

For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 51-REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS**

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401-7671q.

**Subpart P - Protection of Visibility**

2. Section 51.308 is amended by revising paragraphs (e)(2), (e)(2)(i)(A), (e)(2)(i)(B), (e)(2)(i)(C), and (e)(2)(ii), and adding paragraphs (e)(2)(i)(D), (e)(2)(i)(E), and (e)(2)(vi) to read as follows:

**§ 51.308 Regional haze program requirements.**

\* \* \* \* \*  
(e) \* \* \* \* \*  
(2) \* \* \* \* \*  
(i) \* \* \* \* \*

(A) A list of all BART-eligible sources within the State.

(B) A list of all BART source categories covered by the alternative program. The State is not required to include every BART source category in the program, but for each source category covered, the State must include each BART-eligible source within that category in the analysis required by paragraph (C)below.

(C) An analysis of the degree of visibility improvement that would be achieved in each affected mandatory Class I Federal area as a result of the emission reductions projected from the installation and operation of BART controls under paragraph (e)(1) of this section at each source subject to BART in each source category covered by the program.

(D) An analysis of the emissions reductions, and associated visibility improvement anticipated at each Class I area within the State, under the trading program or other alternative measure.

(E) A determination that the emission reductions and associated visibility improvement projected under (D) above (i.e., the trading program or other alternative measure) comprise greater reasonable progress, as defined in paragraph (e)(3) of this section, than those projected under (C) above (i.e., BART).

(ii) A demonstration that the emissions trading program or alternative measures will apply, at a minimum, to all BART-eligible sources within the covered source categories within the State. Those sources having a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART in accordance with section 302(c) or paragraph (e)(1) of this section do not need to meet the requirements of the emissions trading program or alternative measure, but may choose to participate if they meet the requirements of the emissions

trading program or alternative measure.

\* \* \* \* \*

(vi) A cap and trade program adopted by a State in lieu of BART must include the following elements:

(A) Applicability provisions defining which sources are subject to the program. The state must demonstrate that the applicability provisions (including the size criteria for including sources in the program) are designed to prevent any significant, potential shifting within the state of production and emissions from sources in the program to sources outside the program. In the case of programs including multiple states, the states must demonstrate that the applicability provisions cover essentially the same size facilities and, if source categories are specified, the same source categories and prevent any significant, potential shifting within such states of production and emissions to sources outside the program.

(B) Allowance provisions ensuring that the total tonnage value of allowances issued each year under the program will never exceed the total number of tons of the emissions cap established by the budget or milestone.

(C) Monitoring provisions providing for consistent and accurate emissions measurements to ensure that each allowance actually represents the same specified tonnage of emissions and that emissions are measured with similar accuracy at all sources

in the program. The monitoring provisions must require that boilers, combustion turbines, and cement kilns allowed to sell allowances comply with part 75 of this chapter. The monitoring provisions for other sources allowed to sell allowances must require that such sources provide emissions information with the same precision, reliability, accessibility, and timeliness as information provided under part 75 of this chapter.

(D) Recordkeeping provisions that ensure the enforceability of the emissions monitoring provisions and other program requirements. The recordkeeping provisions must require that sources allowed to sell allowances comply with the recordkeeping provisions of part 75 of this chapter.

(E) Reporting provisions requiring timely reporting of monitoring data with sufficient frequency to ensure the enforceability of the emissions monitoring provisions and other program requirements and the ability to audit the program. The reporting provisions must require that sources allowed to sell allowances comply with the reporting provisions of part 75 of this chapter, except that, if the Administrator is not the tracking system administrator for the program, emissions may be reported to the tracking system administrator, rather than the Administrator.

(F) Tracking system provisions which provide for a tracking system that is publicly available in a secure, centralized

database to track in a consistent manner all allowances and emissions in the program.

(G) Authorized account representative provisions ensuring that a source owner or operator designates one individual who is authorized to represent the owner or operator in all matters pertaining to the trading program.

(H) Allowance transfer provisions providing procedures that allow timely transfer and recording of allowances, minimize administrative barriers to the operation of the allowance market and ensure that such procedures apply uniformly to all sources and other potential participants in the allowance market.

