 stay opinion), granting the stay and concluding, in part, that the Petitioners had demonstrated a strong likelihood of success on the merits.<sup>35</sup>

Regarding the EPA's disapproval of Texas's RPGs, the motions panel held that "Petitioners are likely to establish that EPA improperly failed to defer to Texas's application of the statutory factors and improperly required a source-specific analysis not found in the Act or Regional Haze Rule."<sup>36</sup> As to EPA's disapproval of the consultation between Texas and Oklahoma, the panel stated that "EPA's disapproval seems to stem in large part from its assertion that Texas had to conduct a source-specific analysis and provide Oklahoma with that source-specific analysis."<sup>37</sup> The panel found that, "given the absence of a regulation or statute requiring source-specific consultations" (among other things), the "Petitioners have a strong likelihood of success in showing that EPA's disapproval of the consultation

between Oklahoma and Texas was arbitrary and capricious."<sup>38</sup>

Regarding the FIP, the panel found that Petitioners had a strong likelihood of showing that EPA acted in excess of its statutory power when it imposed emission controls that would not be installed until after the period of time covered by the first planning period.<sup>39</sup> The panel found that "EPA bound states (and accordingly bound itself) to a ten-year window when it promulgated the Regional Haze Rule," and that the EPA does not have the authority to require actions that would take place after the particular period.<sup>40</sup> Finally, the panel held that the "EPA's truncated discussion of [electric power] grid reliability indicates that the agency may not have fulfilled its statutory obligation to consider the energy impacts of the FIP."<sup>41</sup>

The panel further found that petitioners had demonstrated that they would suffer irreparable injury if the effect of the 2016 Final Rule was not stayed pending litigation of the petition for review.<sup>42</sup> Moreover, the panel found that a stay would not injure EPA or Intervenor-Respondents, and that "the public's interest in ready access to affordable electricity outweighs the inconsequential visibility differences that the federal implementation plan would achieve in the near future."<sup>43</sup> As such, the panel stayed the 2016 Final Rule in its entirety, "including the emissions control requirements, pending the outcome of this petition for review."<sup>44</sup>

In addition to the panel's ruling, one of the petitioners, Luminant, submitted a request for administrative reconsideration of the 2016 Final Rule pursuant to CAA section 307(d)(7)(B) on March 2, 2016.<sup>45</sup> Among other things, Luminant argued that reconsideration is appropriate because EPA did not finalize its proposal to rely on the Cross-State Air Pollution Rule (CSAPR) to satisfy BART for Texas EGUs, but nonetheless finalized the Agency's

proposed long-term strategy and RPGs for Texas. Luminant argued that, "by deferring this action, EPA is fundamentally changing the manner in which it will evaluate BART controls for Texas and how reasonable progress is evaluated."<sup>46</sup>

On December 2, 2016, the EPA filed a motion for a partial voluntary remand of the portions of the 2016 Final Rule disapproving the Texas and Oklahoma SIPs and imposing FIPs.<sup>47</sup> We stated that our concerns leading to our request for a voluntary remand are "substantial and legitimate," as the court's order demonstrated that the 2016 Final Rule could be found arbitrary and capricious or contrary to law.<sup>48</sup> We also stated that it was "appropriate to reconsider the Final Rule, provide interested parties with a new opportunity to provide comment, including with respect to the views expressed in the Court's Order, and issue a new rule that takes into account the comments received on any factual circumstances that could warrant different outcomes."<sup>49</sup> In response to the EPA's motion for partial voluntary remand, on March 22, 2017, the court remanded the action to the EPA.

Therefore, in this proposal, the EPA is revisiting its prior regional haze SIP disapprovals and FIPs on remand. This is more fully described in sections V and VI. Because the EPA's motion for remand was specific to the prior regional haze SIP disapprovals and FIPs, we are leaving our prior approvals in place and not reopening those determinations in this action.<sup>50</sup> Additionally, while the EPA has not acted on Luminant's administrative

<sup>46</sup> Luminant Reconsideration (Exhibit A w/ Remand Motion) at 2.

<sup>47</sup> Respondent's Motion for Partial Voluntary Remand, *Texas v. EPA*, Case No. 16-60118 (Dec. 2, 2016) (hereinafter referred to as "Remand Motion").

<sup>48</sup> *Citizens Against Pellissippi Parkway Extension, Inc. v. Mineta*, 375 F.3d 412, 417 (6th Cir. 2004). Also, Remand Motion at 21.

<sup>49</sup> Remand Motion at 21.

<sup>50</sup> The 2016 Final Rule also disapproved portions of the following Texas SIP submittals intended to address CAA provisions under section 110(a)(2)(D)(i)(II) that prohibit air pollutant emissions from interfering with measures required to protect visibility in any other state: April 4, 2008: 1997 8-hour Ozone and 1997 PM<sub>2.5</sub> (24-hour and annual); May 1, 2008: 1997 8-hour Ozone and 1997 PM<sub>2.5</sub> (24-hour and annual); November 23, 2009: 2006 24-hour PM<sub>2.5</sub>; December 7, 2012: 2010 NO<sub>2</sub>; December 13, 2012: 2008 8-hour Ozone; and May 6, 2013: 2010 1-hour SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS). In a proposed rule published on January 4, 2017 (82 FR 912), we proposed to reconsider the basis of our prior disapproval and re-proposed disapproval of these portions of these Texas SIP submittals and our final disapproval was published on October 17, 2017 (82 FR 48324, 48332). We are not further addressing our disapproval of the interstate visibility transport portions of these Texas SIP submittals.

<sup>38</sup> *Texas*, 829 F. 3d at 429.

<sup>39</sup> *Texas*, 829 F. 3d at 430.

<sup>40</sup> *Texas*, 829 F. 3d at 430.

<sup>41</sup> *Texas*, 829 F. 3d at 433. Additionally, the court stated it did not need to consider whether EPA improperly used a dollars per ton of reduced pollution metric versus a dollars per deciview improvement metric "or whether the costs imposed are unreasonable as a whole in light of the minimal visibility benefits the FIP would achieve in the relevant period," because petitioners have a strong likelihood of establishing other flaws in the FIP. *Texas*, 829 F. 3d at 431.

<sup>42</sup> *Texas*, 829 F. 3d at 433-434.

<sup>43</sup> *Texas*, 829 F. 3d at 434-435.

<sup>44</sup> *Texas*, 829 F. 3d at 435.

<sup>45</sup> Luminant Reconsideration (Exhibit A w/ Remand Motion).

<sup>33</sup> Other parties include: Big Brown Power Company, L.L.C.; Luminant Mining Company, L.L.C.; Big Brown Lignite Company, L.L.C.; Luminant Big Brown Mining Company, L.L.C.; Southwestern Public Service Company; Utility Air Regulatory Group; Coletto Creek Power, L.P.; NRG Texas Power, L.L.C.; and Nucor Corporation (Utilities).

<sup>34</sup> The Court combined all petitions under Case No. 16-60118.

<sup>35</sup> *Texas v. EPA*, 829 F.3d 405, 411 (5th Cir. 2016).

<sup>36</sup> *Texas*, 829 F. 3d at 428. Additionally, the Court noted that "other grounds for disapproval were asserted in the proposed rule but were not finalized in the Final Rule."

<sup>37</sup> *Texas*, 829 F. 3d at 428.

petition for reconsideration, at this time, we need not take a position on the issue Luminant raised in its petition. In the separate 2023 Texas BART action, the EPA proposed BART controls for Texas EGUs, which we anticipate finalizing before finalizing this reasonable progress action.<sup>51</sup> Once finalized, the Texas BART action should address Luminant's concern.

#### *D. Federal Land Manager (FLM) Consultation*

The RHR requires that a state, or the EPA if promulgating a FIP, consult with FLMs before adopting and submitting a required SIP or SIP revision or a required FIP or FIP revision. Under 40 CFR 51.308(i)(2), a state, or the EPA if promulgating a FIP, 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, or FIP or FIP revision, for regional haze. The EPA must include a description of how it addressed comments provided by the FLMs when considering a FIP or FIP revision. We consulted with the FLMs (specifically, U.S. Fish and Wildlife Service, U.S. Forest Service, and the National Park Service) on April 12, 2023. During the consultation we provided an overview of our proposed actions. The FLMs signaled general support for our proposed action and did not provide any written comments.<sup>52</sup>

### III. Overview of Proposed Actions

To address the voluntary remand, we are proposing to disapprove the same portions of the Texas and Oklahoma SIPs we previously disapproved in 2016. For certain portions of these disapprovals, we are supplementing and clarifying our rationale for disapproval. For others, we are incorporating our original bases for disapproval as detailed in our 2014 Proposed Rule and 2016 Final Rule.

We are proposing to supplement and clarify our disapproval of the portions of the Texas Regional Haze SIP that address several of the requirements at section 51.308(d)(1) related to establishing RPGs, most notably the four-factor analysis required under section 51.308(d)(1)(i)(A) and the requirement to adequately justify RPGs

that are less stringent than the URP under section 51.308(d)(1)(ii) based on the consideration of the four statutory factors in section 51.308(d)(1)(i)(A). Additionally, we are proposing to supplement and clarify our disapprovals of the Texas Regional Haze SIP regarding natural visibility conditions and proposing to supplement and clarify our disapprovals of the consultation portions in the Regional Haze SIPs for Texas and Oklahoma.<sup>53</sup>

For the remaining portions of the Texas Regional Haze SIP that we are proposing to disapprove, we are relying on the bases for disapproval that were discussed in the preambles of our 2014 Proposed Rule and 2016 Final Rule. Similarly, for those portions of the Oklahoma Regional Haze SIP that we are proposing to disapprove, we are relying on the bases for disapproval that were discussed in the preambles of our 2014 Proposed Rule and 2016 Final Rule. We do not reiterate in detail the bases for these disapprovals in this notice but rather refer the reader to the preambles of those prior rulemakings. See section V.A. for a detailed list of the portions of the Texas and Oklahoma Regional Haze SIPs for which we are proposing disapproval and incorporating our original bases for disapproval in this action.<sup>54</sup>

We are proposing to amend the 2016 FIP to find that no further federal action is needed to remedy the proposed disapprovals of portions of the Texas and Oklahoma Regional Haze SIPs. Therefore, we are proposing to rescind the SO<sub>2</sub> emission limits established in the 2016 Final Rule. Our proposal to rescind the SO<sub>2</sub> emission limitations and the associated monitoring, reporting, and recordkeeping requirements we established in the 2016 FIP is based on developments that occurred during the period between the 2016 Final Rule and this proposal, including the shutdown of several of the same units for which we promulgated emission limits in the 2016 Final Rule, our recently proposed SO<sub>2</sub> BART emission limits on several of the same units for which we required controls in the 2016 Final Rule, and the portion of the Fifth Circuit's stay opinion pertaining to the imposition of controls beyond the end of the planning period. We also acknowledge the EPA's ability to consider the remaining units during our forthcoming review of Texas's Regional Haze SIP for the second

planning period. We are also proposing to find that our rescission of the SO<sub>2</sub> emission limitations and the associated monitoring, reporting, and recordkeeping requirements we established in the 2016 FIP is consistent with CAA section 110(l). Specifically, we are proposing to find that our proposed rescission of the FIP would not interfere with any applicable requirement concerning attainment or reasonable further progress (as defined in section 7501 of this title), or any other applicable requirements of the CAA.

### IV. Legal Authority for This Action

The EPA has the authority to revisit its prior actions on SIPs and FIPs on remand. As previously stated, in light of the discussion regarding the likelihood of success on the merits set forth in the Fifth Circuit's 2016 stay order, EPA moved for partial voluntary remand of the SIP disapprovals and FIPs, without admitting error. The Fifth Circuit granted the motion and remanded the action to EPA on March 22, 2017. Thus, EPA has an obligation to complete its action on remand.

On remand, EPA is taking this action pursuant to CAA sections 110(c)(1), 110(k)(3) and 169A(b)(2). CAA section 169A(b)(2) requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the national visibility goal. Additionally, CAA section 110(k)(3) authorizes EPA to approve, disapprove, or partially approve and partially disapprove a SIP or SIP revision, and CAA section 110(c)(1) authorizes EPA to promulgate a FIP where "the Administrator . . . disapproves a State implementation plan submission in whole or in part." EPA's authority to take such actions under the CAA necessarily provides it the inherent authority to revisit and amend such actions as necessary. See *Trujillo v. Gen Elec. Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980). It is well established that agencies have inherent authority to revisit past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983); see also *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016). Further, the Fifth Circuit granted EPA's request for a voluntary remand and this action responds to that remand.

<sup>51</sup> See, Revision and Promulgation of Air Quality Implementation Plans; Texas; Regional Haze Federal Implementation Plan; Disapproval and Need for Error Correction; Denial of Reconsideration of Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations 88 FR 28918 (May 4, 2023), Docket No. EPA–R06–OAR–2016–0611; EPA–HQ–OAR–2016–0598.

<sup>52</sup> See "Texas Regional Haze FLM Consultation 4\_12\_23.xls" in the docket for this action.

<sup>53</sup> See Section 51.308(d)(2)(iii) for requirements regarding natural visibility conditions; Sections 51.308(d)(3)(i) and 51.308(d)(1)(iv) for the consultation requirements.

<sup>54</sup> See 79 FR 74818 (2014 Proposed Rule) and 81 FR 296 (2016 Final Rule).



## V. EPA's Review of the 2016 Prior Disapprovals on Remand

In the 2016 Final Rule, we finalized our disapprovals of several portions of the Texas and Oklahoma Regional Haze SIPs. In this action, we are revisiting those prior disapprovals, and we are again proposing to disapprove those portions of the SIPs and provide supplemental rationale, where necessary, to support the proposed disapprovals.

### A. Proposal To Incorporate Our Prior Bases for Disapprovals

The specific portions of the Texas Regional Haze SIP we disapproved in the 2016 Final Rule are:

- Section 51.308(d)(1) regarding the RPGs for the Guadalupe Mountains and Big Bend;
- Section 51.308(d)(1)(i)(A) regarding the requirement to conduct a four-factor analysis;
- Section 51.308(d)(1)(i)(B) regarding the requirement to calculate the emission reduction measures needed to achieve the URP for the Guadalupe Mountains and Big Bend for the period covered by the SIP;
- Section 51.308(d)(1)(ii) regarding the requirement to demonstrate, based on the factors in Section 51.308(d)(1)(i)(A), that the progress goals adopted by Texas are reasonable;
- Section 51.308(d)(2)(iii) regarding the calculation of natural visibility conditions for the Guadalupe Mountains and Big Bend for the most impaired and least impaired days;
- Section 51.308(d)(2)(iv) regarding the calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions for the Guadalupe Mountains and Big Bend for the most impaired and least impaired days;
- Section 51.308(d)(3)(i) regarding Texas's long-term strategy consultation with Oklahoma in order to develop coordinated emission management strategies to address visibility impacts at the Wichita Mountains;
- Section 51.308(d)(3)(ii) regarding the requirement for Texas to secure its share of reductions necessary to achieve the RPGs for the Guadalupe Mountains, Big Bend, and the Wichita Mountains;
- Section 51.308(d)(3)(iii) regarding the requirement for Texas to document the technical basis for its long-term strategy for the Guadalupe Mountains, Big Bend, and the Wichita Mountains;
- Section 51.308(d)(3)(v)(C) regarding Texas's emission limitations and schedules for compliance to achieve the RPGs for the Guadalupe Mountains, Big Bend, and the Wichita Mountains;

- 30 Texas Administrative Code (TAC) 116.1510(d), which was incorporated into the Texas Regional Haze SIP and relied on the now defunct CAIR.

The specific portions of the Oklahoma Regional Haze SIP we disapproved in the January 5, 2016 rulemaking are:

- Section 51.308(d)(1) regarding the RPGs for the Wichita Mountains;
- Section 51.308(d)(1)(i)(A) regarding the requirement to conduct a four-factor analysis;
- Section 51.308(d)(1)(i)(B) regarding the requirement to consider the URP for the Wichita Mountains and the emission reduction measures needed to achieve it for the period covered by the SIP;
- Section 51.308(d)(1)(ii) regarding the requirement to demonstrate, based on the factors in Section 51.308(d)(1)(i)(A), that the rate of progress for the SIP to attain natural conditions by 2064 is not reasonable and that the progress goal adopted by Oklahoma is reasonable;
- Section 51.308(d)(1)(iv) regarding the requirement for Oklahoma to consult with Texas with respect to the visibility impact of Texas sources at the Wichita Mountains.