(I) Compliance provisions prohibiting a source from emitting a total tonnage of a pollutant that exceeds the tonnage value of its allowance holdings and including the methods and procedures for determining whether emissions exceed allowance holdings. Such method and procedures shall apply consistently from source to source.

(J) Penalty provisions providing for mandatory allowance deduction for excess emissions that apply consistently from source to source. The tonnage value of the allowances deducted shall equal at least three times the tonnage of the excess emissions.

(K) For a trading program that allows banking of allowances, provisions clarifying any restrictions on the use of

these banked allowances.

(L) Program Assessment provisions providing for periodic program evaluation to assess whether the program is accomplishing its goals, and whether modifications to the program are needed to enhance performance of the program.

3. 51.309 is amended by revising paragraphs (a), (b)(5), (b)(7), (c), (d)(1), (d)(4)(i) through (v), (d)(10), (f), (g), and (g)(1) through (g)(4) and adding paragraphs (d)(vi)(A), (d)(vi)(B), and (d)(vii), and deleting paragraph (h), to read as follows:

**§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.**

(a) What is the purpose of this section? This section establishes the requirements for the first regional haze implementation plan to address regional haze visibility impairment in the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report. For the period through 2018, certain States (defined in paragraph (b) of this section as Transport Region States) may choose to implement the Commission's recommendations within the framework of the national regional haze program and applicable requirements of the Act by complying with the provisions of this section. If a transport-region State submits an implementation plan which is approved by EPA as

meeting the requirements of this section, it will be deemed to comply with the requirements for reasonable progress with respect to the 16 Class I areas for the period from approval of the plan through 2018. Any Transport Region State electing not to submit an implementation plan under this section is subject to the requirements of this section in the same manner and to the same extent as any State not included within the Transport Region. Except as provided in paragraph (g) of this section, each Transport Region State is also subject to the requirements of section 308 of this Part with respect to any other Federal mandatory Class I areas within the State or affected by emissions from the State.

(b) \* \* \*

(5) Milestone means the maximum level of annual regional sulfur dioxide emissions, in tons per year, for a given year, assessed annually, through the year 2018, consistent with paragraph (d)(4) of this section.

(6) \* \* \*

(7) Base year means the year for which data for a source included within the program were used by the WRAP to calculate emissions as a starting point for development of the milestone required by paragraph (d)(4)(i) of this section.

\* \* \* \* \*

(c) Implementation Plan Schedule. Each Transport Region

State electing to submit an implementation plan under this section must submit such a plan no later than December 17, 2007. Indian Tribes may submit implementation plans after this deadline.

(d) \* \* \*

(1) Time period covered. The implementation plan must be effective through December 31, 2018, and shall continue in effect until an implementation plan revision is approved by EPA in accordance with section 308(f) of this Part.

\* \* \* \* \*

(4) \* \* \*

(i) Provisions for stationary source sulfur dioxide. The plan submission must include a sulfur dioxide program that contains quantitative emissions milestones for stationary source sulfur dioxide emissions for each year through 2018. Compliance with the annual milestones may be measured by comparing a three-year rolling average of actual emissions with a rolling average of the emissions milestones for the same three years. The milestones must provide for steady and continuing emissions reductions through 2018 consistent with the Commission's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the CAA, and the timing of implementation plan assessments of progress and identification of

deficiencies which will be due in the years 2013 and 2018. The milestones must be shown to provide for greater reasonable progress than would be achieved by application of BART pursuant to section 308(e)(2) of this Part and approvable in lieu of BART.

(ii) Documentation of emissions calculation methods. The plan submission must include documentation of the specific methodology used to calculate emissions during the base year for each emitting unit included in the program. The implementation plan must also provide for documentation of any change to the specific methodology used to calculate emissions at any emitting unit for any year after the base year.

(iii) Monitoring, recordkeeping, and reporting of sulfur dioxide emissions. The plan submission must include provisions requiring the monitoring, recordkeeping, and annual reporting of actual stationary source sulfur dioxide emissions within the State. The monitoring, recordkeeping, and reporting data must be sufficient to determine annually whether the milestone for each year through 2018 is achieved. The plan submission must provide for reporting of these data by the State to the Administrator and to the regional planning organization. The plan must provide for retention of records for at least 10 years from the establishment of the record.