Upon revisiting the 2016 disapprovals, we are again proposing to disapprove these portions of the Texas and Oklahoma Regional Haze SIPs. As we discuss in sections V.B—V.D, we are proposing to clarify and supplement the basis of our proposed disapproval of certain elements of the SIP submissions where the Fifth Circuit motion panel's 2016 stay opinion appears to reflect a misunderstanding or disagreement with the bases of our disapprovals. The portions for which we are proposing to clarify and supplement the bases of our proposed disapprovals are as follows:

- Texas's four-factor analysis required under section 51.308(d)(1)(i) and (ii);
- Texas's calculation of the natural visibility conditions at the Guadalupe Mountains and Big Bend required under section 51.308(d)(2)(iii);
- The portion of the Texas Regional Haze SIP that is intended to address the requirement in section 51.308(d)(3)(i) to consult with other States with Class I areas where Texas emissions are reasonably anticipated to contribute to visibility impairment in order to develop coordinated emission management strategies;
- The portion of the Texas Regional Haze SIP that is intended to address the requirement in section 51.308(d)(3)(ii) to demonstrate that the state has included in its regional haze SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for any Class I area in

another state where its emissions cause or contribute to visibility impairment;

- The portion of the Texas Regional Haze SIP that is intended to address the requirement in section 51.308(d)(3)(iii) to document the technical basis on which the state is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress at the Guadalupe Mountains, Big Bend, and the Wichita Mountains;
- The portion of the Oklahoma Regional Haze SIP that is intended to address the requirement in section 51.308(d)(1)(iv) to consult with those States which may reasonably be anticipated to cause or contribute to visibility impairment in the Wichita Mountains.

For the remaining portions of the Texas and Oklahoma Regional Haze SIPs that we are again proposing to disapprove, the bases for our disapproval were previously discussed in the preamble of our proposed rule published on December 16, 2014, and the preamble of our final rule published on January 5, 2016. We are relying on the same bases for disapproval previously discussed in those proposed and final rulemakings and will not repeat the rationales in this notice but rather refer the reader to the preamble of those prior rulemakings,<sup>55</sup> and we incorporate those rationales by reference in this action. Those remaining portions we are proposing to disapprove and for which we are incorporating our original bases for disapproval in this action are as follows:

- Texas's RPGs for the Guadalupe Mountains and Big Bend under section 51.308(d)(1);<sup>56</sup>
- Texas's calculation of the emission reductions needed to achieve the uniform rates of progress for the Guadalupe Mountains and Big Bend under section 51.308(d)(1)(i)(B);<sup>57</sup>
- Texas's calculation of the number of deciviews by which baseline conditions exceed natural conditions for the best and worst visibility days at the Texas Class I areas under section 51.308(d)(2)(iv) given that this calculation relies on the determination of natural visibility conditions, which we are proposing to disapprove;<sup>58</sup>
- The portion of the Texas Regional Haze SIP intended to address paragraph (C) of section 51.308(d)(3)(v), which is

<sup>55</sup> See 79 FR 74818 (2014 Proposed Rule) and 81 FR 296 (2016 Final Rule).

<sup>56</sup> 79 FR at 74833–74843 (2014 Proposed Rule) and 81 FR 298–299, 338, 339–343 (2016 Final Rule).

<sup>57</sup> 79 FR at 74832–74833 (2014 Proposed Rule) and 81 FR at 299 (2016 Final Rule).

<sup>58</sup> 79 FR at 74832 (2014 Proposed Rule) and 81 FR at 299–300 (2016 Final Rule).

the requirement to consider emissions limitations and schedules for compliance to achieve the reasonable progress goals;<sup>59</sup>

- 30 TAC 116.1510(d), which was incorporated into the Texas Regional Haze SIP and relies on the now defunct CAIR;<sup>60</sup>

- Oklahoma's RPGs for the Wichita Mountains under section 51.308(d)(1) and the portions of Oklahoma's Regional Haze SIP that are intended to address the requirements of section 51.308(d)(1)(i)(A), (i)(B), and (ii) with respect to Oklahoma's establishment of its RPGs for the Wichita Mountains given that these portions of Oklahoma's Regional Haze SIP relied on and were informed by the analysis and results of Texas's reasonable progress analysis required under section 51.308(d)(1).<sup>61</sup>

### B. Supplemental Bases for Our Disapproval of Texas's Four-Factor Analysis

In establishing a RPG for each of its Class I areas, Texas is required by CAA section 169A(g)(1) and section 51.308(d)(1)(i)(A) to “[c]onsider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.” This requirement is often referred to as the reasonable progress “four-factor analysis.” In addition, section 51.308(d)(1)(ii) provides that for the period of the SIP, if a state establishes an RPG that provides for a slower rate of improvement in visibility than the rate that would be needed to attain natural conditions by 2064, it must demonstrate based on the factors in

section 51.308(d)(1)(i)(A) that the rate of progress for the SIP to attain natural conditions by 2064 is not reasonable; and that the progress goal it adopted is reasonable. This requirement under section 51.308(d)(1)(ii) applies to Texas because its RPGs for the 20 percent worst days establish a slower rate of progress than the URP for Big Bend and the Guadalupe Mountains.

We provided a detailed discussion of the basis for our disapproval of Texas's four-factor analysis in the preamble of our 2014 Proposed Rule and provided a more abbreviated discussion of the basis for our disapproval in the preamble of our 2016 Final Rule.<sup>62</sup> However, statements made by the Fifth Circuit motions panel in the 2016 stay opinion appear to reflect a misunderstanding of the basis of our disapproval of Texas's four-factor analysis. Specifically, the opinion indicated that the EPA disapproved the Texas SIP for failing to evaluate the four factors on a source-specific basis. The panel's opinion stated that:

EPA argues that it had several grounds for disapproving the Texas and Oklahoma goals and suggests each alone provides a sufficient basis for the disapproval. Most of these ‘independent’ grounds boil down to EPA's insistence that Texas should have conducted a source-specific requirement. Other grounds for disapproval were asserted in the proposed rule but were not finalized in the Final Rule. *Compare* 79 FR at 74,842–43 (proposing disapproval because of Texas's cost threshold, weighing of factors for individual sources, reliance on CAIR reductions, assumptions about efficiency of SO<sub>2</sub> scrubbers, evaluation of potential improvements, order of magnitude estimate, and scrubber upgrade estimates), *with* 81 FR at 298–300 (finalizing disapproval because of lack of source-specific analysis and estimation of natural visibility conditions).<sup>63</sup>

The panel's characterization is incorrect. First, as we discuss in the paragraphs and subsections that follow, the basis for our disapproval of Texas's four-factor analysis was not, and is not, tied to the lack of a source-specific analysis. Second, our 2016 disapproval included these other grounds for disapproval. Here, the panel refers to a subsection of the preamble of our 2016 Final Rule where we state that we “present a summary of the major points of our final decision regarding the Texas regional haze SIP. . . . and those parts of the Oklahoma regional haze SIP that we have not previously acted upon.”<sup>64</sup> Since this was intended to be a summary, this subsection of the 2016

Final Rule did not identify and discuss in detail each of the “other grounds for disapproval” in the same way our 2014 Proposed Rule did. However, these “other grounds for disapproval” were discussed elsewhere in our 2016 Final Rule and in our Response to Comments document associated with that final rule, and our disapproval was based on consideration of all those deficiencies.<sup>65</sup> In this notice, we provide our evaluation of Texas's four-factor analysis and again identify the deficiencies with this analysis. To address concerns raised in the 2016 stay opinion, and where appropriate, we are presenting additional analysis of the SIP to more fully explain the deficiencies with Texas's four-factor analysis.

The Regional Haze Rule does not require states to conduct four-factor analyses on a source-specific basis. CAA section 169A(b)(2) requires states to include in their SIPs “emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress.” While these emission limits must apply to individual sources or units, CAA section 169A(g)(1) does not explicitly require states to consider the four factors on a source-specific basis when determining what amount of emission reductions (and corresponding visibility improvement) constitutes “reasonable progress.” The EPA has consistently interpreted the CAA to provide states with the flexibility to conduct four-factor analyses for specific sources, groups of sources, or even entire source categories, depending on state policy preferences and the specific circumstances of each state. While the CAA and the Regional Haze Rule provide states with flexibility in evaluating the four reasonable progress factors, states must exercise reasoned judgment when choosing which sources, groups of sources, or source categories to analyze. Consistent with the state's obligation to exercise reasoned judgment in its analysis, EPA's role in reviewing a SIP is not limited to accepting at face value a state's analysis in its own SIP submission and its

<sup>59</sup> 79 FR at 74862 (2014 Proposed Rule) and 81 FR at 301 (2016 Final Rule).

<sup>60</sup> While the EPA finalized a limited disapproval of the regional haze SIPs submitted by Texas and thirteen other states in a final rule published on June 7, 2012 (77 FR 33642) because these states relied on requirements of CAIR to satisfy certain regional haze requirements, the EPA did not specifically take action in that final rule on Texas's BART Rules at 30 TAC section 116 that were incorporated in the Texas Regional Haze SIP. The EPA took final action on Texas's BART Rules at 30 TAC section 116 in the 2016 Final Rule (81 FR at 301, 312–313, 350). *See also* 79 FR at 74853–74854 (2014 Proposed Rule).

<sup>61</sup> Thus, Oklahoma did not have adequate information from Texas, nor did it request further investigation or reductions from those sources in Texas with the greatest potential to impact visibility in the Wichita Mountains to properly address these requirements under section 51.308(d)(1)(i) through (v) related to the establishment of its RPGs. *See* 79 FR 74818, 74864–74872 (2014 Proposed Rule) and 81 FR 302–303, 312–313, 338, 339–343 (2016 Final Rule).

<sup>62</sup> 79 FR 74818, 74830–74838 and 74841–74843 (Dec. 16, 2014); 81 FR 296, 298–299, 308–311, 313–314, 318–319, 323–324, 327 (Jan. 5, 2016).

<sup>63</sup> *Texas*, 829 F. 3d at 427–428.

<sup>64</sup> *See* 81 FR at 298.

<sup>65</sup> *See for instance* 81 FR at 299, footnote 11, where we identify the lack of consideration of scrubber upgrade as part of the basis for our disapproval. *See* 81 FR at 318 where we state that Texas's cost threshold of \$2,700/ton was unreasonable and point to the 2014 proposed rule that discussed the issue in detail. *See also* the Response to Comments Document (RTC) for the Texas-Oklahoma Reasonable Progress SIP and FIP, page 857 and 909, where we discuss Texas's reliance on CAIR reductions and assumptions about control efficiency of SO<sub>2</sub> scrubbers. The RTC for the Texas-Oklahoma Reasonable Progress SIP and FIP is available in the docket for this action at Document ID EPA-R06-OAR-2014-0754-0087.

determination that it has fully satisfied the requirements of the CAA.

Rather, Congress tasked EPA with the responsibility of ensuring that a SIP submission satisfies the requirements of the CAA. Abundant case law reflects an understanding that the EPA must evaluate SIP submissions under CAA section 110(k)(2) and (3).<sup>66</sup> If a SIP submission is deficient in whole or in part, the EPA must so find, and if not corrected, implement the relevant requirements through a FIP under CAA section 110(c). Courts have held that EPA's ability to ensure that a SIP submission satisfies the requirements of the CAA includes the ability to review a state's analysis to ensure that it is "reasonably moored to the Act's provisions and . . . based on reasoned analysis."<sup>67</sup> Thus, EPA's oversight role is "more than the ministerial task of routinely approving SIP submissions."<sup>68</sup> If EPA's role were otherwise, Congress would not have expressly tasked the agency with both reviewing SIPs for completeness (CAA section 110(k)(1)(B)) and reviewing the substance of SIPs (CAA section 110(k)(2)–(4)).

As an initial matter, Texas followed a source-specific approach in selecting sources for evaluation in the four-factor analysis and in analyzing the cost of controls for individual sources, as we discussed in the 2014 Proposed Rule.<sup>69</sup> However, as stated earlier in this section, we disapproved Texas's four-factor analysis not because Texas did not perform its four-factor analysis on a source-specific basis, but because the manner in which Texas analyzed and weighed the four reasonable progress factors was flawed and unreasonable in a number of key areas. First, Texas's overall approach in the selection of a set of sources and controls for evaluation was unreasonable and led to numerous potentially cost-effective controls being dismissed or overlooked altogether. Second, in considering the costs of

compliance, which is one of the statutory factors States must consider under section 51.308(d)(1)(i)(A), Texas made unreasonable assumptions that resulted in the overestimation of the cost-effectiveness of controls and a failure to assess costs of available controls for some sources. Finally, in addressing the requirement under section 51.308(d)(1)(i)(A) to include a demonstration showing how the statutory factors were taken into consideration in establishing the RPGs, Texas unreasonably weighed the costs of compliance and the visibility benefits of controls, which resulted in unreasonable conclusions. We discuss these flaws in Texas's four-factor analysis and its weighing of the four factors in more detail in the subsections that follow.

#### 1. Selection of Sources for Evaluation in Four-Factor Analysis

The Reasonable Progress Guidance for the first planning period provides an overview of the process for developing RPGs, potential methods for identifying which source categories should be evaluated for controls, and suggestions for evaluating the four statutory factors with respect to potentially affected stationary sources.<sup>70</sup> The process begins with the identification of key pollutants and sources and/or source categories that are contributing to visibility impairment at each Class I area.<sup>71</sup> A set of sources should be reasonably selected for the four factor analysis based on the sources and source categories that have been identified to contribute to visibility impairment at the applicable Class I areas. The Reasonable Progress Guidance recommends that states "[i]dentify the control measures and associated emission reductions that are expected to result from compliance with existing rules and other available measures for the sources and source categories."<sup>72</sup> States should then determine what additional control measures would be reasonable based on the statutory factors and other relevant factors for the sources and/or source categories that have been identified.<sup>73</sup>

After identification of key pollutants and source categories, Texas narrowed the scope of the control analysis to point sources of NO<sub>x</sub> and SO<sub>2</sub> and developed a list of sources and potential controls and costs associated with those controls. It used the control strategy analysis

developed by the Central Regional Air Planning Association (CenRAP) as the starting point for this analysis.<sup>74</sup> Texas also included additional sources from source types not included in the CenRAP dataset. This work resulted in a list of sources and potential controls for reducing SO<sub>2</sub> and NO<sub>x</sub>, an estimate of the costs associated with each control, and identification of the Area of Influences (AOIs) for each Class I area.

However, in selecting sources for the four-factor analysis, Texas began by eliminating certain sources purely on the basis of cost before the four statutory factors and the visibility benefit of controls were considered and weighed. Moreover, Texas failed to evaluate potentially cost-effective scrubber upgrades for sources with existing scrubbers despite the potential for large emission reductions and visibility benefits. Texas's overall approach in the selection of a set of sources and controls for evaluation was unreasonable, which led to numerous potentially cost-effective controls being dismissed or overlooked altogether. This led to the selection of a control set that was not appropriately refined, targeted, or focused on those sources that have been identified as contributing to visibility impairment and have cost-effective controls that could result in potentially significant visibility benefits at the Class I areas impacted by Texas sources.

#### a. Texas's Cost-Effectiveness Threshold

Texas's approach in establishing and applying a cost-threshold was unreasonable. Given the multitude of sources located within the State with the potential to impact visibility, Texas narrowed down its list of potential sources for which to conduct a four-factor analysis. While we agree that it is appropriate for a State to narrow down the list of sources for which to conduct a four-factor analysis, a State's rationale in so doing must be reasonable. When selecting the sources to conduct a four-factor analysis, Texas unreasonably eliminated sources for which the cost of controls exceeded \$2,700/ton. Texas's use of a \$2,700/ton threshold was unreasonable for several reasons including its reliance on the Clean Air

<sup>66</sup> See e.g., *Oklahoma v. EPA*, 723 F.3d 1201, 1209 (10th Cir. 2013) (upholding EPA's disapproval of "best available retrofit technology" (BART) SIP, noting BART "does not differ from other parts of the CAA—states have the ability to create SIPs, but they are subject to EPA review"); see also *Westar Energy v. EPA*, 608 Fed. App'x 1, 3 (D.C. Cir. 2015) ("EPA acted well within the bounds of its delegated authority when it disapproved of Kansas's proposed [good neighbor] SIP.").

<sup>67</sup> *North Dakota v. EPA*, 730 F.3d 750, 761 (8th Cir. 2013).

<sup>68</sup> *North Dakota v. EPA*, 730 F.3d 750, 761 (8th Cir. 2013). See also *Alaska Department of Environmental Conservation v. EPA*, 540 U.S. 461, (2004) (concluding that EPA was not limited to verifying that a BACT determination had been made, but rather EPA could examine the substance of the BACT determination).

<sup>69</sup> 79 FR at 74834–74838.

<sup>70</sup> See generally "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," dated June 1, 2007 (hereafter "Reasonable Progress Guidance").

<sup>71</sup> Reasonable Progress Guidance at 3–1.

<sup>72</sup> Reasonable Progress Guidance at 2–3.

<sup>73</sup> Reasonable Progress Guidance at 2–3.

<sup>74</sup> The Central States Air Resource Agencies (CenSARA) is a regional planning organization (RPO) that was created in 1995 and currently includes as members the states of Texas, Oklahoma, Louisiana, Arkansas, Missouri, Kansas, Nebraska, and Iowa, as well as the federally recognized tribes within the boundaries of these states. CenSARA created CenRAP to coordinate activities associated with the management of regional haze issues within the member states and tribes. However, CenRAP has since been abolished and CenSARA currently conducts regional haze and other air quality planning activities for the CenSARA states.

Interstate Rule (CAIR) as a justification, its failure to consider the four factors or take into consideration contributions to visibility impairment in setting the threshold, and its failure to consider the range of costs found reasonable by CenRAP. We discuss these points in turn in the following paragraphs.

Texas used the analysis of potential cost of controls developed by CenRAP as the starting point for the selection of sources to evaluate in the four-factor analysis. CenRAP contracted with Alpine Geophysics to conduct an evaluation of possible additional point-source add-on controls for sources in CenRAP states with a Q/d >5.<sup>75</sup> Alpine Geophysics prepared cost estimates for potential add-on controls for NO<sub>x</sub> and SO<sub>2</sub> reductions in 2005 dollars for point sources in CenRAP states using AirControlNET,<sup>76</sup> a database tool the EPA released in 2006 to enable cost-benefit analyses of potential emissions control measures and strategies. To narrow the list of potential controls and sources, Texas eliminated controls with an estimated cost-efficiency greater than \$2,700/ton from any further analysis and did so regardless of their potential visibility benefits. Texas's justification for the selection of this value was a reference to the fact that the cost associated with implementing CAIR was up to \$2,700/ton.<sup>77</sup> However, EPA promulgated CAIR to address an entirely different issue—the interstate transport of emissions from states that contributed to unhealthy levels of ozone and particulate matter in certain downwind states.<sup>78</sup> The interstate transport program under CAA section 110(a)(2)(D)(i)(I) is an entirely separate program from regional haze, serving a different statutory purpose and involving the consideration of a different set of factors.<sup>79</sup> Thus, the costs associated with CAIR were not developed with consideration of the

four statutory factors used to determine reasonable progress, or visibility impairment in general, and therefore, shouldn't be relied upon to eliminate sources from evaluation for potential visibility benefits. To the extent a state relied on a cost threshold as part of its reasonable progress analysis, such a cost threshold must be justified in a manner consistent with the CAA's expressly stated goal of addressing sources of visibility impairment to Class I areas.<sup>80</sup> Because Texas's SIP justified its selection of \$2,700/ton by referencing costs associated with a program developed to address issues unrelated to regional haze, it failed to adequately justify why such a threshold is reasonable in the context of addressing sources of visibility impairment to Class I areas in Texas.

Texas's application of the \$2,700/ton cost threshold unreasonably eliminated sources from consideration without evaluating the statutory factors or taking into consideration whether requiring controls on those sources could result in meaningful visibility improvement in Class I areas. In the Texas Regional Haze SIP, the State's use of a \$2,700/ton threshold resulted in the state unreasonably overlooking potentially cost-effective controls that would have had a meaningful visibility improvement at the affected Class I areas. Given the large number of Texas sources and their large geographic distribution, Texas's failure to consider location and emissions data in applying a cost threshold to eliminate controls from further analysis was unreasonable. This is especially true for Texas, as its two Class I areas (Guadalupe Mountains National Park and Big Bend National Park) are located in far West Texas. In applying the \$2,700/ton threshold, Texas screened out all EGUs (the largest point sources) in West Texas from consideration in a four-factor analysis. These EGUs in West Texas also impact visibility in the Class I areas located in eastern New Mexico (Salt Creek Wilderness Area, Carlsbad Caverns National Park, White Mountain Wilderness Area, and Pecos Wilderness Area) and the Class I area in Oklahoma (Wichita Mountains Wilderness Area). For example, potential SO<sub>2</sub> controls for the Tolk Station located in West Texas were estimated in the Alpine Geophysics analysis to cost an average of approximately \$3,100/ton and result in nearly 20,000 tpy reduced across the two units.<sup>81</sup> The Tolk facility is located

northwest of Lubbock and is in relatively close proximity to Class I areas in Texas, New Mexico, and Oklahoma.<sup>82</sup> The Tolk units were found in the Alpine Geophysics analysis to each have a high Q/d<sup>83</sup> for SO<sub>2</sub> at multiple Class I areas,<sup>84</sup> in particular at the Guadalupe Mountains in Texas where the Q/d is 34.4 for Unit 171B and 31.4 for Unit 172B.

Beyond prematurely eliminating EGUs in West Texas, Texas's use of the \$2,700/ton threshold also unreasonably eliminated potentially cost-effective SO<sub>2</sub> controls for other sources located in close proximity to Arkansas and Oklahoma Class I areas with a high SO<sub>2</sub> Q/d. This includes the Welsh Power Plant Unit 1,<sup>85</sup> which was found in the Alpine Geophysics analysis to have a Q/d of 69.6 at Caney Creek and 34.2 at Upper Buffalo in Arkansas, 29.1 at the Wichita Mountains in Oklahoma, and 27.1 at Hercules Glades in Missouri. SO<sub>2</sub> wet scrubber controls for Welsh Unit 1 were estimated to cost \$2,852/ton and anticipated to result in approximately 10,500 tpy reduced. As a result of the application of this \$2,700/ton threshold, potentially cost-effective controls were not evaluated at these and other sources that may result in meaningful visibility benefits at Texas's own Class I areas and Class I areas in surrounding states.

Finally, we note that CenRAP conducted a sensitivity analysis which evaluated controls for sources with a Q/d >5 and cost-effectiveness up to \$10,000/ton. Based on that analysis, CenRAP suggested that a range from \$4,000 to \$5,000/ton would be a reasonable threshold for controls

by Alpine Geophysics are available in the docket to this action (See spreadsheet titled "so2\_cost\_ton") under Document ID EPA-R06-OAR-2014-0754-0013, Attachment 13.

<sup>82</sup> The Tolk facility is located approximately 546 km from Big Bend (Texas), approximately 320 km from the Guadalupe Mountains (Texas), approximately 178 km from Salt Creek (New Mexico), approximately 277 km from the Carlsbad Caverns (New Mexico), approximately 298 km from the White Mountains (New Mexico), approximately 309 km from the Pecos Wilderness (New Mexico), and approximately 354 km from the Wichita Mountains (Oklahoma).

<sup>83</sup> Texas identified sources as "high priority" if they had an emissions over distance equal to or greater than five (Q/d ≥ 5) for one or more Class I areas. See Texas Regional Haze SIP at 4–3 and 10–7.

<sup>84</sup> Based on the Alpine Geophysics Analysis, the Q/d for SO<sub>2</sub> for the Tolk units is 32 for Unit 171B and 29.1 for Unit 172B at the Wichita Mountains in Oklahoma; 21.1 for Unit 171B and 19.2 for Unit 172B at Big Bend in Texas; 34.4 for Unit 171B and 31.4 for Unit 172B at the Guadalupe Mountains in Texas; and 14.9 for Unit 171B and 13.5 for Unit 172B at Caney Creek in Arkansas.

<sup>85</sup> The Welsh facility is located approximately 161 km from Caney Creek and 332 km from Upper Buffalo (Arkansas) and approximately 400 km from Wichita Mountains (Oklahoma).

<sup>75</sup> Q/d is the ratio of annual emissions of a given pollutant over distance to a Class I area and can be used to identify those sources with the largest potential to impact visibility.

<sup>76</sup> Lists of NO<sub>x</sub> and SO<sub>2</sub> controls meeting cost thresholds ranging from \$1,500/ton to \$10,000/ton developed by Alpine Geophysics are available in the docket for this action (See spreadsheets titled "nox\_cost\_ton\_2" and "so2\_cost\_ton") under Document ID EPA-R06-OAR-2014-0754-0013, Attachments 11 and 13.

<sup>77</sup> See Texas Regional Haze SIP at 10–7. The SIP submittal is available in the docket for this action under Document ID EPA-R06-OAR-2014-0754-0002.

<sup>78</sup> See generally 70 FR 25161 (May 12, 2005).

<sup>79</sup> While CAIR, and its predecessor CSAPR, were evaluated for BART alternatives under 40 CFR 51.308(e)(2), they were not designed to address visibility impairment caused by regional haze. Furthermore, the evaluation of CAIR and CSAPR as a BART alternative did not consider costs or cost thresholds.

<sup>80</sup> See, e.g., *North Dakota v. EPA*, 730 F.3d 750, 766 (8th Cir. 2013).

<sup>81</sup> Lists of SO<sub>2</sub> controls meeting cost thresholds ranging from \$1,500/ton to \$10,000/ton developed

because of diminishing emission reductions as costs increase beyond that range.<sup>86</sup> While Texas otherwise relied heavily on analyses performed by CenRAP, it is unclear from Texas’s submission why it then opted not to consider CenRAP’s analysis when selecting their \$2,700/ton cost threshold, nor did Texas consider the specific impact of how their selected threshold may have prematurely

eliminated sources with potential cost-effective and large visibility benefits.

b. Scrubber Upgrades

The EPA’s guidance for setting reasonable progress goals instructs that States should focus on those sources that may have the greatest impact on visibility at Class I areas. This is consistent with the national goal established by Congress of remedying

any existing impairment of visibility in Class I areas due to manmade air pollution. As part of its source selection, Texas also failed to consider evaluating EGUs with existing SO<sub>2</sub> scrubbers for potential SO<sub>2</sub> reductions in the four-factor analysis. Such failure to consider these sources in the four-factor analysis was unreasonable given the large projected emissions as shown in Table 1.

TABLE 1—SO<sub>2</sub> EMISSIONS AT TEXAS EGUS WITH EXISTING SCRUBBERS

Facility name	Unit ID	CAMD/NEEDS/EIA verified scrubber	Scrubber online year	Scrubber bypass	SO <sub>2</sub> emissions (tpy)*		
					2002	2018 CenRAP projection	Change
Oklauion Power .....	1	Wet Scrubber .....	1986	Y	3,751	7,101	3,350
Limestone .....	LIM1	Wet Scrubber .....	1985	Y	16,293	12,715	−3,578
Limestone .....	LIM2	Wet Scrubber .....	1986	Y	12,974	4,983	−7,991
W.A. Parish .....	WAP8	Wet Scrubber .....	1982	Y	3,948	4,512	564
Martin Lake .....	1	Wet Scrubber .....	1977	Y	24,832	11,351	−13,481
Martin Lake .....	2	Wet Scrubber .....	1978	Y	22,538	11,984	−10,554
Martin Lake .....	3	Wet Scrubber .....	1979	Y	19,024	12,396	−6,628
Monticello .....	3	Wet Scrubber .....	1978	Y	22,889	11,882	−11,007
San Miguel .....	SM-1	Wet Scrubber .....	1982	Y	13,167	6,550	−6,617
H.W. Pirkey Power .....	1	Wet Scrubber .....	1985	Y	19,476	19,478	2
Sandow .....	4	Wet Scrubber .....	1981	Y	23,305	8,409	−14,896
Gibbons Creek .....	1	Wet Scrubber .....	1983	Y	10,816	2,652	−8,164
Total .....					193,013	114,013	−79,000

\* Emissions data from Texas Regional Haze SIP, Appendix 10.4b.

We note that the AirControlNET database does not include general information for the cost and effectiveness of scrubber upgrades as the cost and reductions from these potential upgrades are typically very specific to the existing equipment and site-specific conditions. The cost of scrubber upgrades at coal-fired power plants has been evaluated in many other instances in both the context of BART and reasonable progress for both the first and second planning periods for regional haze. Based on what we have seen in other regional haze actions, upgrading an underperforming SO<sub>2</sub> scrubber is generally very cost-effective.<sup>87</sup> At the time Texas conducted its analysis, many EGUs were equipped with older vintage scrubbers and/or had scrubber bypasses that divert a portion of the exhaust gas around the control equipment. In some cases, excess scrubbing capacity is simply not being

utilized. Texas included many of these types of sources in the maps showing AOIs and “high priority” sources for other state’s Class I areas, as well as in the table of sources within the Class I areas AOI, in their correspondence with other states (see Appendix 4.2 of the Texas Regional Haze SIP). However, Texas omitted these sources from their source selection of SO<sub>2</sub> point sources and thus did not consider them as part of the four-factor analysis without providing a reasonable justification.

Furthermore, even with these existing SO<sub>2</sub> controls, some of these EGUs are still among the largest SO<sub>2</sub> emitting sources in the State and have large Q/ds. For example, the Martin Lake facility had a Q/d for Guadalupe Mountains (958 km away) greater than 37 using the projected 2018 SO<sub>2</sub> emissions. Emissions at Martin Lake unit 1 in the CenRAP emission inventory were projected to decrease from 24,832 tpy in

2002 to 11,351 tpy in 2018. This is because the 2018 projected emissions include predicted emission reductions due to CAIR at many of these controlled facilities, suggesting some increase in control efficiency, decreased bypass, and/or burning fuels with a lower average sulfur content is already included in the 2018 projections. Thus, even starting with this conservatively lower figure, upgrading the existing scrubber to 95 percent control efficiency would result in an approximate emission reduction of an additional 7,000 tpy beyond those reductions that were projected to occur due to CAIR.<sup>88</sup> Scrubber upgrades across all three Martin Lake units could result in emission reductions of approximately 21,000 tpy beyond the level of control assumed in the 2018 projections. The EGUs Texas omitted from consideration in its four-factor analysis represent approximately one-third of the total

<sup>86</sup> See “Sensitivity Run Specifications for CenRAP Consultation,” available in the docket for this action under Document ID EPA-R06-OAR-2014-0754-0013. See also “so2\_cost\_ton.xls” and “nox\_cost\_ton\_2.xls,” also available in the docket for this action under Document ID EPA-R06-OAR-2014-0754-0013.

<sup>87</sup> See, for instance, the North Dakota Regional Haze SIP: scrubber upgrades for the Milton R. Young Station Unit 2 were evaluated under BART and were found to cost \$522/ton and scrubber upgrades with coal drying for the Coal Creek Station Units 1 and 2 were evaluated under BART

and found to cost \$555/ton at each unit. See the EPA’s final action approving the SO<sub>2</sub> BART determinations for the Coal Creek Station Units 1 and 2 and for the Milton R. Young Station Unit 2 at 77 FR 20894 (April 6, 2012). See also the Wyoming Regional Haze SIP: scrubber upgrades for Wyodak Unit 1 were evaluated to address the RHR requirements under 40 CFR 51.309 and found to cost \$1,167/ton. The EPA approved this portion of the Wyoming Regional Haze SIP at 77 FR 73926 (December 12, 2012).