(iv) Criteria and Procedures for a Market Trading Program. The plan must include the criteria and procedures for conducting

an annual evaluation of whether the milestone is achieved and in accordance with paragraph (d)(4)(v) of this section, for activating a market trading program in the event the milestone is not achieved. A draft of the annual report evaluating whether the milestone for each year is achieved shall be completed no later than 12 months of the end of each milestone year. The plan must also provide for assessments of the program in the years 2013 and 2018.

(v) Market Trading Program. The implementation plan must include requirements for a market trading program to be implemented in the event a milestone is not achieved. The plan shall require that the market trading program be activated beginning no later than 15 months after the end of the first year in which the milestone is not achieved. The plan shall also require that sources comply, as soon as practicable, with the requirement to hold allowances covering their emissions. Such market trading program must be sufficient to achieve the milestones in paragraph (d)(4)(i) of this section, and must be consistent with the elements for such programs outlined in section 308(e)(2)(vi).

(vi) Provision for the 2018 milestone.

(A) Unless and until a revised implementation plan is submitted in accordance with section 308(f) and approved by EPA, the implementation plan shall prohibit emissions from covered

stationary sources in any year beginning in 2018 that exceed the year 2018 milestone. In no event shall a market-based program approved under section 308(f) allow an emissions cap that is less stringent than the 2018 milestone, unless the milestones are replaced by a different program that meets BART and reasonable progress requirements established in section 308, and is approved by EPA.

(B) The implementation plan must provide a framework, including financial penalties for excess emissions based on the 2018 milestone, sufficient to ensure that the 2018 milestone will be met even if the implementation of the market trading program in paragraph (d)(4)(v) of this section has not yet been triggered, or the source allowance compliance provision of the trading program is not yet in effect.

(vii) Provisions for stationary source NOx and PM. The implementation plan must contain any necessary long term strategies and BART requirements for stationary source PM and NOx. Any such BART provisions may be submitted pursuant to either section 308(e)(1) or 308(e)(2) of this Part.

\* \* \* \* \*

(10) Periodic implementation plan revisions. Each Transport Region State must submit to the Administrator periodic reports in the years 2013 and 2018. The progress reports must be in the form of implementation plan revisions that comply with the

procedural requirements of sections 102 and 103 of this Part.

\* \* \* \* \*

(f) [Reserved]

(g) Additional Class I areas. Each Transport Region State implementing the provisions of this section as the basis for demonstrating reasonable progress for mandatory Class I Federal areas other than the 16 Class I areas must include the following provisions in its implementation plan. If a Transport Region State submits an implementation plan which is approved by EPA as meeting the requirements of this section, it will be deemed to comply with the requirements for reasonable progress for the period from approval of the plan to 2018.

(1) A demonstration of expected visibility conditions for the most impaired and least impaired days at the additional mandatory Class I Federal area(s) based on emissions projections from the long-term strategies in the implementation plan. This demonstration may be based on assessments conducted by the States and/or a regional planning body.

(2) Provisions establishing reasonable progress goals and implementing any additional measures necessary to demonstrate reasonable progress for the additional mandatory Federal Class I areas. These provisions must comply with the provisions of section 308(d)(1) through (4) of this part.

(i) In developing long-term strategies pursuant to section

308(d)(3) of this part, the State may build upon the strategies implemented under paragraph (d) of this section, and take full credit for the visibility improvement achieved through these strategies.

(ii) The requirement under section 308(e) related to Best Available Retrofit Technology for regional haze is deemed to be satisfied for pollutants addressed by the milestones and backstop trading program if, in establishing the emission reductions milestones under paragraph (d)(4) of this section, it is shown that greater reasonable progress will be achieved for these additional Class I areas than would be achieved through the application of source-specific BART emission limitations under section 308(e)(1) of this part.

(iii) The Transport Region State may consider whether any strategies necessary to achieve the reasonable progress goals required by paragraph (g)(2) of this section are incompatible with the strategies implemented under paragraph (d) of this section to the extent the State adequately demonstrates that the incompatibility is related to the costs of the compliance, the time necessary for compliance, the energy and no air quality environmental impacts of compliance, or the remaining useful life of any existing source subject to such requirements.

(h) [deleted]