<sup>88</sup> Based on EPA Clean Air Markets Division (CAMD) annual SO<sub>2</sub> emissions data and U.S. Energy

Information Administration (EIA) data on reported sulfur content and tonnages of the fuels burned at Martin Lake Unit 1 in 2009–2013, scrubber upgrades achieving SO<sub>2</sub> removal efficiency of 95 percent are estimated to reduce SO<sub>2</sub> emissions to 3,706 tpy. The difference between the CenRAP 2018 projected SO<sub>2</sub> emissions for Martin Lake Unit 1 (11,351 tpy) and the estimated SO<sub>2</sub> emissions resulting from scrubber upgrades (3,706 tpy) is 7,645 tpy. See the Excel file “Coal vs CEM data 2009–2013.xlsx,” “charts” tab, cell “N15” found in our docket under Document ID EPA-R06-OAR-2014-0754-0007, Attachment 17.

projected Texas EGU SO<sub>2</sub> emissions in 2018.<sup>89</sup> This is a significant fraction of Texas EGU emissions that were not analyzed for potential emission reductions without a reasonable justification. Additionally, SO<sub>2</sub> scrubber upgrade controls are typically very cost-effective. This is because a scrubber can be upgraded by reusing as many structural components and equipment in the existing unit as possible, such as existing structural steel and absorber shells, ducts, pumps, and compressors. A scrubber can be upgraded by applying new scrubbing technology to improve its removal efficiency, decrease operating costs, and improve operations and reliability for much less than it would cost to replace it with a new scrubber. In some cases, the overall removal efficiency of an existing scrubber can be increased by simply decreasing or eliminating the amount of emissions that bypass the scrubber<sup>90</sup> and/or increasing the amount of reagent used in the scrubber, which are relatively inexpensive ways to improve the removal efficiency of a scrubber compared to installing a new scrubber. Given the projected emissions of the sources shown in Table 1, the size of the impact from Texas emissions, and the source apportionment data indicating the large impact from SO<sub>2</sub> emissions from EGUs, we propose to find it was unreasonable for Texas to not perform any analysis on these sources or at least request additional information from the facilities concerning potential scrubber upgrades.

## 2. Consideration of the Four Factors

As stated previously, in establishing a RPG for each Class I area located within the state, Texas is required by CAA section 169A(g)(1) and section 51.308(d)(1)(i)(A) to “[c]onsider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.” This requirement is often referred to as the reasonable progress four-factor analysis. In considering the costs of compliance, Texas made unreasonable assumptions that resulted in the overestimation of the cost-effectiveness of controls and a failure to assess costs of available controls.

### a. Texas’s Assumptions of SO<sub>2</sub> Control Efficiency of Scrubbers

Pursuant to CAA section 169A(g)(1) and section 51.308(d)(1)(i)(A), States must consider the costs of compliance. Texas’s assumptions of the control efficiency of controls led to an overestimation of the cost of scrubber retrofits. The control efficiency of new scrubbers evaluated by CenRAP and Texas, based on the data from AirControlNET, was assumed to be 90 percent. SO<sub>2</sub> scrubber retrofits are capable of achieving emission reductions of at least 95 percent for dry scrubbers and 98 percent for wet scrubbers.<sup>91</sup> Texas’s assumption of 90 percent control efficiency materially affected its analysis due to the large visibility impact of Texas point sources, and EGUs in particular. For instance, the difference in emission reductions assuming 90 percent control efficiency compared to 98 percent is 1,851 tons for Unit 1 and 1,891 tons for Unit 2 at Big Brown. These additional reductions would have further reduced the estimated costs of the controls to approximately \$1,400/ton and increased the visibility benefit anticipated due to controls. At Monticello Units 1 and 2, the higher control efficiency would have resulted in an additional 1,500 tons reduced at a cost of \$1,700/ton. Assuming 98 percent control efficiency compared to 90 percent control efficiency at all the EGUs Texas evaluated in the four-factor analysis would have resulted in an additional 9,800 tons reduced. Therefore, Texas’s assumptions of the emission reductions due to controls and their consideration of cost led to an overestimation of the costs of controls.<sup>92</sup>

### b. Texas’s Cost of Compliance Analysis Assumed Future CAIR Reductions as a Baseline

Texas failed to consider how reliance on the 2018 emission projections under CAIR impacted their source selection, estimated costs of controls, and estimated visibility benefits of controls. A critical decision point in performing the cost analysis for potential controls is the determination of an emission baseline. Texas and CenRAP relied on the IPM predictions to estimate 2018 emission levels for EGUs. Texas identified that the majority of the emission reductions underlying the predicted visibility improvements in 2018 resulting from controls already in

effect or scheduled to become effective will result from the CAIR program in particular. The Integrated Planning Model (IPM) analysis used by CenRAP predicted that due to CAIR compliance, by 2018, EGUs in Texas would purchase approximately 125,000 tpy of emissions allowances from out of state.<sup>93</sup> IPM predicted that many EGUs in Texas would reduce their emissions either through changes in coal, increased efficiency of existing controls, or installation of new controls. Texas also noted that there is uncertainty in the size and distribution in emissions in the future projections and that no EGUs made an enforceable commitment to any particular pollution control strategy and preferred to retain the flexibility offered by the CAIR program.<sup>94</sup> The CAIR program allows interstate trading of allowances and does not put specific emission limits on specific sources. Texas notes that because emission allowances can be purchased by EGUs, visibility improvement may be less or more than that predicted by the CenRAP’s modeling. Nevertheless, Texas unreasonably utilized this future projection of 2018 emissions as the starting point for its estimation of emission reductions and the associated costs of additional controls in its four-factor analysis.<sup>95</sup> Although we acknowledge that CAIR is now defunct and has been replaced by CSAPR, Texas presumed that those results would be comparable under any program to replace CAIR.

The 2018 emission projections under CAIR that Texas relied on for source selection assumed that sources such as W. A. Parish Units WAP5, WAP6, and WAP7 and Welsh Units 2 and 3 would install SO<sub>2</sub> controls to significantly reduce their annual SO<sub>2</sub> emissions by 2018. However, it was unreasonable for Texas to rely on these projected CAIR reductions for the baseline in their analysis because there were no enforceable requirements to accompany these SO<sub>2</sub> reductions. In assuming the

<sup>89</sup> CenRAP used the IPM (Version 2.19) that the EPA employed to predict the emissions reductions expected from CAIR in 2018 and Texas used the CenRAP analysis as their starting point in the four-factor analysis. The IPM model predicts the effect of emission trading programs considering economics, logistics, and the specific regulatory environment for each EGU. The EPA released the results and documentation for the IPM Version 2.19 in 2005.

<sup>90</sup> See Texas Regional Haze SIP at section 10.5.

<sup>91</sup> See Texas Regional Haze SIP at 10–7, 10–8, and 10–9. While Texas relied on CAIR to satisfy the BART requirements for EGUs, BART is only one component of a long-term strategy to make reasonable progress for the first regional haze planing period. A state should look beyond BART for additional reductions when assessing reasonable progress.

<sup>89</sup> See Texas Regional Haze SIP, Appendix 10.4b.

<sup>90</sup> Ways in which scrubber bypass can be decreased or eliminated include adding fan capacity, upgrading the electrical distribution system, and conversion to a wet stack.

<sup>91</sup> See the Oklahoma Regional Haze FIP at 76 FR 81728, 81742 (Dec. 28, 2011).

<sup>92</sup> Underestimation of emission reductions also resulted in an underestimation of the visibility benefits.

2018 emission projections under CAIR as the baseline in their analysis, Texas assumed a starting point where scrubbers were already installed and the only potential control measure considered for these units was to “repower” at an extremely high cost that far exceeded the \$2,700/ton threshold Texas applied, leading Texas to omit the W. A. Parish and Welsh units from their selection of sources to evaluate in the four-factor analysis. However, similar to Big Brown and Monticello, scrubbers were likely cost-effective for these units and should have been considered for the units at Parish and Welsh. As shown in Table 2, the emission baseline Texas used assumed that SO<sub>2</sub> emission reductions under CAIR would be 45,447 tpy across the three W. A. Parish units (approximately

80 percent reduction) and 21,129 tpy across the two Welsh units (approximately 90 percent reduction). It was unreasonable for Texas to omit consideration of scrubbers for Welsh and Parish units simply because the 2018 emission projections used as their baseline assumed scrubbers would already be in place in 2018 due to CAIR. The use of this baseline resulted in large sources being left out of the control set Texas evaluated in their four-factor analysis even though the emission reductions were not enforceable and were based on SO<sub>2</sub> controls that have never been installed. In its SIP, Texas even acknowledged the uncertainties in its 2018 emissions projections by its in depth review of an updated emission projection, available at the time Texas was developing its SIP revision, that did

not predict scrubber upgrades or large emission reductions at the Parish and Welsh Units.<sup>96</sup> This highlights the uncertainty of projections for specific units and the sensitivity of emission projections to inputs in the projections, for instance, higher natural gas prices. Texas should have recognized the flexibility in the CAIR trading program and the resulting uncertainty in the projected emissions and projected controls. In other words, it was unreasonable for Texas to rely on unenforceable projected controls, and not to have recognized that implementation of reasonable controls under the Regional Haze Rule would likely not be in addition to anticipated reductions due to CAIR predicted by IPM but would replace or complement any controls predicted by IPM.

TABLE 2—2002 SO<sub>2</sub> EMISSIONS VS. 2018 PROJECTED SO<sub>2</sub> EMISSIONS UNDER CAIR <sup>97</sup>

Facility name	Unit ID	2002 SO <sub>2</sub> emissions (tpy) *	2018 SO <sub>2</sub> emissions projections under CAIR (Texas baseline) (tpy) *	Projected SO <sub>2</sub> emissions reductions under CAIR (tpy)
W.A. Parish .....	WAP5	20,523	3,733	16,790
W.A. Parish .....	WAP6	17,863	3,809	14,054
W.A. Parish .....	WAP7	17,900	3,297	14,603
Welsh .....	2	11,995	1,223	10,772
Welsh .....	3	11,584	1,227	10,357

\* Emissions data from Texas Regional Haze SIP, Appendix 10.4b.

Texas’s use of 2018 projections also impacted the potential emission reductions and cost of available controls for EGUs. For example, Big Brown Unit 1’s SO<sub>2</sub> emissions in 2002 were 43,413 tpy. The IPM predictions that were incorporated into the 2018 emission level assume that a greater than 1/3 reduction in these emissions will occur in response to CAIR by switching to a coal with a lower sulfur content, resulting in a 2018 SO<sub>2</sub> emission level of 23,142 tpy. Texas’s cost-effectiveness calculation for post-combustion controls on Big Brown Unit 1 was based on reducing that projected 2018 SO<sub>2</sub> emission level of 23,142 tpy by 90 percent, resulting in a reduction of 20,828 tpy. This results in a cost of \$32,766,310/yr, or a cost-effectiveness calculation of \$1,573/ton. However, the installation of a scrubber would allow Big Brown flexibility in fuel choice thus

allowing the unit to continue to burn the higher average sulfur fuel it currently burns, instead of moving to the low sulfur coal predicted by IPM. There was no enforceable commitment for these emission reductions at Big Brown with the company preferring the flexibility afforded under CAIR and thus it was unreasonable for Texas to rely on these projected reductions as a starting point for evaluating controls for this and other EGUs without consideration of how the uncertainty in 2018 IPM projections may impact their analysis.

Big Brown Unit 1 SO<sub>2</sub> emissions in 2006 were 49,777 tons.<sup>98</sup> The issue of scrubber efficiency aside, a reduction of 90 percent from these actual emission levels would result in an SO<sub>2</sub> reduction of approximately 44,800 tpy. While the numerator (\$) in the cost-effectiveness metric of \$/ton will increase slightly beyond what was estimated by Alpine

Geophysics due to an increased sulfur loading to the scrubber, the denominator (tons) would increase by more than 100 percent, thus improving (lowering) the overall cost-effectiveness of controlling Big Brown Unit 1 significantly. Estimates for scrubbers at Monticello are similarly impacted by the cost methodology used by Texas in estimating cost-effectiveness on a cost-per-ton basis. Similarly, the visibility benefits of controls estimated by Texas were based only on the estimated additional emission reductions beyond what was already estimated to occur under CAIR in 2018. Accounting for the full reductions that would result from installation of the scrubbers based on historical emissions at the time would result in larger emission reductions and therefore, larger estimated visibility benefits from controls.

<sup>96</sup> The 2018 emission projections Texas used as its baseline were based on the Integrated Planning Model (IPM) Version 2.19; however, there was also an updated version of IPM available for review at the time Texas was developing its SIP (Version 3.0). Texas provided an in-depth comparison of the two IPM runs in Appendix 7–2 of their SIP submittal. While the IPM 3.0 results estimated very similar

overall SO<sub>2</sub> emissions, IPM 3.0 estimated larger reductions at Big Brown and Monticello and did not predict scrubber installations or large emission reductions at the Parish and Welsh units. See Texas Regional Haze SIP, at pg. 10–9 and Appendix 7–2, at pg. 8.

<sup>97</sup> We note that the difference in projected emissions for W.A. Parish facility between IPM

Versions 2.19 and 3.0 is 29,407 tons, and the difference in projected emissions for the Welsh facility is 21,354 tons. See Texas Regional Haze SIP, Appendix 7–2, at pg.8.

<sup>98</sup> 2006 was the most recent year for which complete annual emissions data was available prior to Texas issuing the draft Regional Haze SIP for public comment.

For these reasons, it was unreasonable for Texas to rely on the 2018 projections without consideration of uncertainty and how these assumptions may impact their analysis. Texas should have recognized that implementation of reasonable controls under the Regional Haze Rule would likely not be in addition to anticipated reductions due to CAIR predicted by IPM but would replace or complement any controls predicted by IPM.

### 3. Weighing of the Four Statutory Factors and Visibility Benefits

After consideration of the four statutory factors and other applicable factors, States must weigh the factors and include a demonstration showing how these factors were taken into consideration in establishing the goal as required under Section 51.308(d)(1)(i)(A) and (d)(1)(ii). Texas unreasonably weighed the costs of compliance and the visibility benefits of controls, which resulted in unreasonable conclusions.

#### a. Cost of Compliance

Texas's use of annualized aggregate costs in determining whether controls were necessary to make reasonable progress for the first planning period was unreasonable and inconsistent with the CAA. In looking at the costs of compliance as part of its four-factor analysis, Texas stated that the total annualized aggregate cost of \$324,300,000 was too high in light of the imperceptible visibility benefits of controls.<sup>99</sup> For reasons explained in section V.B.3.c, we find that Texas's characterization and consideration of visibility benefits was both flawed and unreasonable. Focusing on costs, the figure of approximately \$324 million reflects the annualized cost of controls on the entire group of sources that Texas selected for analysis under the four factors. As stated previously, states have flexibility in how they consider the four factors; however, such flexibility must be exercised in a reasonable manner. While determining that a total cost of \$324 million was too high, Texas provided no context or support as to why that figure is too high, and importantly, what range of costs would be reasonable. This is especially problematic when considering that Texas already applied a cost-effectiveness threshold of \$2,700/ton to "limit the proposed controls group to cost effective measures"<sup>100</sup> and thus eliminate sources for which they deemed controls as too costly. Thus,

pointing to the \$324 million total annual cost as too expensive seemingly contradicts Texas's determination that controls on these sources are cost-effective. Rather, all that can be determined from Texas's use of the aggregate annualized cost is that it represents the sum total of the costs of controls for 45 units that impact one or more Class I areas in Texas or nearby States and that Texas had previously determined were cost effective as they were below its \$2,700/ton cost-threshold. As such, the way Texas relied on the annual aggregate cost of controls was irrational and did not constitute a reasonable consideration of the costs of compliance as required by the CAA and the RHR.

#### b. Texas's Approach in Grouping Sources

The way Texas grouped sources led to unreasonable results when weighing the factors—namely it included multiple sources that inflated the total cost of controls without providing a corresponding reduction in visibility impairment. Texas constructed a potential control set consisting of a mix of large and small sources, located at various distances from Class I areas, with a large geographical distribution. While on its face, this selection of controls and sources appears broad and comprehensive, in analyzing how Texas constructed its control set and mixture of sources, we find several flaws and therefore find the analysis unreasonable. Because of the variation in size, type, and location of these sources, the potential to impact visibility and potential visibility benefit from controls at a given Class I area can vary greatly between the identified sources. This potential control set identified by Texas included controls on sources that would likely result in significant visibility benefits at several Class I areas (such as sources with high emissions and tall stacks), but also included controls on many sources with much less anticipated visibility benefits (such as sources with lower emissions and shorter stacks, located at greater distances to the Class I areas). Because Texas only estimated the visibility benefit by grouping all the controls together, it was not able to appropriately assess the potential benefit of controlling a more refined grouping of sources with significant, and potentially cost-effective, visibility benefits. While we are not suggesting that Texas was required to weigh the four factors and visibility benefits on a source-specific basis, the grouping of sources like the Bryans Mill Plant and the Celanese Chemical Manufacturing Plant together

with sources like Big Brown unreasonably inflated the total cost of controls without providing a corresponding reduction in visibility impairment. Thus, Texas failed to adequately justify why including sources with very dissimilar potential visibility benefits in the same group was reasonable.

The significant visibility benefits of controls on some sources being grouped together with controls on other sources that provided little visibility benefit only served to increase the total annual cost figures for the entire potential control set. For example, Texas identified SO<sub>2</sub> controls at the two Big Brown units to be approximately \$1,500/ton, significantly less than its \$2,700/ton threshold. These controls were estimated to achieve greater than 40,000 tpy SO<sub>2</sub> emission reductions and would result in important visibility benefits given that the Big Brown units have tall stacks and a Q/d greater than 50 at surrounding Class I areas.<sup>101</sup> Big Brown and the other EGUs included in Texas's evaluated control set have Q/d values greater than 5 at all ten Class I areas evaluated in Texas's estimation of visibility benefits, and these emission reductions were included in the estimation of potential visibility benefits at all ten areas. In the same potential control set, Texas included SO<sub>2</sub> controls at other sources with estimated costs similar or more expensive than those at Big Brown, but with considerably lower SO<sub>2</sub> emissions reductions and lower Q/d. For instance, in the same control set Texas identified SO<sub>2</sub> controls at the Bryans Mill Plant estimated to cost approximately \$1,425/ton (similar to the Big Brown units), but with estimated SO<sub>2</sub> emission reductions of only approximately 1,330 tpy. The Bryans Mill Plant has a Q/d less than 10 at any given surrounding Class I areas and thus the visibility benefits of SO<sub>2</sub> controls on this source are anticipated to be much lower than the visibility benefits of SO<sub>2</sub> controls on Big Brown. In Texas's estimation of visibility benefits, emission reductions at Bryans Mills Plant were only included in the estimation of visibility benefits at Caney Creek (Q/d = 8.2). The Q/d values for all other Class I areas were so low (less than 5) that Texas assumed that no visibility benefit would result at these Class I areas from reductions at the Bryans Mills Plant. Texas also included in the same potential control set SO<sub>2</sub> controls at the Celanese Chemical

<sup>101</sup> The Big Brown units have a Q/d of 67.6 for Unit 1 and 69 for Unit 2 at Caney Creek in Arkansas and a Q/d of 56.9 for Unit 1 and 58.1 for Unit 2 at Wichita Mountains in Oklahoma.

<sup>99</sup> See Texas Regional Haze SIP, Table 10–5.

<sup>100</sup> See Texas Regional Haze SIP at 10–7.



Manufacturing Plant that were estimated to be approximately \$2,658/ton, but with estimated SO<sub>2</sub> emission reductions of only approximately 1,760 tpy. The Celanese Chemical Manufacturing Plant has a Q/d less than 9 at any given surrounding Class I area and thus the visibility benefits of this SO<sub>2</sub> control are anticipated to be much lower than the visibility benefits of SO<sub>2</sub> controls on Big Brown. In Texas's estimation of visibility benefits, emission reductions at Celanese were only included in the estimation of visibility benefits at Salt Creek (Q/d = 5.3) and Wichita Mountains (Q/d = 8.8). The Q/d values for all other Class I areas were so low (less than 5) that Texas assumed that no visibility benefit would result at these Class I areas from reductions at the Celanese Chemical Manufacturing Plant. Despite this evidence in the record of identified cost-effective controls that result in large emission reductions and large potential visibility benefits at multiple Class I areas, in addition to source apportionment modeling identifying large impacts from EGU sources, and in particular EGUs in northeast Texas, the unreasonable manner in which the State grouped sources in weighing the four factors resulted in controls at sources such as Big Brown, an EGU in northeast Texas, being dismissed.

Additionally, the total annualized aggregate cost of \$324,300,000 includes \$53,500,000 associated with the cost of NO<sub>x</sub> controls. However, visibility improvement due to reductions in nitrate extinction are much less than the sulfate reductions at each Class I area as shown in Table 3.

TABLE 3—TEXAS ESTIMATED REDUCTION IN EXTINCTION

Class I area	Estimated reduction in extinction (Mm <sup>-1</sup> )	
	Sulfate	Nitrate
Big Bend .....	0.847	0.032
Breton .....	0.465	0.005
Caney Creek .....	3.232	0.054
Carlsbad Caverns .....	1.014	0.023
Guadalupe Mountains .....	1.014	0.023
Salt Creek .....	1.069	-0.081
Upper Buffalo .....	1.583	0.016
Wheeler Peak .....	0.121	0.000
White Mountain .....	0.850	0.014
Wichita Mountains .....	2.722	0.408

The reduction in nitrate extinction is less than 4 percent of the sulfate reduction at each Class I area with the exception of Wichita Mountains (15 percent). Despite this very small incremental reduction in light extinction, Texas included costs of NO<sub>x</sub> emission reductions, \$53,500,000, in the

aggregate costs for controls of which represents more than 16 percent of the total aggregated cost of controls. Thus, the inclusion of the costs associated with NO<sub>x</sub> controls serves to increase the total aggregate cost but does not result in significant visibility benefits compared to the benefits that result for the SO<sub>2</sub> controls.

c. Texas's Evaluation of Potential Visibility Improvements

In considering whether compliance costs for sources were reasonable, Texas weighed the total aggregated annual costs to the emission reductions and estimated visibility improvement those sources would achieve. While visibility is not an explicitly listed factor to consider when determining whether additional controls are reasonable, the purpose of the four-factor analysis is to determine what degree of progress toward natural visibility conditions is reasonable. Therefore, the EPA has interpreted the CAA and the RHR as allowing States to consider visibility alongside the four statutory factors when determining the emission reduction measures that are necessary to make reasonable progress. However, while it is reasonable for a State to consider visibility benefits, it is not free to do so in a manner that is unreasonable or inconsistent with the requirements of the CAA. For the reasons explained in the following paragraphs, we find that Texas's consideration of visibility improvements was unreasonable and inconsistent with the requirements of the CAA.

i. Texas's Use of Visibility Thresholds

The visibility thresholds selected by Texas to dismiss otherwise meaningful visibility improvement provided for by the sources it analyzed are inconsistent with the CAA. In evaluating and dismissing the estimated visibility benefit from the entire control set it identified, Texas states that the estimated benefit is not perceptible (less than 1 dv) and that it is less than 0.5 dv, the screening threshold used under BART requirements used to determine if a facility contributes to visibility impairment. However, this 0.5 dv is not an appropriate visibility threshold to use for the reasonable progress analysis, given that the modeling inputs and metrics for determining the visibility benefits for reasonable progress differ significantly from modeling conducted for purposes of BART. For example, modeling conducted for purposes of BART focused on the maximum anticipated visibility impact from the source on a single day due to the short-

term maximum actual baseline emissions from a single facility, compared to clean background conditions. On the other hand, the reasonable progress analysis presented by Texas contemplates the visibility benefit to degraded background conditions anticipated for an average tpy emission reduction (as opposed to the impact from the total short-term maximum emissions from the sources) averaged across the 20 percent worst days at the Class I area(s) (which may not be the same days that are most impacted by any particular source). By looking at average impacts over an averaged number of days, the visibility benefits projected for a reasonable progress analysis would be anticipated to be significantly lower compared to maximum day impact metrics. Thus, using a 0.5 dv threshold developed for evaluating the maximum impacts under BART as a basis for dismissing potential controls in a reasonable progress analysis is unreasonable. The FIP TSD associated with the 2014 Proposed Rule provides a detailed discussion of the different metrics and modeling typically used for BART and reasonable progress analyses.<sup>102</sup> Furthermore, even in the context of BART we have stated that even though the installation of BART may not result in a perceptible improvement in visibility, the visibility benefit may still be significant, as explained by the Regional Haze Rule:

Even though the visibility improvement from an individual source may not be perceptible, it should still be considered in setting BART because the contribution to haze may be significant relative to other source contributions in the Class I area. Thus, we disagree that the degree of improvement should be contingent upon perceptibility.<sup>103</sup>

As we stated in our final rule partially approving and partially disapproving a portion of the Oklahoma Regional Haze SIP and promulgating an SO<sub>2</sub> BART FIP for Oklahoma sources:

Given that sources are subject to BART based on a contribution threshold of no greater than 0.5 deciviews, it would be inconsistent to automatically rule out additional controls where the improvement in visibility may be less than 1.0 deciview or even 0.5 deciviews. A perceptible visibility improvement is not a requirement of the BART determination because visibility improvements that are not perceptible may still be determined to be significant.<sup>104</sup>

Thus, Texas's use of both perceptibility and the 0.5 dv threshold developed for use in evaluating BART, as a basis for dismissing potential

<sup>102</sup> See Texas-Oklahoma Regional Haze FIP TSD, Appendix A, pages A-35-A-39, A-75.

<sup>103</sup> 70 FR 39104, 39130 (July 6, 2005).

<sup>104</sup> 76 FR 81728, 81739 (Dec. 28, 2011).

controls in a reasonable progress analysis is unreasonable.

ii. Visibility Benefits of Texas's Estimated Control Set

Texas's conclusions regarding the visibility benefits of their control set at Big Bend and Guadalupe Mountains, and its determination that those benefits were not significant enough to justify the cost of controls, were unreasonable.

Texas estimated that their control set would result in 0.16 dv visibility improvement at Big Bend. In estimating these deciview improvements, Texas estimated that the evaluated control set would result in a reduction in sulfate and nitrate extinction of 0.85 Mm<sup>-1</sup> and 0.03 Mm<sup>-1</sup>, respectively.<sup>105</sup> Texas only evaluated potential controls to reduce NO<sub>x</sub> and SO<sub>2</sub> emissions from point sources in their four-factor analysis and Texas determined that point sources make up over 90 percent of the projected 2018 statewide SO<sub>2</sub> emissions. Given the large reduction in extinction of sulfate compared to nitrate, we focus our analysis on the projected visibility benefits of SO<sub>2</sub> controls. All U.S. point sources combined were projected by CenRAP to contribute 7.19 Mm<sup>-1</sup> in sulfate extinction at Big Bend. Of this 7.19 Mm<sup>-1</sup> in extinction, CenRAP projected that Texas point sources alone would be responsible for 3.24 Mm<sup>-1</sup>, or 45 percent of the U.S. point source sulfate extinction in 2018. The next largest contribution from a State to sulfate extinction at Big Bend is 1.10 Mm<sup>-1</sup> from all Louisiana point sources. Thus, the estimated visibility benefits for the Texas control set represent a 26 percent reduction in visibility impairment from sulfate due to all Texas point sources, and a 12 percent reduction in sulfate due to all U.S. point sources. This is a significant reduction in visibility impairment and represents significant progress towards the national goal of eliminating manmade visibility impairment. As we discuss elsewhere, these potential visibility benefits of controls are impacted by the emission baseline assumption, control efficiency assumptions, and other factors that lead to an underestimation in the visibility benefits due to the applied controls.

For Guadalupe Mountains, Texas estimated that the evaluated control set would result in 0.22 dv visibility improvement by securing a reduction in sulfate and nitrate extinction of 1.01 Mm<sup>-1</sup> and 0.02 Mm<sup>-1</sup>, respectively. All U.S. point sources combined were projected by CenRAP to contribute 6.78 Mm<sup>-1</sup> in sulfate extinction at

Guadalupe Mountains. Of this 6.78 Mm<sup>-1</sup> in extinction, CenRAP projected that Texas point sources alone would be responsible for 3.08 Mm<sup>-1</sup>, or 45 percent of the U.S. point source sulfate extinction in 2018. The next largest contribution from a State to sulfate extinction at GUMO is 0.47 Mm<sup>-1</sup> from all Louisiana point sources. The estimated visibility benefits for the Texas control set represent a 33 percent reduction in visibility impairment from sulfate due to all Texas point sources, and a 15 percent reduction in sulfate due to all U.S. point sources.

Evaluating potential visibility benefits in Class I areas in nearby States, Texas estimated that the evaluated control set would result in 0.36 dv visibility improvement at Wichita Mountains in Oklahoma. Texas estimated that the evaluated control set would result in a reduction in sulfate and nitrate extinction of 2.72 Mm<sup>-1</sup> and 0.41 Mm<sup>-1</sup>, respectively at Wichita Mountains. All U.S. point sources combined were projected by CenRAP to contribute 21.74 Mm<sup>-1</sup> in sulfate extinction, including 7.83 Mm<sup>-1</sup> from Texas point sources, or 36 percent of the U.S. point source sulfate extinction in 2018. The next largest contribution from a State to sulfate extinction at WIMO is 2.16 Mm<sup>-1</sup> from all Louisiana point sources. The estimated visibility benefits for the Texas control set represent a 35 percent reduction in visibility impairment from sulfate due to all Texas point sources, and a 12.5 percent reduction in sulfate due to all U.S. point sources. Similarly, the estimated visibility benefits for the Texas control set represent a 19 percent reduction in visibility impairment from nitrate due to all Texas point sources, and a 7 percent reduction in nitrate due to all U.S. point sources.

Texas failed to provide a reasonable justification for why it did not require the control measures other than to point to the aggregate annual cost of controls and state that the visibility benefit would not be perceptible. However, as discussed in the previous section, Texas's consideration of the costs was also flawed. Based on the large percentage of contribution from Texas point sources and the amount of visibility impairment that would be addressed under Texas's proposed control strategy, Texas failed to adequately demonstrate that it is not reasonable to impose control measures on those sources.

iii. Texas's Use of Degraded Background Conditions

Texas estimated the visibility improvement of potential controls by making comparisons to degraded

background conditions instead of to natural background conditions. However, this approach is not reasonable, and the EPA has previously disapproved a regional haze SIP submission for utilizing the same flawed approach. For example, North Dakota's SIP used degraded, rather than natural background results in what we determined to be a flawed analysis because it greatly underestimates the visibility benefits of potential control options. As we explained in the North Dakota SIP disapproval, this is true because of the nonlinear nature of visibility impairment. In other words, as a Class I area becomes more polluted, a source's contribution to changes in impairment becomes geometrically less.<sup>106</sup> In challenges to the SIP disapproval, the 8th Circuit upheld EPA's decision to disapprove the SIP because the SIP made comparisons to degraded background conditions to assess visibility benefits. Specifically, the Court noted that "the goal of § 169A is to attain natural visibility conditions in mandatory Class I Federal areas, see 42 U.S.C. 7491(a)(1), and EPA has demonstrated that the visibility model used by the State would serve instead to maintain current degraded conditions."<sup>107</sup> Because the analysis Texas relied upon to evaluate visibility improvement uses degraded background conditions, we propose to find Texas's consideration and use of visibility improvement unreasonable and inconsistent with the requirements of the CAA.

d. Texas's "Order of Magnitude Estimate" for Visibility Improvement

Texas produced an "order of magnitude estimate" of the visibility improvements resulting from the level of aggregate emission reductions that would result from its point source control strategy using Particulate Matter Source Apportionment Technology (PSAT) results and effectiveness ratios.<sup>108</sup> Texas did not model the potential emission reductions to estimate visibility benefits, but rather estimated the benefits based on the results on the 2018 base case CenRAP modeling and a sensitivity run developed by CenRAP that included a large set of emission reductions on sources throughout the CenRAP

<sup>106</sup> 77 FR 20894, 20912 (quoting 70 FR 39124).

<sup>107</sup> *North Dakota v. EPA*, 730 F.3d 750, 765–66 (8th Cir. 2013).

<sup>108</sup> The Comprehensive Air Quality Model with extensions (CAMx) with PSAT is a tool used to provide source apportionment of particulate matter species from primary sources to defined receptor locations by geographic region and major source category.

<sup>105</sup> Texas RH SIP Appendix 10–4b, see "Means" tab.

states.<sup>109</sup> This methodology assumes that all emission reductions within a PSAT region and source category (EGU or non-EGU) have the same effectiveness in reducing visibility impairment.<sup>110</sup> For example, emission reductions at non-EGU sources in the West Texas PSAT region would be estimated to have the same effect on visibility, regardless of location, like the Big Spring facility (330 km to Guadalupe Mountains) and the Borger facility (524 km to Guadalupe Mountains). The estimated effectiveness factor applied equally to all emission reductions at EGUs located in the East Texas source region, including Sommers Deely Spruce (440 km from Big Bend and 680 km from Guadalupe Mountains) and Monticello (850 km from Big Bend and 920 km from Guadalupe Mountains). Given the large difference in distances between these two facilities and the Class I areas, it is reasonable to expect that the effectiveness of emission reductions could vary greatly between the two. We propose to find that given the variability in the distances between sources and Class I areas, it was unreasonable for Texas not to consider how its assumptions could result in underestimation of the visibility benefit of controlling the sources it selected for consideration in its four-factor analysis.

### C. Clarification of Our Basis for Disapproval of Texas's Calculation of Natural Visibility Conditions

We are proposing to disapprove Texas's calculation of natural visibility conditions. Section 51.308(d)(2)(iii) requires States to calculate the natural visibility conditions for each Class I area located within the State by estimating the degree of visibility impairment existing under natural conditions for the most impaired and least impaired days, based on available monitoring information and appropriate data analysis techniques.

We explained the basis for our disapproval of Texas's calculation of the natural visibility conditions for the Guadalupe Mountains and Big Bend in the preamble of our 2014 Proposed Rule and in the preamble of our 2016 Final Rule.<sup>111</sup> While not specifically addressed in the 2016 stay opinion, statements made by the Fifth Circuit

motions panel appear to indicate disagreement with the EPA's disapproval of Texas's calculation of natural visibility conditions at the Guadalupe Mountains and Big Bend. Specifically, the court's opinion stated that the RHR grants States considerable flexibility when they estimate natural conditions and that EPA's natural visibility guidance expressly permits States to use refined approaches for the calculation of natural visibility and to identify other approaches that are more appropriate for their own situations. We agree that our guidance and the RHR allow states to develop an alternative approach to estimate natural visibility conditions.<sup>112</sup> The fact that States have the option of calculating their own natural visibility conditions instead of using the default natural conditions provided in the guidance is not at issue. However, any such alternative approach must be supported and documented. As we state in our guidance, States are "free to develop alternative approaches that will provide natural visibility conditions estimates that are technically and scientifically supportable. Any refined approach should be based on accurate, complete, and unbiased information and should be developed using a high degree of scientific rigor."<sup>113</sup> Texas did not provide a technically and scientifically supportable approach, specifically by not adequately supporting the assumptions used in calculating "refined" estimates of natural visibility conditions.

One alternative approach available to States is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another option available to States is to use the "new IMPROVE equation" that was adopted for use by the IMPROVE Steering Committee in December 2005.<sup>114</sup> This refined version

of the IMPROVE equation provided more accurate estimates (as compared to the "old IMPROVE equation") of some of the factors that affect the calculation of light extinction. The default natural conditions in our guidance<sup>115</sup> were updated by the Natural Haze Levels II Committee utilizing the new IMPROVE equation and included some refinements to the estimates for the PM components.<sup>116 117</sup> These estimates are referred to as the "NCII" default natural visibility conditions.

Texas chose to derive a "refined" estimate of natural visibility conditions rather than using the default NCII values.<sup>118</sup> In calculating natural visibility conditions, Texas used the new IMPROVE equation and PM concentration estimates (*i.e.*, the NCII values) for most components, but assumed that 100 percent of the fine soil and coarse mass concentrations in the baseline period is attributed to natural causes and that the corresponding estimates in the NCII values should be replaced. Texas did so without adequately demonstrating that all fine soil and coarse mass measured in the baseline period can be attributed to 100 percent natural sources. Anthropogenic sources of coarse mass and fine soil in the baseline period could have included emissions associated with paved and unpaved roads, agricultural activity, and construction activities as well. We also note that the impact from dust at Big Bend is less certain than at the Guadalupe Mountains and a different assumption may be appropriate in estimating natural conditions there. Furthermore, Texas itself concluded that it cannot verify its own assumption that all fine soil and coarse mass measured in the baseline period can be attributed to 100 percent natural sources. Texas acknowledged that the information it cites to in the Texas Regional Haze SIP does not quantify the percentage of anthropogenic or natural

analysis techniques, visibility modeling, policy formulation and source attribution field studies.

<sup>115</sup> Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA-454/B-03-005, September 2003.

<sup>116</sup> Pitchford, Marc, 2006, Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates. Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006, available at: [https://vista.cira.colostate.edu/improve/Publications/GrayLit/029\\_NaturalCondII/naturalhazelevelsIIreport.ppt](https://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt).

<sup>117</sup> The second version of the natural haze level II estimates based on the work of the Natural Haze Levels II Committee is available at: [https://vista.cira.colostate.edu/Docs/IMPROVE/Aerosol/NaturalConditions/NaturalConditionsII\\_Format2\\_v2.xls](https://vista.cira.colostate.edu/Docs/IMPROVE/Aerosol/NaturalConditions/NaturalConditionsII_Format2_v2.xls).

<sup>118</sup> See Chapter 5 and Appendix 5-2 of the Texas Regional Haze SIP.

<sup>109</sup> See Texas RH SIP Appendix 10-2 and 10-4.

<sup>110</sup> For PSAT modeling and control analysis, Texas was divided into 3 regions (East Texas, West Texas, and Texas Gulf Coast). See Figure 5-8 of Technical Support Document for CenRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans (CenRAP TSD), available in the docket for this action under Document ID EPA-R06-OAR-2014-0754-0014.

<sup>111</sup> 79 FR at 74830-74832 (2014 Proposed Rule) and 81 FR at 299-300, 325-326 (2016 Final Rule).

<sup>112</sup> Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA-454/B-03-005, September 2003. See also 51.308(d)(2)(iii).

<sup>113</sup> Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA, September 2003, at 1-11.

<sup>114</sup> The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the federal land managers) and regional planning organizations. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation,

contributions to total coarse mass and fine dust, and that some portion must be from human activity.<sup>119</sup> We are proposing to disapprove Texas's calculation of natural visibility conditions for the Guadalupe Mountains and Big Bend because those calculations are based on the technically indefensible assumption that there is 0 percent dust (CM and soil) from human activity when Texas rightly concedes that some impairment "must be from some human activity."<sup>120</sup>

#### *D. Clarification of Our Basis for Disapproval of Consultation Between Texas and Oklahoma*

In finalizing the RHR, we stated that "successful implementation of the regional haze program will involve long term regional coordination among States," and that "States will need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction to air quality in another."<sup>121</sup> We also noted that RPGs and long-term strategies are intricately linked.<sup>122</sup> The regulations bear this out. Section 51.308(d)(3)(i) requires that States (in this case Texas) consult with other States if its emissions are reasonably anticipated to contribute to visibility impairment at that State's Class I area(s), and that Texas consult with other States if those States' emissions are reasonably anticipated to contribute to visibility impairment at the Guadalupe Mountains and Big Bend. We commonly refer to this as the long-term strategy consultation. Similarly, in developing the RPGs for its Class I area(s), Section 51.308(d)(1)(iv) requires that States (in this case Oklahoma) consult with those States which may reasonably be anticipated to cause or contribute to visibility impairment at their Class I area(s) (in this case Wichita Mountains). We commonly refer to this as the reasonable progress consultation. Section 51.308(d)(3)(ii) requires that if a State's emissions (in this case Texas's emissions) cause or contribute to impairment in another State's Class I area, it must demonstrate that it has included in its regional haze SIP all

measures necessary to obtain its share of the emission reductions needed to meet the progress goal for that Class I area. Section 51.308(d)(3)(iii) requires that States (in this case Texas) document the technical basis, including modeling, monitoring and emissions information, on which it is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I area it affects. This documentation is necessary so that the interstate consultation process can proceed on an informed basis, and so that downwind states can properly assess whether any additional upwind emission reductions are necessary to achieve reasonable progress at their Class I area(s).

We explained the basis for our disapproval of Texas's consultation with Oklahoma to address visibility impairment in the Wichita Mountains, as required under section 51.308(d)(3)(i), in the preamble of our 2014 Proposed Rule and in the preamble of our 2016 Final Rule.<sup>123</sup> We also explained the basis for our disapproval of Oklahoma's consultation with Texas to address visibility impairment in the Wichita Mountains, as required under section 51.308(d)(1)(iv), in the preamble of our 2014 Proposed Rule and in the preamble of our 2016 Final Rule.<sup>124</sup> As to EPA's disapproval of the consultation between Texas and Oklahoma, the Fifth Circuit motions panel in the 2016 stay opinion stated that "EPA's disapproval seems to stem in large part from its assertion that Texas had to conduct a source-specific analysis and provide Oklahoma with that source-specific analysis."<sup>125</sup> This is incorrect. The basis for our disapproval of Texas's long-term strategy consultation with Oklahoma was not, and is not, tied to whether Texas conducted a source-specific analysis and provided Oklahoma with that source-specific analysis. Rather, we are proposing to disapprove Texas's long-term strategy consultation with Oklahoma because it relied on and was informed by a flawed four-factor analysis in which Texas analyzed and weighed the four reasonable progress factors in a manner that is unreasonable and inconsistent with the requirements of the CAA and the RHR. Similarly, we are proposing to disapprove Oklahoma's reasonable progress consultation with Texas and the RPG Oklahoma

established for the Wichita Mountains. Oklahoma unreasonably relied on and was informed by Texas's flawed four-factor analysis that concluded no additional control measures were necessary even though both States acknowledged Wichita Mountains suffers from "significant anthropogenic impacts from Texas"<sup>126</sup> and cost-effective controls were available. Given that impacts from Texas point sources were several times greater than the impact from Oklahoma's own point sources, Oklahoma and Texas did not adequately justify why additional reductions from Texas sources were not necessary to address impacts at the Wichita Mountains as part of the consultation process required under the RHR.

In determining its long-term strategy under section 51.308(d)(3)(iii), we believe that Texas had an obligation to conduct an appropriate technical analysis and demonstrate through that technical analysis (required under section 51.308(d)(3)(ii)), that it provided its fair share of emission reductions to Oklahoma. Texas used its flawed four-factor analysis to determine its "share of the emission reductions needed to meet the progress goal" for the Wichita Mountains and to inform its decision not to control any additional sources, including those that impact visibility at the Wichita Mountains. To the extent that Texas relied on its flawed four-factor analysis to address the requirements of section 51.308(d)(3)(ii) and 51.308(d)(3)(iii), it did not develop and provide the information necessary to determine the reasonableness of controls at those sources in Texas that impact visibility at the Wichita Mountains or other Class I areas. For the same reasons discussed in this section regarding the bases for our disapproval of Texas's four-factor analysis, we are proposing to find that Texas's demonstration failed to satisfy the requirements under section 51.308(d)(3)(ii) and section 51.308(d)(3)(iii).

CenRAP source apportionment modeling results indicated that Texas is a significant contributor to visibility impairment at the Wichita Mountains.<sup>127</sup> Point sources are the most significant contributors to haze at the Wichita Mountains, and the largest contributing point sources are Texas

<sup>119</sup> Appendix 5–2 of the Texas Regional Haze SIP at page 4 Texas states in its SIP that "while some dust (CM and Soil) at both of Texas' Class I areas must be from some human activity, the times when human caused dust is likely to be more important at these sites are on days with less visibility impairment than on the worst dust impaired days." Texas goes on to conclude that "for the sake of the most and least impaired natural visibility estimates, to treat 100 percent of the CM and Soil concentrations measured at each of its Class I areas as natural." See *id.*

<sup>120</sup> See Appendix 5–2 of the Texas Regional Haze SIP at page 4.

<sup>121</sup> 64 FR 35714, 35728 (July 1, 1999).

<sup>122</sup> 64 FR at 35735 (July 1, 1999).

<sup>123</sup> 79 FR at 74854–74856 (2014 Proposed Rule) and 81 FR at 300–301, 312–313 (2016 Final Rule).

<sup>124</sup> 79 FR 74818, 74864–74872 (2014 Proposed Rule) and 81 FR 302–303, 312–313, 338, 339–343 (2016 Final Rule).

<sup>125</sup> *Texas*, 829 F.3d at 428.

<sup>126</sup> See August 3, 2007 letter from ODEQ Executive Director Steven Thompson to TCEQ Executive Director Glenn Shankle included in Appendix 4–2 of Texas Regional Haze SIP.

<sup>127</sup> See Appendix E of the *Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze SIP*, included as Appendix 8–1 of the Texas Regional Haze SIP.

EGUs. Texas SO<sub>2</sub> emissions were projected in 2018 to have the largest visibility impacts, in terms of both absolute contribution to extinction and

percent contribution to total extinction, at the Wichita Mountains in Oklahoma. Table 4 summarizes the percent of visibility impairment at the Wichita

Mountains from Oklahoma and nearby states projected in 2018 based on the CenRAP modeling results.<sup>128</sup>

TABLE 4—PERCENT CONTRIBUTION TO TOTAL VISIBILITY IMPAIRMENT AT WICHITA MOUNTAINS IN 2018

	Texas (%)	Oklahoma (%)	Louisiana (%)	Kansas (%)	Arkansas (%)	Missouri (%)	Eastern U.S. (%)
Percent Total Contribution, All Pollutants .....	27.5	16.3	4.8	3.8	2.3	2.8	4.2
Percent Point Source Contribution, All Pollutants .....	14.0	3.9	3.4	1.4	1.3	1.7	3.2

Texas (all sources and pollutants) is projected to contribute 27.5 percent of the visibility impairment at the Wichita Mountains, compared to 16.3 percent for Oklahoma sources, 4.8 percent from Louisiana sources and 4.2 percent from sources in the Eastern U.S. Point sources in Texas are projected to account for 14 percent of all visibility impairment projected in 2018 at Wichita Mountains, compared to 3.9 percent from Oklahoma point sources, 3.4 percent from Louisiana point sources and 3.2 percent from point sources in the Eastern U.S.

Oklahoma and Texas mutually acknowledged that Texas sources significantly impact visibility at the Wichita Mountains in Oklahoma, and that the impacts from point sources in Texas are several times greater than the impact from Oklahoma point sources.<sup>129</sup> Furthermore, Oklahoma asserted in its consultations with Texas, and elsewhere in the Oklahoma Regional Haze SIP, that the Wichita Mountains would remain above the URP without additional reductions from Texas sources. During consultation calls with Texas and other states, Oklahoma specifically requested additional information on feasibility and cost of controls for those facilities identified through the CenRAP process as having available controls estimated to cost less than \$5,000/ton and with the potential to result in visibility improvements in the Wichita Mountains due to their location and emissions.<sup>130</sup> The cost-effectiveness of all the Texas point sources identified by Oklahoma except one was below \$3,000/ton. Texas relied on the cost estimates developed by CenRAP and shared with Oklahoma with respect to feasibility and costs of potential controls for which Oklahoma

specifically requested information. Texas also identified that there is uncertainty in the size and distribution in emissions in the future projections and that no EGUs made an enforceable commitment to any particular pollution control strategy and preferred to retain the flexibility offered by the CAIR program.<sup>131</sup>

In addition, Texas provided Oklahoma with information that other sources with existing controls still have a large potential to impact visibility and should be analyzed for control upgrades. Specifically, Texas provided Oklahoma a letter on March 25, 2008, which included a table that listed sources of “particular interest to Wichita Mountains due to their emissions and their positions within the area of influence.”<sup>132</sup> However, Texas did not analyze the costs of controls or corresponding visibility benefits of several of these sources even though they identified them as a source of interest. Some of these sources include EGUs at Martin Lake and Pirkey. In the case of Martin Lake, the three units combined were projected to emit over 35,000 tpy of SO<sub>2</sub>. SO<sub>2</sub> emissions from the Pirkey facility were projected to be over 19,000 tpy. Given Texas’s identification of these sources, it was unreasonable for Texas not to provide any further analysis and Texas and Oklahoma did not adequately justify why additional reductions from these sources were not necessary to address impacts at the Wichita Mountains as part of the consultation process required under the RHR.

Ultimately, Texas determined that no additional controls at its sources were warranted during the first planning period to help achieve reasonable

progress at the Wichita Mountains, and Oklahoma did not specifically request any additional reductions from Texas sources. As a result, Oklahoma established RPGs for the Wichita Mountains that do not reflect any reasonable emission reductions from Texas beyond those that will be achieved by compliance with other requirements of the CAA. We are proposing to disapprove Texas’s long-term strategy consultation with Oklahoma required under Section 51.308(d)(3)(i) because it relied on and was informed by Texas’s flawed four-factor analysis, as discussed in Section V.B. Similarly, Oklahoma’s reasonable progress consultation with Texas required under Section 51.308(d)(1)(iv) and the RPG Oklahoma established for the Wichita Mountains relied on Texas’s flawed four-factor analysis. We are proposing to disapprove those portions of Oklahoma’s Regional Haze SIP because they relied on and were informed by Texas’s flawed four-factor analysis, as discussed in Section V.B. For the same reasons, we are proposing to find that Texas’s demonstration failed to satisfy the requirements under section 51.308(d)(3)(ii) and section 51.308(d)(3)(iii).

**VI. Amending the FIP on Remand**

We are proposing to amend the 2016 FIP by proposing to find that no further federal action is needed to remedy the disapprovals of portions of the Texas and Oklahoma Regional Haze SIPs. We are proposing to not make changes to our recalculation in the 2016 FIP of the natural visibility conditions on the 20 percent best and worst days for the Guadalupe Mountains and Big Bend. We are also proposing to not make

<sup>128</sup> These model results include estimated reductions due to the implementation of CAIR, other on-the-book federal and State rules, and some assumptions for BART reductions in Oklahoma and other states.

<sup>129</sup> See e.g., March 25, 2008 letter from TCEQ Air Quality Division Director Susana M. Hildebrand,

P.E., to ODEQ Air Quality Division Director Eddie Terrill included in Appendix 4–2 of Texas Regional Haze SIP.

<sup>130</sup> See document entitled, ODEQ Wichita Mountains consultation (Aug. 16, 2007), available in the docket for this action under Document ID EPA–R06–OAR–2014–0754–0030.

<sup>131</sup> See Texas Regional Haze SIP at section 10.5.

<sup>132</sup> March 25, 2008 letter from TCEQ Air Quality Division Director Susana M. Hildebrand, P.E., to ODEQ Air Quality Division Director Eddie Terrill included in Appendix 4–2 of Texas Regional Haze SIP.

changes to our recalculation in the 2016 FIP of the following metrics that are dependent on the calculation of the natural visibility conditions: the number of deciviews by which baseline visibility conditions exceed natural visibility conditions for the Guadalupe Mountains and Big Bend (*i.e.*, our calculation of visibility impairment) pursuant to section 51.308(d)(2)(iv)(A) and our recalculation of the URPs for the 20 percent worst days for these Class I areas.

We are proposing to rescind the SO<sub>2</sub> emission limits established in the 2016 FIP. Our 2016 FIP required SO<sub>2</sub> emission limits for 15 coal-fired EGUs at eight power plants that affect visibility at the Wichita Mountains Wilderness, Big Bend National Park, and Guadalupe Mountains National Park. We required emission limits consistent with scrubber upgrades and a compliance date three years from the effective date of the 2016 Final Rule on the following units: (1) Monticello 3; (2) Sandow 4; (3) Martin Lake Units 1, 2, and 3; and (4) Limestone Units 1 and 2. We further required emission limits consistent with scrubber retrofits and a compliance date five years from the effective date of the 2016 Final Rule on the following units: (1) Big Brown Units 1 and 2; (2) Monticello Units 1 and 2; (3) Coletto Creek Unit 1; and (4) Tolk Units 171B and 172B. Finally, we required an SO<sub>2</sub> emission limit for the San Miguel unit based on the continued operation of scrubber upgrades it had already installed, which the facility needed to comply with within one year from the effective date of the 2016 Final Rule.

On remand, we revisited whether, in light of the Fifth Circuit's 2016 stay opinion, as well as several changes in circumstances, the FIP should remain or be amended. In the interim period between the 2016 Final Rule and this proposal, several units for which we promulgated emission limits in the 2016 Final Rule have shut down. These units are: Sandow 4;<sup>133</sup> Monticello Units 1, 2, and 3;<sup>134</sup> and Big Brown Units 1 and 2.<sup>135</sup> These shutdowns are permanent and enforceable because the CAA permits for these units have been voided. These units may not return to

operation without going through CAA new source review permitting and Title V operating permitting requirements. Therefore, the EPA is proposing to rescind the SO<sub>2</sub> emission limits for these units.

Furthermore, several units, including Martin Lake Units 1, 2, and 3, and Coletto Creek Unit 1 may be subject to emission limits under our proposed BART FIP for Texas EGUs.<sup>136</sup> If finalized, these emission limits will provide for similar emission reductions and visibility improvement that would have been achieved by the emission limits for these units in the 2016 FIP. Therefore, we propose to find that no further controls beyond BART should be required for Martin Lake Units 1, 2, and 3, and Coletto Creek Unit 1, and we propose to rescind the SO<sub>2</sub> emission limits for these units.

After taking into account the Texas EGUs that have permanently shut down in the intervening period and those that are subject to proposed controls under our recently proposed Texas BART FIP, the remaining units for which we required SO<sub>2</sub> limits in the 2016 FIP are Limestone Units 1 and 2; Tolk Units 171B and 172B; and San Miguel Unit 1. With respect to these units, the EPA is proposing to rescind the SO<sub>2</sub> emission limits. As explained above, several units in Texas have shut down and the EPA recently proposed BART emission limits for 12 units in Texas. Additionally, we took a voluntary remand on the 2016 Final Rule, in part, due to the motion panel's finding in its stay opinion of the petitioners' likelihood of success on the merits. As to the SO<sub>2</sub> emission limits imposed by the FIP portion of the 2016 Final Rule, the panel found that the EPA likely did not have the authority to impose controls that could not be installed until after the end of the planning period (in this case, beyond the end of the first planning period, or 2018). We strongly disagree with the panel's view that the RHR somehow constrains States or the EPA from imposing controls that cannot be installed until after the end of the planning period. Nevertheless, in response to the panel's opinion, we revised the Regional Haze Rule in 2017 to clarify that for the second and subsequent planning periods, states or the EPA can require controls even if

they cannot be installed until after the end of the planning period.<sup>137</sup> In addition, we previously found that San Miguel upgraded its SO<sub>2</sub> scrubber system in 2010, 2011, 2012, and 2014 to perform at the reasonably highest level that can be expected (approximately 94 percent SO<sub>2</sub> removal efficiency) based on the extremely high sulfur content of the coal being burned and the technology available.<sup>138</sup> In the 2016 FIP, we finalized an SO<sub>2</sub> emission limit based on the continued operation of the scrubber upgrades the facility had already performed and consistent with recent monitoring data.<sup>139</sup> As a result, we did not anticipate that San Miguel would have to install any additional controls in order to comply with the SO<sub>2</sub> emission limit we finalized.<sup>140</sup> The scrubber upgrades at San Miguel remain in place, and we do not anticipate any increase in visibility impacts from the unit.

We propose to find that for these reasons, no additional emission limits are necessary to make reasonable progress for the first planning period. The EPA will also have an opportunity to evaluate Texas's analyses and determinations for the Texas second planning period SIP,<sup>141</sup> including with respect to Limestone, Tolk, and San Miguel. Because we are proposing to rescind the emission limits promulgated in the 2016 FIP for the reasons explained in the preceding paragraphs, we are proposing that it is not necessary to revise our four-factor analysis.

While we are proposing to rescind the SO<sub>2</sub> emission limits established in the 2016 FIP, we are proposing that it is not necessary to revise the 2018 RPGs we calculated in the 2016 FIP. Section 169B(e)(1) of the CAA directed EPA to promulgate regulations that "include[e] criteria for measuring 'reasonable progress' toward the national goal." Consequently, the regional haze regulations for the first planning period direct states to develop RPGs for the most and least impaired days to "measure" the progress that will be achieved by the control measures in the

<sup>133</sup> See letter dated February 14, 2018, from Kim Mireles of Luminant to the TCEQ requesting to cancel certain air permits and registrations for Sandow Steam Electric Station available in the docket for this action.

<sup>134</sup> See letter dated February 8, 2018, from Kim Mireles of Luminant to the TCEQ requesting to cancel certain air permits and registrations for Monticello available in the docket for this action.

<sup>135</sup> See letter dated March 27, 2018, from Kim Mireles of Luminant to the TCEQ requesting to cancel certain air permits and registrations for Big Brown available in the docket for this action.

<sup>136</sup> See 88 FR 28918, 28977 (May 4, 2023). In addition to the units listed at Martin Lake and Coletto Creek, the 2023 Texas BART action proposed emission limits for three units at the W.A. Parish facility, two units at the Harrington facility, two units at the Fayette facility, and one unit at the Welsh facility. We anticipate finalizing the proposed 2023 Texas BART action before finalizing this proposed Reasonable Progress action.

<sup>137</sup> See 40 CFR 51.308(f)(2)(i).

<sup>138</sup> See "Technical Support Document for the Cost of Controls Calculations for the Texas Regional Haze Federal Implementation Plan (Cost TSD)" dated November 2014, pages 56–61. This is the Cost TSD for the 2016 Texas-Oklahoma RP FIP and is available in the docket for this action under Document ID EPA-R06-OAR-2014-0754-0008.

<sup>139</sup> 79 FR at 74823 (footnote 26) and 81 FR at 332 (footnote 161).

<sup>140</sup> 81 FR at 305.

<sup>141</sup> On July 20, 2021, Texas submitted its second planning period Regional Haze SIP to the EPA. See "2021 Regional Haze SIP Revision" at [https://www.tceq.texas.gov/airquality/sip/bart/haze\\_sip.html](https://www.tceq.texas.gov/airquality/sip/bart/haze_sip.html).

state's long-term strategy "over the period of the implementation plan."<sup>142</sup> The RPGs represent the best estimate of the degree of visibility improvement that is anticipated to result in the Class I area at the end of the planning period taking into account the measures included in the long-term strategy over the period of the SIP for that planning period. For the first planning period, the RPGs allow for comparisons between the progress that will be achieved by the state's long-term strategy and the URP,<sup>143</sup> and provide a benchmark for assessing the adequacy of a state's SIP in 5-year periodic reports.<sup>144</sup> In the 2016 FIP, we calculated new 2018 RPGs for the 20 percent worst days and the 20 percent best days for the Guadalupe Mountains, Big Bend, and the Wichita Mountains based on our technical analysis in that FIP.<sup>145</sup> However, it is now five years past the end of the first planning period. Given the timing of this action, revising the RPGs for 2018 would not further the purpose or intent behind establishing the RPGs for the first planning period. Furthermore, as we discussed in the preceding paragraphs, in a separate proposed rule recently published in the **Federal Register**,<sup>146</sup> we proposed SO<sub>2</sub> emission limits for 12 Texas EGUs under the BART requirements, some of which are the same EGUs for which we promulgated SO<sub>2</sub> emission limits in the 2016 FIP. Additionally, several Texas EGUs have shut down including some of the same units addressed in the 2016 FIP. In evaluating the Texas and Oklahoma Regional Haze SIPs for the second planning period,<sup>147</sup> we will have an opportunity to evaluate these States' four-factor analyses for the second planning period, including the 2028 RPGs adopted by the States. For these reasons, we are proposing to find that it is not necessary or practical at this point in time for the EPA to make further changes to the 2018 RPGs.

As described in further detail below, we find that the EPA's proposed revision to the FIP would not result in interference with any applicable CAA requirements and would be consistent with CAA section 110(l). We note that, on the face of this action, the rescission of the emission limits could lead to increases in emissions of SO<sub>2</sub> over what was anticipated in the 2016 Final Rule.

The 2016 FIP imposed emission limits on 15 EGUs located at eight different facilities. However, since that action was promulgated, six of the EGUs covered by the 2016 FIP have permanently shut down and retired. Due to these shutdowns, there are no longer emissions from these six EGUs. As a result, the proposed rescission of these SO<sub>2</sub> emission limits will have no effect, and the emissions from these sources will be lower than anticipated in the 2016 FIP. In addition, the EPA recently proposed source-specific BART limits for four of these EGUs that, if finalized, would impose similar limitations on SO<sub>2</sub> emissions.

For the remaining five EGUs (two EGUs located at the Limestone facility, two EGUs located at the Tolk facility, and one EGU located at San Miguel facility),<sup>148</sup> the proposed rescission of the emission limits, which were judicially stayed from taking effect, is not anticipated to interfere with any applicable requirements under the CAA. First, the geographic areas where the five EGUs are located are not part of a nonattainment area for any National Ambient Air Quality Standards (NAAQS).<sup>149</sup> The Limestone facility is located in a county adjacent to the Freestone/Anderson SO<sub>2</sub> nonattainment area. However, at the time the EPA designated this area as nonattainment, we used dispersion modeling to identify nearby areas that contributed to the violation of the NAAQS.<sup>150</sup> Based on this evaluation, we found that emissions from the Limestone facility did not contribute to the violation of the SO<sub>2</sub> NAAQS. Additionally, since that time, the Big Brown facility, which was the primary source causing the NAAQS violations in the Freestone/Anderson SO<sub>2</sub> nonattainment area, has shut down, and the EPA made a Clean Data Determination in 2021 finding that the

<sup>148</sup> The SO<sub>2</sub> emission limit we are proposing to rescind for the San Miguel facility is based on SO<sub>2</sub> scrubber system upgrades that the facility had already installed prior to the promulgation of the 2016 FIP. The SO<sub>2</sub> emission limit we required for San Miguel was based on the emission rate the facility was already meeting and thus we do not expect that our proposed rescission of this emission limit would result in an increase in SO<sub>2</sub> emissions from this facility.

<sup>149</sup> The Limestone facility is located in Limestone County, the Tolk facility is located in Lamb County, and the San Miguel facility is located in Atascosa County. None of these counties are part of a nonattainment area for any NAAQS.

<sup>150</sup> See Technical Support Document for the Designation Recommendations for the 2010 Sulfur Dioxide National Ambient Air Quality Standards (NAAQS)—Supplement for Four Areas in Texas Not Addressed in June 30, 2016, Version, Docket No. EPA-HQ-OAR-2014-0464, at pg. 15–16 (Nov. 29, 2016), available in the docket for this action.

area is currently attaining the 1-hour SO<sub>2</sub> NAAQS.<sup>151</sup>

Second, there are no approved attainment demonstrations in other areas of the State or outside of the state that rely on the SO<sub>2</sub> emission limits for these five EGUs to achieve attainment of any of the NAAQS. At this time, the areas that may be potentially impacted by our rescission of the SO<sub>2</sub> emission limits for Limestone, Tolk, and San Miguel are all attaining the 2010 1-hour SO<sub>2</sub> NAAQS, 2006 PM<sub>2.5</sub> NAAQS, and 2012 PM<sub>2.5</sub> NAAQS.<sup>152 153</sup> Additionally, rescinding the emission limits will not alter how these sources have been operating and thus the EPA does not anticipate that emission levels from these sources will increase such that we would expect exceedances of, or interference with, the SO<sub>2</sub> and PM<sub>2.5</sub> NAAQS to occur in the future in the areas where these sources are located.

Finally, the proposed rescission of the FIP provisions would not interfere with the "applicable requirements" of the regional haze program. This section explains how the proposed FIP revision will comply with applicable regional haze requirements and general implementation plan requirements. As such, our rescission of these FIP provisions will not interfere with the CAA requirements for regional haze, including the reasonable progress and long-term strategy provisions of the regional haze program.

## VII. Proposed Action

We are proposing disapproval of the portions of the Texas Regional Haze SIP and Oklahoma Regional Haze SIP we previously disapproved in our 2016 Final Rule.

With respect to the Texas Regional Haze SIP, we are proposing disapproval of the portions of the Texas Regional Haze SIP addressing the following Regional Haze Rule requirements contained in 40 CFR part 51:<sup>154</sup>

- Section 51.308(d)(1) regarding the RPGs for the Guadalupe Mountains and Big Bend;
- Section 51.308(d)(1)(i)(A) regarding the four-factor analysis;

<sup>151</sup> 86 FR 26401 (May 14, 2021).

<sup>152</sup> Since SO<sub>2</sub> is a precursor pollutant for fine particulate matter (PM<sub>2.5</sub>), we also address whether withdrawal of the FIP emission limits would interfere with attainment of the PM<sub>2.5</sub> NAAQS.

<sup>153</sup> As we noted in the final rule promulgating the 2010 1-hour SO<sub>2</sub> NAAQS, a significant fact for ambient SO<sub>2</sub> concentrations is that stationary sources are the predominant emission sources of SO<sub>2</sub> and the peak, maximum SO<sub>2</sub> concentrations that may occur are most likely to occur nearer the parent stationary source. 75 FR 35520, 35557 (June 22, 2010).

<sup>154</sup> We are also proposing disapproval of 30 TAC 116.1510(d).

<sup>142</sup> 40 CFR 51.308(d)(1).

<sup>143</sup> 40 CFR 51.308(d)(1)(ii).

<sup>144</sup> 40 CFR 51.308(g)–(h).

<sup>145</sup> 81 FR at 347, see Table 9.

<sup>146</sup> See 88 FR 28918 (May 4, 2023).

<sup>147</sup> Texas submitted its Regional Haze SIP for the second planning period to EPA on July 20, 2021, and Oklahoma submitted its Regional Haze SIP for the second planning on August 9, 2022.

- Section 51.308(d)(1)(i)(B) regarding the requirement to calculate the emission reduction measures needed to achieve the URP for the Guadalupe Mountains and Big Bend for the period covered by the SIP;

- Section 51.308(d)(1)(ii) regarding the requirement to demonstrate, based on the factors in Section 51.308(d)(1)(i)(A), that the progress goal adopted by Texas is reasonable;

- Section 51.308(d)(2)(iii) regarding the calculation of natural visibility conditions for the Guadalupe Mountains and Big Bend for the most impaired and least impaired days;

- Section 51.308(d)(2)(iv)(A) regarding the calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions for the Guadalupe Mountains and Big Bend for the most impaired and least impaired days;

- Section 51.308(d)(3)(i) regarding Texas's long-term strategy consultations with Oklahoma in order to develop coordinated emission management strategies to address visibility impacts at the Wichita Mountains;

- Section 51.308(d)(3)(ii) regarding the requirement for Texas to secure its share of reductions necessary to achieve the RPGs for the Guadalupe Mountains, Big Bend, and the Wichita Mountains;

- Section 51.308(d)(3)(iii) regarding the requirement for Texas to document the technical basis for its long-term strategy for the Guadalupe Mountains, Big Bend, and the Wichita Mountains;

- Section 51.308(d)(3)(v)(C) regarding Texas's emission limitations and schedules for compliance to achieve the RPGs for the Guadalupe Mountains, Big Bend, and the Wichita Mountains.

We are also proposing disapproval of the portions of the Oklahoma Regional Haze SIP addressing the following Regional Haze Rule requirements contained in 40 CFR part 51:

- Section 51.308(d)(1) regarding the RPGs for the Wichita Mountains;

- Section 51.308(d)(1)(i)(A) regarding the four-factor analysis;

- Section 51.308(d)(1)(i)(B) regarding the requirement to consider the URP for the Wichita Mountains and the emission reduction measures needed to achieve it for the period covered by the SIP;

- Section 51.308(d)(1)(ii) regarding the requirement to demonstrate, based on the factors in Section 51.308(d)(1)(i)(A), that the rate of progress for the SIP to attain natural conditions by 2064 is not reasonable and that the progress goal adopted by Oklahoma is reasonable;

- Section 51.308(d)(1)(iv) regarding the requirement for Oklahoma to consult with Texas with respect to the

visibility impact of Texas sources at the Wichita Mountains.

We are proposing to find that no further federal action is needed to remedy the proposed disapprovals of these portions of the Texas and Oklahoma Regional Haze SIPs. We are proposing to rescind the SO<sub>2</sub> emission limitations and the associated monitoring, reporting, and recordkeeping requirements we established in the 2016 FIP for Texas EGUs. We are also proposing that it is not necessary to revise the four-factor analysis or the numeric 2018 RPGs we established in the 2016 FIP for the Guadalupe Mountains, Big Bend, and the Wichita Mountains. Finally, we are proposing to find that our amendments to the 2016 FIP are consistent with CAA section 110(l) because they will not interfere with any applicable requirement concerning attainment or reasonable further progress (as defined in section 7501 of this title), or any other applicable requirements of the CAA.

#### VIII. Environmental Justice Considerations

The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>155</sup> The EPA further defines the term “fair treatment” to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”<sup>156</sup> Recognizing the importance of these considerations to local communities, the EPA conducted an environmental justice screening analysis around the location of the facilities associated with this action to identify potential environmental stressors on these communities and the potential impacts of this action. However, the EPA is providing the information associated with this analysis for informational purposes only. The information provided herein is not a basis of the proposed action.

The EPA conducted the screening analyses using EJScreen, an EJ mapping and screening tool that provides the EPA with a nationally consistent dataset

and approach for combining various environmental and demographic indicators.<sup>157</sup> The EJScreen tool presents these indicators at a Census block group (CBG) level or a larger user-specified “buffer” area that covers multiple CBGs.<sup>158</sup> An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJScreen is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to EJ and is subject to uncertainty in some underlying data (e.g., some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).<sup>159</sup> For informational purposes, we have summarized EJScreen data within larger “buffer” areas covering multiple block groups and representing the average resident within the buffer areas surrounding the eight facilities for which we are proposing to rescind emission limits. EJScreen environmental indicators help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population in the U.S. These indicators of overall pollution burden include estimates of ambient particulate matter (PM<sub>2.5</sub>) and ozone concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.<sup>160</sup> EJScreen also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and less than high school education.

The EPA prepared EJScreen reports covering buffer areas of approximately 6-mile radii around the 8 facilities

<sup>157</sup> The EJSCREEN tool is available at <https://www.epa.gov/ejscreen>.

<sup>158</sup> See <https://www.census.gov/programs-surveys/geography/about/glossary.html>.

<sup>159</sup> In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (i.e., lower sampling error), particularly for small geographic areas and population groups. For more information, see [https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs\\_general\\_handbook\\_2020.pdf](https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf).

<sup>160</sup> For additional information on environmental indicators and proximity scores in EJSCREEN, see “EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,” Chapter 3 and Appendix C (September 2019) at [https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen\\_technical\\_document.pdf](https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf).

<sup>155</sup> See <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

<sup>156</sup> *Id.*



covered by the 2016 Final Rule. From those reports, two facilities, Tolk and Monticello, showed EJ indices greater than the 80th national percentiles.<sup>161</sup> For Tolk, the EJ indices greater than the 80th national percentiles were for ozone and lead paint, which are not affected by this proposed action. For Monticello, the EJ indices greater than the 80th national percentiles were for PM<sub>2.5</sub>, air toxics cancer risk, air toxics respiratory hazard index, RMP facility proximity, and wastewater discharge. However, the Monticello facility permanently shut down in 2018.<sup>162</sup> No currently operating facility for which we are proposing to rescind emission limits showed an EJ index greater than the 80th national percentile for PM<sub>2.5</sub>, diesel particulate matter, air toxics cancer risk, air toxics respiratory hazard index, traffic proximity, Superfund site proximity, RMP facility proximity, hazardous waste site proximity, underground storage tanks, or wastewater discharge. The full, detailed EJScreens reports are provided in the docket for this rulemaking.

This action proposes to again disapprove portions of the Texas and Oklahoma Regional Haze SIPs for the first planning period but proposes to make the determination that no further federal action is necessary to address the proposed SIP disapprovals. As a result, this action also proposes to rescind SO<sub>2</sub> emission limitations for 8 facilities in Texas. Exposure to SO<sub>2</sub> is associated with significant public health effects. Short-term exposures to SO<sub>2</sub> can harm the human respiratory system and make breathing difficult. People with asthma, particularly children, are sensitive to these effects of SO<sub>2</sub>.<sup>163</sup> However, the 2016 Final Rule was stayed by the Fifth Circuit on July 15, 2016, and the emission limitations have not gone into effect and therefore have never been implemented. Therefore, we expect that this action will not change potential impacts to communities. There is nothing in the record that indicates that this proposed action, if finalized, would have disproportionately high or adverse human health or environmental

effects on communities with environmental justice concerns.

### IX. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1937 (August 10, 2005) (“SAFETEA”), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State’s environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State’s request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).<sup>164</sup>

On October 1, 2020, the EPA approved Oklahoma’s SAFETEA request to administer all the State’s EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country. As requested by Oklahoma, the EPA’s approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

EPA’s approval under SAFETEA expressly provided that to the extent EPA’s prior approvals of Oklahoma’s environmental programs excluded

Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.<sup>165</sup> The approval also provided that future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).<sup>166</sup>

As explained earlier in this action, the EPA is proposing to again address regional haze obligations for the first planning period in Texas and Oklahoma. More specifically, we are proposing again to disapprove portions of the Oklahoma Regional Haze SIP and Texas Regional Haze SIP submissions that relate to reasonable progress for the first planning period from 2008–2018. Consistent with the D.C. Circuit’s decision in *ODEQ v. EPA* and with EPA’s October 1, 2020, SAFETEA approval, if this disapproval is finalized as proposed, this disapproval will apply to all Indian country within Oklahoma, other than the excluded Indian country lands, as described earlier. Because—per the State’s request under SAFETEA—EPA’s October 1, 2020, SAFETEA approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, the SIP disapproval will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.

<sup>165</sup> The EPA’s prior actions relating to Oklahoma’s SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit’s decision in *ODEQ v. EPA*) located in the state. *See, e.g.*, 76 FR 81728, 81756 (Dec. 28, 2011); 81 FR 296, 348 (Jan. 5, 2016). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

<sup>166</sup> On December 22, 2021, EPA proposed to withdraw and reconsider the October 1, 2020 SAFETEA approval. *See* <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. EPA expects to have further discussions with tribal governments and State of Oklahoma as part of this reconsideration. EPA also notes that the October 1, 2020 approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20–9635 (10th Cir.). EPA may make further changes to the approval of Oklahoma’s program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020 SAFETEA approval. To the extent any change occurs in the scope of Oklahoma’s SIP authority in Indian country before the finalization of this proposed rule, such a change may affect the scope of the EPA’s final action on the proposed rule.

<sup>161</sup> For a place at the 80th percentile nationwide, that means 20 percent of the U.S. population has a higher value. EPA identified the 80th percentile filter as an initial starting point for interpreting EJScreens results. The use of an initial filter promotes consistency for EPA programs and regions when interpreting screening results.

<sup>162</sup> *See* letter dated February 8, 2018, from Kim Mireles of Luminant to the TCEQ requesting to cancel certain air permits and registrations for Monticello available in the docket for this action.

<sup>163</sup> *See* <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects>.

<sup>164</sup> In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit’s decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA’s decision, described in this section, on October 1, 2020.

## X. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Overview and Executive Order 14094: Modernizing Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866, as amended by Executive Order 14094, because the proposed FIP, if finalized, would constitute a rule of particular applicability, as it proposes to rescind source specific requirements for electric generating units at eight different facilities located only in Texas.

### B. Paperwork Reduction Act

This action does not impose any new information collection burden under the PRA. Because the proposed rescission of source specific emission limits applies to only eight different facilities, the Paperwork Reduction Act does not apply. See 5 CFR 1320.3(c).

### C. Regulatory Flexibility Act

I certify that this action will not have a significant impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed action, if finalized, will rescind source specific requirements for electric generating units at eight different facilities, none of which are small entities as defined by the RFA.

### D. Unfunded Mandates Reform Act

The EPA has determined that Title II of UMRA does not apply to this proposed rule. In 2 U.S.C. 1502(1) all terms in Title II of UMRA have the meanings set forth in 2 U.S.C. 658, which further provides that the terms “regulation” and “rule” have the meanings set forth in 5 U.S.C. 601(2). Under 5 U.S.C. 601(2), “the term ‘rule’ does not include a rule of particular applicability relating to . . . facilities.” Because this proposed rule is a rule of particular applicability relating to specific EGUs located at eight named facilities, the EPA has determined that it is not a “rule” for the purposes of Title II of UMRA.

### E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This proposed disapproval of a portion of the Oklahoma Regional Haze SIP submission that relates to reasonable progress for the first planning period (2008–2018) will apply, if finalized as proposed, to certain areas in Oklahoma with a nexus to Indian country as discussed in the preamble, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. The EPA will offer consultation with tribal officials to allow them to provide meaningful input on this action.

### G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA’s Policy on Children’s Health also does not apply.

### H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed 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.

### I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) 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 communities with environmental justice concerns.

The EPA believes that the human health or environmental conditions that exist prior to this action have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental concerns. As explained further in section VIII, the EPA’s screening analysis provides an assessment of indicators related to environmental justice and overall pollution burden around the location of the facilities associated with this action and demonstrates the potential for disproportionate and adverse effects on the areas located near at least two of the facilities subject to this action; however, one of these facilities permanently shut down in 2018. The other facility demonstrated EJ indices greater than the 80th national percentiles for ozone and lead paint, which are potential health and environmental stressors not affected by this proposed action.

The EPA believes that this action, if finalized, is not likely to change the human health or environmental conditions that exist prior to this action and that have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental concerns. This action is not expected to change potential community impacts associated with these indexes or add disproportional human health or environmental burden to these communities with the rescission of SO<sub>2</sub> emission limits that have never gone into effect. The analyses and proposed requirements included in this proposed rulemaking are consistent with and commensurate with the Regional Haze Rule and how that rule functions. Additionally, the EPA conducted these analyses for informational purposes only, and in a manner consistent with both the CAA and E.O. 12898.

The EPA intends to promote fair treatment and provide meaningful involvement in developing the final action through the public notice and comment process. This will include a

virtual public hearing and public comment period, as well as additional outreach to promote public engagement. Information related to this action will be available on the EPA’s website as well as in the docket for this action.

The information supporting this Executive Order review is contained in section VIII of this Preamble as well as throughout the Preamble, and all supporting documents have been placed in the public docket for this action.

*K. Determinations Under CAA Section 307(d)*

This proposed action is subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, “the promulgation or revision of an implementation plan by the Administrator under [CAA section 110(c)].” 42 U.S.C. 7407(d)(1)(B). If finalized, this proposed action would, among other things, revise a federal implementation plan pursuant to the authority of section 110(c). To the extent any portion of this proposed action is not expressly identified under section

307(d)(1)(B), the Administrator determines that the provisions of section 307(d) apply to this proposed action. See CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to “such other actions as the Administrator may determine”).

**List of Subjects in 40 CFR Part 52**

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

**Michael S. Regan,**  
*Administrator.*

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 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 LL—Oklahoma**

■ 2. Section 52.1928 is amended by revising paragraph (a)(5) to read as follows:

**§ 52.1928 Visibility protection.**

(a) \* \* \*

(5) The reasonable progress goals for the first planning period and the reasonable progress consultation with Texas for the Wichita Mountains Class I area.

\* \* \* \* \*

**Subpart SS—Texas**

■ 3. Section 52.2270 is amended by revising in paragraph (e) the “Texas Regional Haze SIP” entry under the table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” to read as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
Texas Regional Haze SIP.	Statewide .....	3/19/2009	1/5/2016, 81 FR 350 ....	The following sections are not approved as part of the SIP: The reasonable progress goals, the reasonable progress four-factor analysis; and the calculation of the emission reductions needed to achieve the uniform rates of progress for the Guadalupe Mountains and Big Bend; the demonstration that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable and that the progress goal adopted by the State is reasonable; calculation of natural visibility conditions; calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions; long-term strategy consultations with Oklahoma; Texas securing its share of reductions necessary to achieve the reasonable progress goals at Big Bend, the Guadalupe Mountains, and the Wichita Mountains; technical basis for its long-term strategy and emission limitations and schedules for compliance to achieve the RPGs for Big Bend, the Guadalupe Mountains and Wichita Mountains.

**§ 52.2302 [Removed and Reserved]**

■ 4. Remove and reserve § 52.2302.

■ 5. Section 52.2304 is amended by revising paragraph (e) to read as follows:

**§ 52.2304 Visibility protection.**

\* \* \* \* \*

(e) The following portions of the Texas Regional Haze SIP submitted March 19, 2009 are disapproved: The reasonable progress goals, the

reasonable progress four-factor analysis; and the calculation of the emission reductions needed to achieve the uniform rates of progress for the Guadalupe Mountains and Big Bend; the demonstration that the rate of progress

for the implementation plan to attain natural conditions by 2064 is not reasonable and that the progress goal adopted by the State is reasonable; calculation of natural visibility conditions; calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions; long-term strategy consultations with Oklahoma; Texas securing its share of reductions necessary to achieve the reasonable progress goals at Big Bend, the Guadalupe Mountains, and the Wichita Mountains; technical basis for its long-term strategy and emission limitations and schedules for compliance to achieve the reasonable progress goals for Big Bend, the Guadalupe Mountains and Wichita Mountains.

\* \* \* \* \*

[FR Doc. 2023-15338 Filed 7-25-23; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2023-0069; FRL-10579-06-OCSPP]

#### Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (June 2023)

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

**ACTION:** Notice of filing of petition and request for comment.

**SUMMARY:** This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before August 25, 2023.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2023-0069, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Madison Le, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566-

1400, email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov); or Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566-2427, email address: [RDFFRNotices@epa.gov](mailto:RDFFRNotices@epa.gov). The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

###### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or

low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

##### II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at <https://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

###### A. Notice of Filing—Amended Tolerances for Non-Inerts

PP 2E9041. EPA-HQ-OPP-2023-0078. Interregional Research Project Number 4 (IR-4), IR-4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture