ED_002918_00017284-00001

environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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 dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 2 U.S.C. 7401 *et seq.*

Dated: August 8, 2018.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–18408 Filed 8–24–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R06–OAR–2016–0611; FRL–9982–50—Region 6]

Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan: Proposal of Best Available Retrofit Technology (BART) and Interstate Transport Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 17, 2017, the EPA published a final rule partially approving the 2009 Texas Regional Haze State Implementation Plan (SIP) submission and promulgated a Federal Implementation Plan (FIP) for Texas to address certain outstanding Clean Air Act (CAA) regional haze requirements. Because the EPA believes that certain aspects of the final rule could benefit from additional public input, we are proposing to affirm our October 2017 SIP approval and FIP promulgation and to provide the public with an opportunity to comment on relevant aspects, as well as other specified related issues.

DATES: Comments must be received on or before October 26, 2018.

Public Hearing:

We are holding an information session, for the purpose of providing additional information and informal discussion for our proposal. We are also holding a public hearing to accept oral comments into the record:

Date: Wednesday, September 26, 2018

Time: Information Session: 1:30 p.m.–3:30 p.m.

Public hearing: 4:00 p.m.–8:00 p.m. (including a short break)

Location: Joe C. Thompson Conference Center (on the University of Texas (UT) Campus), Room 1.110, 2405 Robert Dedman Drive, Austin, Texas 78712.

For additional logistical information regarding the public hearing please see the **SUPPLEMENTARY INFORMATION** section of this action.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0611, at *http://www.regulations.gov* or via email to *R6 TX-BART@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

The Texas regional haze SIP is also available online at: *https://www.tceq.texas.gov/airquality/sip/bart/haze_sip.html.* It is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Jennifer Huser, Air Planning Section (6MM–AA), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7347; email address *Huser.Jennifer@epa.gov.*

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

Joe C. Thompson Conference Center parking is adjacent to the building in Lot 40, located at the intersection of East Dean Keeton Street and Red River Street. Additional parking is available at the Manor Garage, located at the intersection of Clyde Littlefield Drive and Robert Dedman Drive. If arranged in advance, the UT Parking Office will allow buses to park along Dedman Drive near the Manor Garage for a fee.

The public hearing will provide interested parties the opportunity to present information and opinions to us concerning our proposal. Interested parties may also submit written comments, as discussed in the proposal. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. We will not respond to comments during the public hearing. When we publish our final action, we will provide written responses to all significant oral and written comments received on our proposal. To provide opportunities for questions and discussion, we will hold an information session prior to the public hearing. During the information session, EPA staff will be available to informally answer questions on our proposed action. Any comments made to EPA staff during an information session must still be provided orally during the public hearing, or formally in writing within 30 days after completion of the hearings, in order to be considered in the record.

At the public hearing, the hearing officer may limit the time available for each commenter to address the proposal to three minutes or less if the hearing officer determines it to be appropriate. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral

ED_002918_00017284-00002

comments and data pertaining to our proposal at the public hearing. Verbatim English—language transcripts of the hearing and written statements will be included in the rulemaking docket.

Table of Contents

I. Background
A. Overview of the Purpose of Today's Action
B. Regional Haze
C. Interstate Transport of Pollutants That Affect Visibility
D. Previous Actions Related to Texas Regional Haze
II. Summary of This Proposed Action
A. Regional Haze
1. SO_2 BART
2. PM BART
B. Interstate Transport of Pollutants that Affect Visibility
III. PM BART
IV. The SO_2 Trading Program and Its Implications for Interstate Visibility Transport and EGU BART
A. Background on the Concept of CSAPR As an Alternative to BART
B. Texas SO_2 Trading Program
1. Identification of Sources Participating in the Trading Program
2. Texas SO_2 Trading Program as a BART Alternative
C. Specific Texas SO_2 Trading Program Features
D. Recent Retirements
E. Interstate Visibility Transport
V. Proposed Action
A. Regional Haze
B. Interstate Visibility Transport
VI. Statutory and Executive Order Reviews

I. Background

A. Overview of the Purpose of Today's Action

The following overview demonstrates the lengthy and difficult path the regional haze program has taken in Texas. EPA maintains that States are in the best position to provide flexibility and protect the environment while maintaining a strong economic engine. As outlined in more detail below, the Texas 2009 Regional Haze SIP relied on the defunct Clean Air Interstate Rule (CAIR) to satisfy the Best Available Retrofit Technology (BART) requirements. The D.C. Circuit remanded CAIR to the EPA in 2009, prior to the state's submission. The CAIR requirements were replaced by the Cross-State Air Pollution Rule (CSAPR) in 2011. Because of legal challenges, CSAPR in its current form does not provide SO_2 emission reductions in Texas and, as such, cannot satisfy the BART requirements for SO_2 at electrical generating units (EGUs) in Texas. Nonetheless, Texas has not provided a replacement SIP submission to address BART for SO_2 at its EGUs. Because of court deadlines and without a Texas SIP, EPA has been forced to adopt a Federal Implementation Plan (FIP) to address BART.

When EPA proposed a source-specific BART FIP in January 2017,[1] Texas, along with other commenters, suggested to EPA the concept of a trading program. In close cooperation with Texas, EPA developed an SO_2 trading program that we included in our October 2017 final rule[2] and adopted in time to meet our court-ordered deadline. Texas entered an agreement with EPA to provide a SIP-based trading program that would replace the FIP.[3] However, in the months since EPA promulgated the trading program FIP, Texas has not met its commitment to provide a SIP, leaving it without the benefits a State program could bring and leaving EPA little choice but to continue to implement a federal plan.

On December 15, 2017, EPA received a petition for reconsideration of the October 2017 rule requesting that the Administrator reconsider certain aspects of the FIP related to the intrastate trading program promulgated to address the SO_2 BART requirement for EGUs. As stated in our letter in response to that petition dated April 30, 2018, we believe certain specific aspects of the federal plan can benefit from further public comment. Therefore, in this action, we are soliciting comment on: (1) The issuance of a FIP establishing an intrastate trading program capping emissions of SO_2 from certain EGUs in Texas and our determination that this program meets the requirements for an alternative to BART for SO_2; (2) our finding that the BART alternatives in the October 2017 rulemaking to address SO_2 and NO_X BART at Texas' EGUs result in emission reductions adequate to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility for a number of NAAQS issued between 1997 and 2010; and (3) our approval of Texas' SIP determination that no sources are subject to BART for $PM_{2.5}$. We are also soliciting comment on the specific issues of whether recent shutdowns of sources included in the trading program and the merger of two owners of affected EGUs should impact the allocation methodology for certain SO_2 allowances. EPA will consider these comments in the context of our proposal to affirm the SO_2 trading program FIP. We believe that this action, which provides the public an opportunity to provide input on the issues raised in the December 15, 2017 petition for reconsideration of the October 2017 final rule, resolves the basis for that petition.

While soliciting comment on the above three proposed actions, EPA also invites comment on additional issues that could inform our decision making with regard to the SO_2 BART obligations for Texas. First, we seek input on whether SO_2 BART would be better addressed through a source-by-source approach (source-specific BART), the October 2017 SO_2 trading program, or some other appropriate BART alternative. Second, EPA requests comment on whether a SIP-based program would serve Texas better than a FIP. Third, we request public input on whether and how the SO_2 trading program finalized in the October 2017 final rule addresses the long-term strategy and reasonable progress requirements for Texas.

We note that, should we decide to act pursuant to any comments we receive on these additional policy questions, we may initiate a new rulemaking process with a new proposed rule.

B. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities that are located across a broad geographic area and emit $PM_{2.5}$ (*e.g.*, sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust), and its precursors (*e.g.*, SO_2, NO_X, and, in some cases, ammonia (NH_3) and volatile organic compounds (VOCs)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that can be seen. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects, such as acid deposition and eutrophication.[4]

In Section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the prevention of any future, and the remedying of any existing, man-made impairment of visibility in 156 national parks and wilderness areas designated as mandatory Class I Federal areas. On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is

[1] 82 FR 912 (Jan. 4, 2017).

[2] 82 FR 48324 (Oct. 17, 2017).

[3] See Texas Regional Haze MOA with TCEQ dated August 14, 2017 at docket document number EPA–R06–OAR–2016–0611–0051.

[4] Additional information regarding the regulatory background of the CAA and regional haze requirements can be found in our January 2017 notice of proposed rulemaking for Texas Regional Haze. (82 FR 917, January 4, 2017).

ED_002918_00017284-00003

"reasonably attributable" to a single source or small group of sources, *i.e.*, "reasonably attributable visibility impairment." These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved. Congress added section 169B to the CAA in 1990 to address regional haze issues, and EPA promulgated regulations addressing regional haze in 1999. The Regional Haze Rule revised the existing visibility regulations to add provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas.

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often under-controlled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal by controlling emissions of pollutants that contribute to visibility impairment, including a requirement that certain categories of existing major stationary sources [5] built between 1962 and 1977 procure, install, and operate the "Best Available Retrofit Technology" (BART). Larger "fossil-fuel fired steam electric plants" are included among the BART source categories. Under the Regional Haze Rule, states are directed to conduct BART determinations for "BART-eligible" sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Following the compilation of the BART-eligible sources, the sources are examined to determine whether these sources cause or contribute to visibility impairment in nearby Class I areas.[6] For those sources that are not reasonably anticipated to cause or contribute to any visibility impairment in a Class I area, a BART determination is not required. Those sources are determined to be not subject-to-BART. Sources that are reasonably anticipated to cause or contribute to any visibility impairment in a Class I area are determined to be subject-to-BART. For each source subject to BART, 40 CFR 51.308(e)(1)(ii)(A) requires that states (or EPA, in the case of a FIP) identify the level of control representing BART after considering the factors set out in CAA section 169A(g). The evaluation of BART for EGUs that are located at fossil-fuel-fired power plants having a generating capacity in excess of 750 megawatts must follow the "Guidelines for BART Determinations Under the Regional Haze Rule" at appendix Y to 40 CFR part 51 (hereinafter referred to as the "BART Guidelines"). Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or alternative program (sometimes referred to as a "BART alternative") as long as the alternative provides greater reasonable progress towards improving visibility than BART. 40 CFR 51.308(e)(2) specifies how a state must conduct the demonstration to show that an alternative program will achieve greater reasonable progress than the installation and operation of BART. 40 CFR 51.308(e)(2)(i)(E) requires a determination, under specific criteria laid out at 40 CFR 51.308(e)(3) or otherwise based on the clear weight of evidence, that the trading program or other alternative measure achieves greater reasonable progress than would be achieved through the installation and operation of BART at the covered sources. Finally, 40 CFR 51.308(e)(4) states that states participating in a Cross-State Air Pollution Rule (CSAPR) trading program need not require BART-eligible fossil fuel-fired steam electric plants to install, operate, and maintain BART for the pollutant covered by that trading program.

Under section 110(c) of the CAA, whenever we disapprove a mandatory SIP submission in whole or in part, we are required to promulgate a FIP within two years unless the state corrects the deficiency and we approve the new SIP submittal.

C. Interstate Transport of Pollutants That Affect Visibility

Section 110(a) of the CAA directs states to submit SIPs that provide for the implementation, maintenance, and enforcement of each NAAQS, which is commonly referred to as an infrastructure SIP. Among other things, CAA section 110(a)(2)(D)(i)(II) requires that SIPs contain adequate provisions to prohibit interference with measures required to protect visibility in other states. This is commonly referred to as "interstate visibility transport." States must submit infrastructure SIPs addressing interstate visibility transport, among other requirements, which are due to the EPA within three years after the promulgation of a new or revised NAAQS (or within such shorter period as we may prescribe). A state's failure to submit a complete, approvable SIP for interstate visibility transport creates an obligation for the EPA to promulgate a FIP to address this requirement.

D. Previous Actions Related to Texas Regional Haze

On March 31, 2009, Texas submitted a regional haze SIP (the 2009 Regional Haze SIP) to the EPA that included reliance on Texas' participation in trading programs under the Clean Air Interstate Rule (CAIR) as an alternative to BART for SO_2 and NO_X emissions from EGUs.[7] This reliance was consistent with the EPA's regulations at the time that Texas developed its 2009 Regional Haze SIP,[8] but at the time that Texas submitted this SIP to the EPA, the D.C. Circuit had remanded CAIR (without vacatur).[9] The court left CAIR and our CAIR FIPs in place in order to "temporarily preserve the environmental values covered by CAIR" until we could, by rulemaking, replace CAIR consistent with the court's opinion. The EPA promulgated CSAPR to replace CAIR in 2011 [10] (and revised it in 2012).[11] CSAPR established FIP requirements for a number of states, including Texas, to address the states' interstate transport obligation under CAA section 110(a)(2)(D)(i)(I). CSAPR addresses interstate transport of fine particulate matter and ozone by requiring affected EGUs in these states to participate in the CSAPR trading programs and establishes emissions budgets that apply to the EGUs' collective annual emissions of SO_2 and NO_X, as well as emissions of NO_X during ozone season.[12]

Following issuance of CSAPR, the EPA determined that CSAPR would achieve greater reasonable progress towards improving visibility than would source-specific BART in CSAPR states (a determination often referred to as "CSAPR better than BART").[13] In the

[5] *See* 42 U.S.C. 7491(g)(7) (listing the set of "major stationary sources" potentially subject-to-BART).

[6] See 40 CFR part 51, Appendix Y, III, How to Identify Sources "Subject to BART".

[7] CAIR required certain states, including Texas, to reduce emissions of SO_2 and NO_X that significantly contribute to downwind nonattainment of the 1997 NAAQS for fine particulate matter and ozone. See 70 FR 25152 (May 12, 2005).

[8] *See* 70 FR 39104 (July 6, 2005).

[9] *See North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008), *as modified*, 550 F.3d 1176 (D.C. Cir. 2008).

[10] 76 FR 48207 (Aug. 8, 2011).

[11] CSAPR was amended three times in 2011 and 2012 to add five states to the seasonal NO_X program and to increase certain state budgets. 76 FR 80760 (December 27, 2011); 77 FR 10324 (February 21, 2012); 77 FR 34830 (June 12, 2012).

[12] Ozone season for CSAPR purposes is May 1 through September 30.

[13] 77 FR 33641 (June 7, 2012). This determination was recently upheld by the D.C. Circuit. (*See Util.*

ED_002918_00017284-00004

same action, we revised the Regional Haze Rule to allow states that participate in the CSAPR trading programs to rely on such participation in lieu of requiring EGUs in the state to install BART controls.

In the same action that EPA determined that states could rely on CSAPR to address the BART requirements for EGUs, EPA issued a limited disapproval of a number of states' regional haze SIPs, including the 2009 Regional Haze SIP submittal from Texas, due to the states' reliance on CAIR, which had been replaced by CSAPR.[14] The EPA did not immediately promulgate a FIP to address those aspects of the 2009 Regional Haze SIP submittal subject to the limited disapproval of Texas' regional haze SIP to allow more time for the EPA to assess the remaining elements of the 2009 Texas SIP submittal.

In December 2014, we proposed an action to address the remaining regional haze obligations for Texas.[15] In that action, we proposed, among other things, to rely on our CSAPR FIP subjecting Texas to participation in the CSAPR trading programs to satisfy the NO_X and SO_2 BART requirements for Texas' EGUs; we also proposed to approve the portions of the 2009 Regional Haze SIP addressing PM BART requirements for the state's EGUs. Before that rule was finalized, however, the D.C. Circuit issued a decision on a number of challenges to CSAPR, denying most claims, but remanding the CSAPR SO_2 and/or seasonal NO_X emissions budgets of several states to the EPA for reconsideration, including the Phase 2 SO_2 and seasonal NO_X budgets for Texas.[16] Due to the uncertainty arising from the remand of Texas' CSAPR budgets, we did not finalize our December 2014 proposal to rely on CSAPR to satisfy the SO_2 and NO_X BART requirements for Texas EGUs.[17] Additionally, because our proposed action on the PM BART provisions for EGUs was dependent on how SO_2 and NO_X BART were satisfied, we did not take final action on the PM BART elements of the 2009 Texas' Regional Haze SIP. In January 2016, we finalized action on the remaining aspects of the December 2014 proposal. This final action disapproved Texas' Reasonable Progress Goals for the Big Bend and Guadalupe Mountains Class I areas in Texas, Texas's reasonable progress analysis and Texas's long-term strategy. EPA promulgated a FIP establishing a new long-term strategy that consisted of SO_2 emission limits for 15 coal fired EGUs at eight power plants. That rulemaking was challenged, however, and in July 2016, the Fifth Circuit granted the petitioners' motion to stay the rule pending review. In December 2016, following the submittal of a request by the EPA for a voluntary remand of the parts of the rule under challenge, the Fifth Circuit Court of Appeals remanded the rule in its entirety.[18]

On October 26, 2016, the EPA finalized an update to CSAPR to address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (CSAPR Update).[19] The EPA also responded to the D.C. Circuit's remand of certain CSAPR seasonal NO_X budgets in that action. As to Texas, the EPA withdrew Texas' seasonal NO_X budget finalized in CSAPR to address the 1997 ozone NAAQS. However, in that same action, the EPA promulgated a FIP with a revised seasonal NO_X budget for Texas to address the 2008 ozone NAAQS.[20] Accordingly, Texas remains subject to CSAPR seasonal NO_X requirements.

On November 10, 2016, in response to the D.C. Circuit's remand of Texas's CSAPR SO_2 budget, we proposed to withdraw the FIP provisions that required EGUs in Texas to participate in the CSAPR trading programs for annual emissions of SO_2 and NO_X.[21] We also proposed to reaffirm that CSAPR continues to provide for greater reasonable progress than BART following our actions taken to address the D.C. Circuit's remand of Texas' SO_2 budget and the CSAPR emissions budgets of several additional states. On September 29, 2017, we finalized the withdrawal of the FIP provisions for annual emissions of SO_2 and NO_X for EGUs in Texas[22] and affirmed our proposed finding that the EPA's 2012 analytical demonstration remains valid and that participation in the CSAPR trading programs as they now exist meets the Regional Haze Rule's criteria for an alternative to BART.

On January 4, 2017, we proposed a FIP to address the EGU BART requirements for Texas' EGUs. In that action, we proposed to replace the 2009 Regional Haze SIP's reliance on CAIR with reliance on our CSAPR FIP to address the NO_X BART requirements for EGUs.[23] This portion of our proposal was based on the CSAPR Update and our separate November 10, 2016 proposed finding that the EPA's actions in response to the D.C. Circuit's remand would not adversely impact our 2012 demonstration that participation in the CSAPR trading programs meets the Regional Haze Rule's criteria for alternatives to BART (sometimes referred to as a finding that "CSAPR is still better than BART").[24] We noted that we could not finalize this portion of our proposed FIP to address the NO_X BART requirements for EGUs unless and until we finalized our proposed finding that CSAPR was still better than BART.

Our January 4, 2017 proposed action addressing the BART requirements for Texas EGUs acknowledged that because Texas would no longer be participating in the CSAPR program for SO_2, and thus would no longer be eligible to rely on participation in CSAPR as an alternative to source-specific EGU BART for SO_2 under 40 CFR 51.308(e)(4), there were BART requirements that were left unfulfilled with respect to Texas's EGU emissions of SO_2 that would need to be fulfilled by either an approved SIP or an EPA-issued FIP that satisfied the BART requirements under 40 CFR 51.308(e)(1) or constituted a viable BART alternative under 40 CFR 51.308(e)(2) for those emissions. EPA proposed to satisfy these requirements through a BART FIP, entailing the identification of BART-eligible EGU sources, screening of sources to identify subject-to-BART sources, and source-by-source determinations of SO_2 BART controls as appropriate. For those EGU sources we proposed to find subject to BART, we proposed to promulgate source-specific SO_2 requirements. We proposed SO_2 emission limits on 29 EGUs located at 14 facilities.

In the January 2017 proposal, we also proposed to disapprove the portion of the 2009 Regional Haze SIP that made BART determinations for PM from EGUs, on the grounds that the demonstration in the 2009 Texas Regional Haze SIP relied on underlying assumptions as to how the SO_2 and NO_X BART requirements for EGUs were being met that were no longer valid with the proposed source-specific SO_2 requirements.[25] In place of these

Air Regulatory Grp. v. *EPA*, 885 F.3d 714 (D.C. Cir. 2018)).

[14] *Id.*

[15] 79 FR 74818 (Dec. 16, 2014).

[16] *EME Homer City Generation, L.P.* v. *EPA*, 795 F.3d 118, 132 (D.C. Cir. 2015).

[17] 81 FR 296 (Jan. 5, 2016).

[18] *Texas* v. *EPA*, 829 F.3d 405 (5th Cir. 2016).

[19] 81 FR 74504 (Oct. 26, 2016).

[20] 81 FR 74504, 74524–25.

[21] 81 FR 78954.

[22] 82 FR 45481 (Sept. 29, 2017). Texas continues to be subject to portions of our CSAPR FIP, under which it participates in CSAPR for ozone season NO_X.

[23] 82 FR 912, 914–15 (Jan. 4, 2017).

[24] 81 FR 74504 (Nov. 10, 2016).

[25] In the 2009 Regional Haze Texas SIP, for EGU BART, Texas' BART EGUs' emissions of both SO_2 and NO_X were covered by participation in trading programs, which allowed Texas to conduct a

Continued

ED_002918_00017284-00005

determinations, we proposed to promulgate source-specific PM BART requirements based on existing practices and control capabilities for those EGUs that we proposed to find subject to BART. Previously, we had proposed to approve the EGU BART determinations for PM in the 2009 Texas Regional Haze SIP, and this proposal had never been withdrawn.[26] At that time, CSAPR was an appropriate alternative for SO_2 and NO_X BART for EGUs. The 2009 Texas Regional Haze SIP included a pollutant-specific screening analysis for PM to demonstrate that Texas EGUs were not subject to BART for PM. In a 2006 guidance document,[27] the EPA stated that pollutant-specific screening can be appropriate where a state is relying on a BART alternative to address both NO_X and SO_2 BART. However, in the January 2017 proposal, we proposed to disapprove the PM BART determination since SO_2 BART was no longer addressed by a BART alternative. In our October 2017 FIP, we approved the 2009 Regional Haze SIP PM BART determination because the SO_2 requirements were addressed by a BART alternative, making the original pollutant-specific screening demonstration once again an appropriate approach.

In our October 2017 rulemaking, we finalized our January 2017 proposed determination that Texas' participation in CSAPR's trading program for ozone-season NO_X qualifies as an alternative to source-specific NO_X BART. We also determined that the SO_2 BART requirements for all BART-eligible coal-fired units and a number of BART-eligible gas- or gas/fuel oil-fired units are satisfied by a BART alternative for SO_2—specifically, an intrastate trading program addressing emissions of SO_2 from certain EGUs in Texas. Finally, we approved the 2009 Regional Haze SIP's determination that Texas' EGUs are not subject to BART for PM. The remaining BART-eligible EGUs not covered by the SO_2 BART alternative were previously determined to be not subject to BART based on methods using model plants and CALPUFF[28] modeling as described in our proposed rule and BART Screening technical support document (TSD).[29] With respect to visibility transport obligations, we determined that the BART alternative to address SO_2 and Texas' participation in CSAPR's trading program for ozone-season NO_X to address NO_X BART at Texas' EGU fully addresses the obligations for six NAAQS.

As explained above, EPA received a petition for reconsideration of issues related to the SO_2 intrastate trading program promulgated in the October 2017 rule. As stated in our letter in response to that petition dated April 30, 2018, we believe certain specific aspects of the federal plan can benefit from further public comment. Therefore, in this notice, we are proposing to affirm certain aspects of our SIP approval and of the FIP, and to provide the public with an opportunity to comment on those particular aspects, as well as other specified related issues.

II. Summary of This Proposed Action

In this notice, we are taking comment on the following elements: (1) This proposal to affirm the October 2017 FIP establishing an intrastate trading program addressing emissions of SO_2 from certain EGUs in Texas as a BART alternative and the determination that this program satisfies the requirements for BART alternatives; (2) this proposal to affirm the finding that the BART alternatives in the October 2017 rulemaking to address SO_2 and NO_X BART at Texas' EGUs result in emission reductions adequate to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility for a number of NAAQS issued between 1997 and 2010; and (3) this proposal to affirm our October 2017 approval of Texas' SIP determination that no sources are subject to BART for PM. We are not soliciting comment on our final determination that CSAPR addresses the NO_X BART requirements for EGUs in Texas.[30]

A. Regional Haze

1. SO_2 BART

In our January 2017 proposed action, we proposed BART limits based on our source-specific BART determinations for certain EGUs in Texas. We proposed this approach to address the SO_2 BART requirements following the remand from the D.C. Circuit in *EME Homer City II*[31] of certain CSAPR emission budgets that created uncertainty regarding our proposed reliance on CSAPR to satisfy the SO_2 BART requirements for EGUs in Texas. However, based on comments we received in response to our January 2017 proposal, including views expressed by Texas, we finalized, as a BART alternative, a program establishing emission caps using CSAPR allocations for certain EGUs in Texas in our October 2017 final action. The EPA determined that, because this BART alternative would result in SO_2 emissions from Texas EGUs similar to emissions anticipated under CSAPR, the alternative is an appropriate approach for addressing Texas' SO_2 BART obligations and, in the context of the operation of the CSAPR ozone-season NO_X trading program and the operation of the CSAPR annual NO_X and SO_2 trading programs, will achieve greater reasonable progress than BART towards restoring visibility, consistent with the June 2012 "CSAPR better than BART" and September 2017 "CSAPR still better than BART" determinations. In today's proposed action, we are proposing to affirm our determination that the intrastate trading program is an appropriate SO_2 BART alternative for EGUs in Texas.

The BART alternative has been designed to achieve SO_2 emission levels that are functionally equivalent to those projected for Texas' participation in the original CSAPR program. The BART alternative applies the CSAPR allowance allocations for SO_2 to all BART-eligible coal-fired EGUs, several additional coal-fired EGUs, and several BART-eligible gas-fired and gas/fuel oil-

screening analysis of the visibility impacts from PM emissions in isolation. However, modeling on a pollutant-specific basis for PM is appropriate only in the narrow circumstance of reliance on BART alternatives to satisfy both NO_X and SO_2 BART. Due to the complexity and nonlinear nature of atmospheric chemistry and chemical transformation among pollutants, EPA has not recommended performing modeling on a pollutant-specific basis to determine whether a source is subject to BART, except in the unique situation described above. See discussion in Memorandum from Joseph Paisie to Kay Prince, "Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations," July 19, 2006.

[26] 79 FR 74817, 74853–54 (Dec. 16, 2014).

[27] *See* discussion in Memorandum from Joseph Paisie to Kay Prince, "Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations," July 19, 2006.

[28] CALPUFF (California Puff Model) is a multi-layer, multi-species non-steady-state puff dispersion modeling system that simulates the effects of time- and space-varying meteorological conditions on pollutant transport, transformation, and removal. CALPUFF is intended for use in assessing pollutant impacts at distances greater than 50 kilometers to several hundreds of kilometers. It includes algorithms for calculating visibility effects from long range transport of pollutants and their impacts on Federal Class I areas. EPA previously approved the use of the CALPUFF model in BART related analyses (40 CFR part 51 Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations; Final Rule; FR Vol. 70 No. 128 Pages 39104—39172; July 6, 2005). For instructions on how to download the appropriate model code and documentation that are available from Exponent (Model Developer/Owner) at no cost for download, see EPA's website: *https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models#calpuff.*

[29] See document at docket identification number EPA–R06–OAR–0611–0005.

[30] For additional information regarding the determination that CSAPR addresses the NO_X BART requirements for EGUs in Texas, please see our January 2017 proposal, and our October 2017 final action, including response to comments. These actions are included in the docket for this action.

[31] *EME Homer City Generation, L.P.* v. *EPA*, 795 F.3d 118, 132 (D.C. Cir. 2015).

ED_002918_00017284-00006

fired EGUs. In addition to being a sufficient alternative to BART, we are proposing to affirm our October 2017 determination that the BART alternative secures reductions consistent with visibility transport requirements and is part of the long-term strategy to meet the reasonable progress requirements of the Regional Haze Rule.

We propose to affirm that the combination of the source coverage for this program, the total allocations for EGUs covered by the program, and recent and foreseeable emissions trends from those EGUs both covered and not covered by the program will result in future EGU emissions in Texas that are similar to or less than the SO_2 emission levels forecast in the 2012 better-than-BART demonstration for Texas EGU emissions assuming CSAPR participation. We propose to affirm that the intrastate trading program meets the requirements for a BART alternative and therefore satisfies the SO_2 BART requirements for the BART-eligible coal-fired EGUs and gas- and gas/fuel oil-fired EGUs in the following table. See Section IV.B for a discussion on identification of sources covered by the program.

TABLE 1—TEXAS EGUS SUBJECT TO THE FIP SO_2 TRADING PROGRAM

Owner/operator	Units	BART-eligible
AEP	Welsh Power Plant Unit 1	Yes.
	Welsh Power Plant Unit 2	Yes.
	Welsh Power Plant Unit 3	No.
	H W Pirkey Power Plant Unit 1	No.
	Wilkes Unit 1 *	Yes.
	Wilkes Unit 2 *	Yes.
	Wilkes Unit 3 *	Yes.
CPS Energy	JT Deely Unit 1	Yes.
	JT Deely Unit 2	Yes.
	Sommers Unit 1 *	Yes.
	Sommers Unit 2 *	Yes.
Dynegy/Vistra	Coleto Creek Unit 1	Yes.
LCRA	Fayette/Sam Seymour Unit 1	Yes.
	Fayette/Sam Seymour Unit 2	Yes.
Vistra/Luminant	Big Brown Unit 1	Yes.
	Big Brown Unit 2	Yes.
	Martin Lake Unit 1	Yes.
	Martin Lake Unit 2	Yes.
	Martin Lake Unit 3	Yes.
	Monticello Unit 1	Yes.
	Monticello Unit 2	Yes.
	Monticello Unit 3	Yes.
	Sandow Unit 4	No.
	Stryker ST2 *	Yes.
	Graham Unit 2 *	Yes.
NRG	Limestone Unit 1	No.
	Limestone Unit 2	No.
	WA Parish Unit WAP4 *	Yes.
	WA Parish Unit WAP5	Yes.
	WA Parish Unit WAP6	Yes.
	WA Parish Unit WAP7	No.
Xcel	Tolk Station Unit 171B	No.
	Tolk Station Unit 172B	No.
	Harrington Unit 061B	Yes.
	Harrington Unit 062B	Yes.
	Harrington Unit 063B	No.
El Paso Electric	Newman Unit 2 *	Yes.
	Newman Unit 3 *	Yes.
	Newman Unit 4 *	Yes.

* Gas-fired or gas/fuel oil-fired units.

This BART alternative includes all BART-eligible coal-fired units in Texas, additional coal-fired EGUs, and some additional BART-eligible gas and gas/fuel oil-fired units. Moreover, we propose to affirm that the differences in source coverage between CSAPR and this BART alternative are either not significant or, in fact, work to demonstrate the relative stringency of this BART alternative as compared to CSAPR. This relative stringency is demonstrated in the following points:

A. Covered sources under the BART alternative in this FIP represent 89% [32] of all SO_2 emissions from all Texas EGUs in both 2016 and 2017, and approximately 85% of CSAPR allocations for existing units in Texas.

B. The remaining 11% (100 minus 89) of 2016 and 2017 emissions from sources not covered by the BART alternative come from gas units that rarely burn fuel oil or from coal-fired units that on average are better controlled for SO_2 than the covered sources and generally are less relevant to visibility impairment. As such, any shifting of generation to non-covered sources, as might occur if a covered source were to reduce its operation in order to remain within its SO_2 emissions allowance allocation, would

[32] In 2016, EGUs included in the program emitted 218,291 tons of SO_2, and other EGUs emitted 27,446 tons from other EGUs (11.1% of the total emitted by Texas EGUs). In 2017, sources included in the program emitted 245,870 tons of SO_2, and other EGUs emitted 30,096 (10.9%).

ED_002918_00017284-00007

result in fewer emissions to generate the same amount of electricity.

C. Furthermore, the non-inclusion of a large number of gas-fired units that rarely burn fuel oil reduces the amount of available allowances for such units that would typically and collectively be expected to use only a fraction of CSAPR emissions allowances. Many of these sources typically emit at levels much lower than their allocation level. Should sources not participating in the program choose to opt in, thereby increasing the number of available allowances, this would serve to make the program more closely resemble CSAPR.

D. The BART alternative does not allow purchasing of allowances from out-of-state sources. Emission projections under CAIR and CSAPR showed that Texas sources were anticipated to purchase allowances from out-of-state sources.[33] [34]

Based on these points, and applying as appropriate the principles of the rules and program design of CSAPR to a program designed to apply to and for Texas, we are proposing to affirm our earlier determinations regarding SO_2 BART coverage for EGUs by means of a BART alternative under an intrastate trading program. In 2014, we had originally proposed that participation in a CSAPR SO_2 trading program would satisfy the SO_2 BART requirement for Texas EGUs.[35] The October 2017 final action and this proposal rely in large part on substantially similar technical elements. In contrast to the 2014 proposal, however, the intrastate trading program SO_2 BART alternative would not meet the terms of 40 CFR 51.308(e)(4), as amended, because that regulatory provision provides BART coverage for pollutants covered by the CSAPR trading program in the State. In September 2017, EPA finalized the removal of Texas from the CSAPR SO_2 trading program.[36] Instead, we are relying on the BART alternative option provided under 40 CFR 51.308(e)(2). The BART alternative we are proposing to affirm today is supported by our determination that the trading program achieves greater reasonable progress than BART. The BART alternative is designed to achieve SO_2 emission levels from Texas sources similar to the SO_2 emission levels that would have been achieved under CSAPR. Relying on a quantitative and qualitative assessment of the operation of the BART alternative, we propose to affirm our determination that emission levels under this program, and their aggregate impact on visibility, will be on average no greater than those from Texas EGUs that would have been realized from the SO_2 trading program under CSAPR. Accordingly, for materially the same reasons underlying our June 2012 "CSAPR better than BART" and September 2017 "CSAPR still better than BART" determinations, and the March 2018 court opinion [37] upholding CSAPR better than BART, the SO_2 BART FIP for Texas' BART-eligible EGUs participating in the trading program will achieve greater reasonable progress than BART with respect to SO_2.

In our January 2017 proposed action and in our October 2017 final action, we determined that the BART-eligible EGUs not participating in the program were not causing or contributing to visibility impairment, and were therefore not subject to BART. In today's proposed rule, we are not re-opening the determination that these units are not subject to BART.

The Regional Haze Rule at 40 CFR 51.308(e)(2)(iii) requires that the emission reductions from BART alternatives occur "during the period of the first long-term strategy for regional haze." The SO_2 BART alternative that EPA is proposing here will be implemented beginning in January 2019, and thus emission reductions needed to meet the allowance allocations must take place by the end of 2019. For the purpose of evaluating Texas' BART alternative, the end of the period of the first long-term strategy for Texas is 2021, consistent with the requirement that states submit revisions to their long-term strategy to address the second planning period by July 31, 2021.[38] Therefore, we propose to affirm our determination that because the emission reductions from the Texas SO_2 trading program will be realized prior to that date, the necessary emission reductions will take place within the period of Texas' first long-term strategy for regional haze.

In proposing to affirm the regulatory terms and rules for implementing the BART alternative, we are mindful of the minimally required elements for a BART alternative emissions trading program that are specified in the provisions of 40 CFR 51.308(e)(2)(vi)(A)–(L). In a generic sense, these types of provisions are foundational to the establishment of allowance markets. CSAPR is a prominent example of such an allowance market, and we have designed this BART alternative guided by transferring and generally incorporating well-tested program rules and terms from the provisions of CSAPR; we have ensured that the BART alternative will conform to the provisions necessary and appropriate that are needed for an emissions trading program covered by a cap.

EPA requests comment on our proposal to affirm the October 2017 FIP establishing an intrastate trading program addressing emissions of SO_2 from certain EGUs in Texas as a BART alternative and our determinations that this program satisfies the requirements for BART alternatives.

2. PM BART

The 2009 Texas Regional Haze SIP included a pollutant-specific screening analysis for PM to demonstrate that Texas EGUs were not subject to BART for PM. This approach was consistent with a 2006 guidance document in which the EPA stated that pollutant-specific screening can be appropriate where a state is relying on a BART alternative to address both NO_X and SO_2 BART. The majority of Texas' BART-eligible EGUs rely on BART alternatives for both SO_2 and NO_X emissions and we approved Texas' pollutant-specific screening analysis as appropriate. All of the BART-eligible sources participating in the SO_2 intrastate trading program have visibility impacts from PM alone below the subject-to-BART threshold of 0.5 deciviews (dv). Furthermore, the BART-eligible sources not participating

[33] See CAIR 2018 emission projections of approximately 350,000 tons SO_2 emitted from Texas EGUs compared to CAIR budget for Texas of 225,000 tons. See section 10 of the 2009 Texas Regional Haze SIP.

[34] For the projected annual SO_2 emissions from Texas EGUs under CSAPR See Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, Docket ID No. EPA–HQ–OAR–2011– 0729–0014 (December 2011) (2011 CSAPR/BART Technical Support Document), available in the docket for this action at table 2–4. Certain CSAPR budgets were increased after promulgation of the CSAPR final rule (and the increases were addressed in the 2012 CSAPR/BART sensitivity analysis memo. See memo entitled "Sensitivity Analysis Accounting for Increases in Texas and Georgia Transport Rule State Emissions Budgets," Docket ID No. EPA–HQ–OAR–2011–0729–0323 (May 29, 2012), available in the docket for this action. The increase in the Texas SO_2 budget was 50,517 tons which, when added to the Texas SO_2 emissions projected in the CSAPR + BART-elsewhere scenario of 266,600 tons, yields total potential SO_2 emissions from Texas EGUs of approximately 317,100 tons. Texas SO_2 emissions projected in the CSAPR + BART-elsewhere scenario of 266,600 tons compared to the original CSAPR budget of 243,954. The CSAPR budget for Texas after adjustments was 294,471 tons.

[35] 79 FR 74817, 74823 (December 16, 2014) ("We propose to replace Texas' reliance on CAIR to satisfy the BART requirement for EGUs with reliance on CSAPR."). This part of the 2014 proposal was not finalized in the action taken on January 5, 2016, that has since been remanded by the Fifth Circuit Court of Appeals. 81 FR 295.

[36] 2 FR 45481 (Sept. 29, 2017). See docket EPA–HQ–OAR–2016–0598 for additional information.

[37] *Util. Air Regulatory Grp.* v. *EPA*, 885 F.3d 714 (D.C. Cir. 2018).

[38] 40 CFR 51.308(f).

ED_002918_00017284-00008

in the intrastate trading program were screened out of BART for all visibility impairing pollutants. EPA requests comments on our proposal to affirm our October 2017 approval of the portion of the Texas Regional Haze SIP that determined that PM BART emission limits are not required for any Texas EGUs.

B. Interstate Transport of Pollutants That Affect Visibility

In our January 5, 2016 final action [39] we disapproved the portion of Texas' SIP revisions intended to address interstate visibility transport for six NAAQS, including the 1997 8-hour ozone and 1997 $PM_{2.5}$.[40] That rulemaking was challenged, however, and in December 2016, following a stay of the rule by the Fifth Circuit Court of Appeals in *Texas* v. *EPA* and EPA's submittal of a subsequent request by the EPA for a voluntary remand of the parts of the rule under challenge, the Fifth Circuit Court of Appeals remanded the rule in its entirety without vacatur.[41] In our October 2017 final action, we again finalized our disapproval of Texas' SIP revisions addressing interstate visibility transport under CAA section 110(a)(2)(D)(i)(II) for six NAAQS. As explained in our January 2017 proposal, Texas' infrastructure SIP revisions for these six NAAQS relied on its 2009 Regional Haze SIP, including that SIP's reliance on CAIR as an alternative to EGU BART for SO_2 and NO_X, to meet the interstate visibility transport requirements.[42] We are now proposing to affirm that Texas' participation in CSAPR to satisfy NO_X BART and our SO_2 intrastate trading program, fully addresses Texas' interstate visibility transport obligations for the following six NAAQS: (1) 1997 8-hour ozone; (2) 1997 $PM_{2.5}$ (annual and 24 hour); (3) 2006 $PM_{2.5}$ (24-hour); (4) 2008 8-hour ozone; (5) 2010 1-hour NO_2; and (6) 2010 1-hour SO_2. The basis of this proposed affirmation is our determination in the October 2017 final action that the regional haze measures in place for Texas are adequate to ensure that emissions from the State do not interfere with measures to protect visibility in nearby states because the emission reductions are consistent with the level of emissions reductions relied upon by other states during consultation. EPA requests comment on our proposal to affirm the finding that the BART alternatives in the October 2017 rulemaking result in emission reductions adequate to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility for six NAAQS issued between 1997 and 2010.

III. PM BART

In our January 2017 proposal, we proposed to disapprove Texas' technical evaluation and determination in the 2009 Regional Haze SIP that PM BART emission limits are not required for any of Texas' EGUs. That SIP included a pollutant-specific screening analysis for PM to demonstrate that Texas EGUs were not subject to BART for PM. This approach was consistent with a 2006 guidance document [43] in which the EPA stated that pollutant-specific screening can be appropriate where a state is relying on a BART alternative to address both NO_X and SO_2 BART. However, because we proposed to address SO_2 BART on a source-specific basis, Texas' pollutant-specific screening was not appropriate and we proposed source-specific PM BART emission limits consistent with existing practices and controls. In our October 2017 final action, we did not issue source-specific SO_2 BART determinations. Instead, for the majority of Texas' BART-eligible EGUs, we relied on BART alternatives for both SO_2 and NO_X emissions and approved Texas' pollutant-specific screening analysis as appropriate.[44] All of the BART-eligible sources participating in the intrastate trading program have visibility impacts from PM alone below the subject-to-BART threshold of 0.5 deciviews (dv).[45] Furthermore, the BART-eligible sources not participating in the intrastate trading program were screened out of BART for all visibility impairing pollutants. As such, we are proposing to affirm our October 2017 approval of the portion of the Texas Regional Haze SIP that determined that PM BART emission limits are not required for any Texas EGUs, and are requesting comment on this proposal.

As we explained in the January 2017 proposal, the 2009 Regional Haze SIP did not evaluate PM impacts from all BART-eligible EGUs. We evaluated and determined that this omission did not affect Texas' conclusion that no BART-eligible EGUs should be subject-to-BART for PM emissions. In our January 2017 proposal and as finalized in our October 2017 action, we identified several facilities as BART-eligible that Texas did not identify as BART eligible in its 2009 Regional Haze SIP. Specifically, we identified the following additional BART-eligible sources: Coleto Creek Unit 1 (Dynegy), Dansby Unit 1 (City of Bryan), Greens Bayou Unit 5 (NRG), Handley Units 3,4, and 5 (Exelon), Lake Hubbard Units 1 and 2 (Luminant), Plant X Unit 4 (Xcel), Powerlane Units ST1, ST2, and ST3 (City of Greenville), R W Miller Units 1, 2, and 3 (Brazos Elec.), Spencer Units 4 and 5 (City of Garland), and Stryker Creek Unit ST2 (Luminant). Based on CALPUFF modeling and a model-plant analysis, we found that all of these facilities except Coleto Creek and Stryker Creek had impacts from NO_X, SO_2, and PM below the BART screening level.[46] CALPUFF modeling showed that Stryker Creek Unit ST2 had a visibility impact of 0.786 dv from NO_X, SO_2, and PM. However, Stryker Creek Unit ST2 is now covered by a BART alternative for NO_X and SO_2, so we evaluated the visibility impact of Stryker Creek Unit ST2's PM emissions alone. The CALPUFF modeling files and spreadsheets included in our January 2017 proposal indicate that light extinction from PM (PM_{Fine} and PM_{Coarse}) is less than 1% of total light extinction at all Class I areas. Therefore, because the visibility impact attributable to PM emissions from Stryker Creek Unit ST2 would be a small fraction (roughly 1%) of the 0.786 dv aggregate impact of the unit's emissions from all pollutants, we propose to affirm our determination that the source is not subject to BART for PM under EPA's 2006 guidance, and are requesting comment on this proposal.

We also evaluated the potential visibility impact of PM emissions from

[39] 81 FR 296 (Jan. 5, 2016).

[40] Specifically, we previously disapproved the relevant portion of these Texas' SIP submittals: April 4, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual); May 1, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual); November 23, 2009: 2006 24-hour $PM_{2.5}$; December 7, 2012: 2010 NO_2; December 13, 2012: 2008 8-hour Ozone; May 6, 2013: 2010 1-hour SO_2 (Primary NAAQS). 79 FR 74818, 74821; 81 FR 296, 302.

[41] *Texas* v. *EPA*, 829 F.3d 405 (5th Cir. 2016).

[42] *EME Homer City Generation, L.P.* v. *EPA*, 795 F.3d 118, 133–34 (DC Cir. 2015) (holding that SIPs based on CAIR were unapprovable to fulfill good neighbor obligations).

[43] *See* discussion in Memorandum from Joseph Paisie to Kay Prince, "Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations," July 19, 2006.

[44] We originally proposed to approve Texas' screening approach in 2014, and the basis of our proposal today remains consistent with the technical evaluation we provided at that time. See 79 FR 74817, 74848 (Dec. 16, 2014).

[45] Stryker Creek is covered by CSAPR for NO_X and by the SO_2 trading program but was not included in the 2009 Regional Haze SIP. How Stryker Creek is screened out for PM is discussed below.

[46] EPA determined that Dansby, Greens Bayou, Handley, Lake Hubbard, Plant X, Powerlane, R W Miller, and Spencer are not subject to BART based on the methodologies utilizing model plants and CALPUFF modeling as described in our January 2017 proposed rule and BART Screening TSD (Available in the docket for this action, document ID EPA–R06–OAR–2016–0611–0005).

ED_002918_00017284-00009

Coleto Creek Unit 1 using the CAMx modeling that Texas used for PM BART screening of its EGU sources in its 2009 Regional Haze SIP.[47] Specifically, we evaluated the modeling results for two facilities (LCRA Fayette and Sommers Deely) that have stack parameters similar to Coleto Creek's, but that are located closer to Class I areas than Coleto Creek. Texas grouped the LCRA Fayette Facility together with other sources into Group 2 of their PM screening modeling and found that this group's maximum aggregate impacts at all Class I areas were less than 0.25 deciviews (dv). Texas also modeled the City Public Service Sommers Deely Facility's PM impacts. Maximum impacts at all Class I areas from Sommers Deely were less than 0.32 dv. To extend these model results to Coleto Creek, we used the Q/D ratio where Q is the maximum annual PM emissions[48] and D is the distance to the nearest receptor in a Class I area. If the Q/D ratio of Coleto Creek is smaller than the ratios for the two modeling results (Fayette and Sommers Deely) then Coleto Creek's impacts can be estimated as less than the impacts of these source(s) and thus be screened out. We evaluated the closest Class I areas (Big Bend, Guadalupe Mountains, Carlsbad, Wichita Mountains, and Caney Creek) and the Q/D ratios were: Coleto Creek (0.59–0.86), Fayette (4.25–6.1), and Sommers Deely (6.0–10.05).[49] The Q/D ratio for Fayette is 6 to 8 times larger than for Coleto Creek, while the Q/D ratio for Sommers Deely is 9 to 11.6 times higher than for Coleto Creek. Therefore, if we were to model the PM impacts from Coleto Creek, they would be an order of magnitude smaller than the impacts from these facilities, which themselves are well below the threshold of 0.5 dv. Therefore, we propose to affirm our determination that Coleto Creek is not subject to BART for PM emissions, and are requesting comment on this proposal.

We originally proposed to approve Texas' screening approach in 2014,[50] and the basis of our proposal today remains consistent with the technical evaluation we provided at that time.

IV. The SO_2 Trading Program and Its Implications for Interstate Visibility Transport and EGU BART

The Regional Haze Rule provides each state with the flexibility to adopt an emissions trading program or other alternative measure instead of requiring source-specific BART controls, so long as the alternative measure is demonstrated to achieve greater reasonable progress than BART. In our October 2017 final rulemaking, we acknowledged the State's preference and promulgated a BART alternative for SO_2 for certain Texas EGUs. The rationale that the BART alternative would be better than BART was based on the combination of the source coverage for this program and the total allocations for EGUs covered by the program, which along with the recent and foreseeable emissions trends from EGUs both covered and not covered by the program indicate that the BART alternative will result in future EGU emissions in Texas that are similar to what was forecast in the 2012 "CSAPR better than BART" demonstration for Texas EGU emissions that assumed Texas would be subject to CSAPR for all pollutants participation. Today's proposed rule reiterates our finding in the October 2017 rule and affirms that it continues to support the promulgated FIP.

A. Background on the Concept of CSAPR as an Alternative to BART

In 2012, the EPA amended the Regional Haze Rule to provide that participation by a state's EGUs in a CSAPR trading program for a given pollutant qualifies as a BART alternative for those EGUs for that pollutant.[51] In promulgating this "CSAPR-better-than-BART" rule (also referred to as "Transport Rule as a BART Alternative"), the EPA relied on an analytic demonstration based on an air quality modeling study[52] showing that CSAPR implementation meets the Regional Haze Rule's criteria for a demonstration of greater reasonable progress than BART. In the air quality modeling study conducted for the 2012 analytic demonstration, the EPA projected visibility conditions in affected Class I areas[53] based on 2014 emissions projections for two control scenarios and on the 2014 base case emissions projections.[54] One control scenario represents "Nationwide BART" and the other represents "CSAPR+BART-elsewhere."[55] In the base case, neither BART controls nor the EGU SO_2 and NO_X emissions reductions attributable to CSAPR were reflected. To project emissions under CSAPR, the EPA assumed that the geographic scope and state emissions budgets for CSAPR would be implemented as finalized in 2011, and the EPA's final analysis also accounted for several amendments to the CSAPR budgets that were finalized in 2012.[56] The results of that analytic demonstration based on this air quality modeling passed the two-pronged test set forth at 40 CFR 51.308(e)(3). The first prong requires that the alternative program will not cause a decline in visibility at any affected Class I area. The second prong requires that the alternative program results in improvements in average visibility across all affected Class I areas as compared to adopting source-specific BART. Together, these tests ensure that the alternative program provides for greater visibility improvement than would source-specific BART.

For purposes of the 2012 analytic demonstration that CSAPR as finalized and amended in 2011 and 2012 provides for greater reasonable progress than BART, the analysis included Texas EGUs as subject to CSAPR for SO_2 and annual NO_X (as well as ozone-season NO_X). CSAPR's emissions limitations are defined in terms of emissions "budgets" for the collective emissions from affected EGUs in each covered state. Sources can purchase allowances from sources outside of the state, so total projected emissions for a state may,

[47] Environ Report—"Final Report Screening Analysis of Potential BART-Eligible Sources in Texas", September 27, 2006; "Addendum 1—BART Exemption Screening Analysis", Draft December 6, 2006; and "BARTmodelingparameters V2.csv".

[48] This is calculated by using the maximum daily PM_{10} daily emission rate, adding the maximum daily $PM_{2.5}$ emission rate and then calculating the total emissions in tons per year if this max daily rate happened every day.

[49] *See* 'Coleto_Creek_Screen_analysis.xlsx'.

[50] *See* 79 FR 74817, 74848 (Dec. 16, 2014). Docket number EPA–R06–OAR–2014–0754.

[51] 40 CFR 51.308(e)(4); *see also generally* 77 FR 33641 (June 7, 2012). The D.C. Circuit recently denied a challenge to petition seeking review of the 2012 amendments. *Utility Air Regulatory Group* v. *EPA*, 885 F.3d 714 (D.C. Cir. 2018).

[52] *See* Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, Docket ID No. EPA–HQ–OAR–2011–0729–0014 (December 2011) (2011 CSAPR/BART Technical Support Document), and memo entitled "Sensitivity Analysis Accounting for Increases in Texas and Georgia Transport Rule State Emissions Budgets," Docket ID No. EPA–HQ–OAR–2011–0729–0323 (May 29, 2012), both available in the docket for this action.

[53] The EPA identified two possible sets of affected Class I areas to consider for purposes of the study and found that implementation of CSAPR met the criteria for a BART alternative whichever set was considered. *See* 77 FR 33641, 33650 (June 7, 2012).

[54] For additional detail on the 2014 base case, *see* the CSAPR Final Rule Technical Support Document, available in the docket for this action.

[55] The "Nationwide BART" scenario reflected implementation of presumptive source-specific BART for both SO_2 and NO_X at BART-eligible EGUs nationwide. The "CSAPR+BART-elsewhere" reflected implementation of CSAPR in covered states and presumptive source-specific BART for each pollutant in states where CSAPR did not apply for that pollutant.

[56] CSAPR was amended three times in 2011 and 2012 to add five states to the seasonal NO_X program and to increase certain state budgets. 76 FR 80760 (Dec. 27, 2011); 77 FR 10324 (Feb. 21, 2012); 77 FR 34830 (June 12, 2012). The "CSAPR-better-than-BART" final rule reflected consideration of these changes to CSAPR.

ED_002918_00017284-00010

in some cases, exceed the state's emission budget, but aggregate emissions from all sources in a state are expected to remain lower than or equal to the state's "assurance level" given the incentives that source owners have under the program to achieve that result. The final emission budget under CSAPR for Texas was 294,471 tons per year for SO_2, including 14,430 tons of allowances available in the new unit set aside.[57] The State's "assurance level" under CSAPR was 347,476 tons.[58] Under CSAPR, the projected SO_2 emissions from the affected Texas EGUs in the "CSAPR + BART-elsewhere" scenario were 266,600 tons per year. In a 2012 sensitivity analysis memo, EPA conducted a sensitivity analysis that confirmed that CSAPR would remain better-than-BART even if Texas EGU emissions increased to approximately 317,100 tons.[59]

As discussed in Section I.D, in the EPA's final response in September 2017 to the D.C. Circuit's remand in *EME Homer City II* of certain CSAPR budgets, we finalized the withdrawal of the requirements for Texas' EGUs to participate in the annual SO_2 and NO_X trading programs and also finalized our determination that the changes to the geographic scope of the CSAPR trading programs resulting from the remand response do not affect the continued validity of participation in CSAPR as a BART alternative.[60] This determination that CSAPR remains a viable BART alternative despite changes in geographic scope resulting from EPA's response to the CSAPR remand was based on a sensitivity analysis of the 2012 analytic demonstration used to support the original CSAPR as better-than-BART rulemaking. A full explanation of the sensitivity analysis is included in the remand response proposal and final rule.[61]

B. Texas SO_2 Trading Program

Texas is no longer in the CSAPR program for annual SO_2 emissions and accordingly cannot rely on CSAPR as a BART alternative for SO_2 under 51.308(e)(4).[62] Therefore, informed by the TCEQ's comments on our January 2017 proposal, in our October 2017 final action we addressed the SO_2 BART requirement for coal-fired, some gas-fired, and some gas/fuel oil-fired units under a BART alternative, which we developed to meet the demonstration requirements under 51.308(e)(2). Today we propose to affirm the demonstration in our October 2017 action and to retain the SO_2 BART alternative for coal-fired, some gas-fired, and some gas/fuel-oil fired units. We are soliciting comment on these issues, and in particular, we are soliciting comments on the proposal to affirm our determinations that the BART alternative meets each of the applicable regulatory requirements, as detailed in this section.

1. Identification of Sources Participating in the Trading Program

Under 51.308(e)(2), a State may opt to implement or require participation in an emissions trading program or other alternative measure rather than to require sources subject to BART to install, operate, and maintain BART. Such an emissions trading program or other alternative measure must achieve greater reasonable progress than would be achieved through the installation and operation of BART. At the same time, the Texas trading program should be designed so as not to interfere with the validity of existing SIPs in other states that have relied on reductions from sources in Texas. As discussed elsewhere, the Texas trading program is designed to provide the measures that are needed to address interstate visibility transport requirements for several NAAQS and to be part of the long-term strategy needed to meet the reasonable progress requirements of the Regional Haze Rule.[63] To meet all of these goals, the trading program must not only be inclusive of all BART-eligible sources that are treated as satisfying the BART requirements through participation in a BART alternative, but must also include additional emission sources to the extent required to ensure that the trading program as a whole can be shown to both achieve greater reasonable progress than would be achieved through the installation and operation of BART, and achieve the emission reductions assumed by other states in their own regional haze SIPs, and relied upon in establishing their reasonable progress goals for their Class I areas.

In order to identify EGUs in the trading program, we began with the list of BART-eligible EGUs for which we intended to address the BART requirements through a BART alternative. As discussed elsewhere, we determined that several BART-eligible gas-fired and gas/oil-fired EGUs are not subject-to-BART for NO_X, SO_2, and PM, and are therefore not included in the trading program. The table below lists those BART-eligible EGUs identified for inclusion in the trading program.

TABLE 2—BART-ELIGIBLE EGUS PARTICIPATING IN THE TRADING PROGRAM

Facility	Unit
Big Brown (Luminant/Vistra)	1
Big Brown (Luminant/Vistra)	2
Coleto Creek (Dynegy[64]/Vistra)	1
Fayette (LCRA)	1
Fayette (LCRA)	2
Graham (Luminant)	2

[57] Units that are subject to CSAPR but that do not receive allowance allocations as existing units are eligible for a new unit set aside (NUSA) allowance allocation. NUSA allowance allocations are a batch of emissions allowances that are reserved for new units that are regulated by the CSAPR, but were not included in the final rule allocations. The NUSA allowance allocations are removed from the original pool of regional allowances, and divided up amongst the new units, so as not to exceed the emissions cap set in the CSAPR. Each calendar year, EPA issues three pairs of preliminary and final notices of data availability (NODAs), which are determined and recorded in two "rounds" and are published in the **Federal Register**. In any year, if the NUSA for a given CSAPR state and program does not have enough new unit applicants after completion of the 2nd round to use up all of the set aside allowances, the remaining allowances are allocated to existing CSAPR-affected units.

[58] See 40 CFR 97.710 for state SO_2 Group 2 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

[59] For the projected annual SO_2 emissions from Texas EGUs, *see* Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, Docket ID No. EPA–HQ–OAR–2011–0729–0014 (December 2011) (2011 CSAPR/BART Technical Support Document at Table 2–4), available in the docket for this action. at table 2–4. Certain CSAPR budgets were increased after promulgation of the CSAPR final rule (and the increases were addressed in the 2012 CSAPR/BART sensitivity analysis memo. See memo entitled "Sensitivity Analysis Accounting for Increases in Texas and Georgia Transport Rule State Emissions Budgets," Docket ID No. EPA–HQ–OAR–2011–0729–0323 (May 29, 2012), available in the docket for this action. The increase in the Texas SO_2 budget was 50,517 tons which, when added to the Texas SO_2 emissions projected in the CSAPR + BART-elsewhere scenario of 266,600 tons, yields total potential SO_2 emissions from Texas EGUs of approximately 317,100 tons.

[60] In addition to the withdrawal of the FIP provisions for annual emissions of SO_2 and NO_X for EGUs in Texas, the full set of actions taken to respond to the remand includes the 2016 CSAPR Update withdrawing the remanded seasonal NO_X budgets for eleven states and establishing new seasonal NO_X budgets to address a more recent ozone NAAQS for eight of those states, and the actions approving Alabama's, Georgia's, and South Carolina's SIP revisions establishing state CSAPR trading programs for SO_2 and annual NO_X to replace the corresponding federal CSAPR trading programs.

[61] 81 FR 78954 (Nov. 10, 2016), 82 FR 45481 (Sept. 29, 2017). A petition challenging the EPA's determination regarding the continued validity of participation in CSAPR as a BART alternative is currently being held in abeyance in the D.C. Circuit. Order, *Nat'l Parks Conservation Assn.* v. *EPA*, No. 17–1253 (D.C. Cir. Apr. 10, 2018).

[62] See 82 FR 45481; see also 40 CFR 52.39(c)(2), 52.2284(c)(1).

[63] EPA is not determining now that this proposal serves to also resolve the EPA's outstanding obligations with respect to reasonable progress that resulted from the Fifth Circuit's remand of our reasonable progress FIP. We intend to take future action to address the Fifth Circuit's remand.

ED_002918_00017284-00011

TABLE 2—BART-ELIGIBLE EGUS PARTICIPATING IN THE TRADING PROGRAM—Continued

Facility	Unit
Harrington Station (Xcel)	061B
Harrington Station (Xcel)	062B
J T Deely (CPS Energy)	1
J T Deely (CPS Energy)	2
Martin Lake (Luminant/Vistra)	1
Martin Lake (Luminant/Vistra)	2
Martin Lake (Luminant/Vistra)	3
Monticello (Luminant/Vistra)	1
Monticello (Luminant/Vistra)	2
Monticello (Luminant/Vistra)	3
Newman (El Paso Electric)	2
Newman (El Paso Electric)	3
Newman (El Paso Electric)	4
O W Sommers (CPS Energy)	1
O W Sommers (CPS Energy)	2
Stryker Creek (Luminant/Vistra)	ST2
WA Parish (NRG)	WAP4
WA Parish (NRG)	WAP5
WA Parish (NRG)	WAP6
Welsh Power Plant (AEP)	1
Welsh Power Plant (AEP)	2
Wilkes Power Plant (AEP)	1
Wilkes Power Plant (AEP)	2
Wilkes Power Plant (AEP)	3

For a BART alternative that includes an emissions trading program, the applicability provisions must be designed to prevent any significant potential shifting within the state of production and emissions from sources in the program to sources outsidethe program.[65] Shifting would be logistically simplest among units in the same facility, because they are under common management and have access to the same transmission lines. In addition, since a coal-fired EGU to which electricity production could shift would have a relatively high SO_2 emission rate (compared to a gas-fired EGU), such shifting could also shift substantial amounts of SO_2 emissions. To prevent any significant shifting of generation and SO_2 emissions from participating sources to non-participating sources within the same facility, coal-fired EGUs that are not BART-eligible but are co-located with BART-eligible EGUs have been included in the program, with the following exceptions. While Fayette Unit 3, WA Parish Unit 8 (WAP8), and J K Spruce Units 1 and 2 were identified as coal-fired units that are not BART-eligible but are co-located with BART-eligible EGUs, these units have scrubbers installed to control SO_2 emissions such that a shift in generation from the participating units to these units would not result in a significant increase in emissions. Fayette Unit 3 has a high performing scrubber similar to the scrubbers on Fayette Units 1 and 2,[66] and has a demonstrated ability to maintain SO_2 emissions at or below 0.04 lbs/MMBtu.[67] Any shifting of generation from the participating units at the facility to Fayette Unit 3 would result in an insignificant shift of emissions. The scrubber at Parish Unit 8 maintains an emission rate four to five times lower than the emission rate of the other coal-fired units at the facility (Parish Units 5, 6, and 7) that are uncontrolled.[68] Shifting of generation from the participating units at the Parish facility to Parish Unit 8 would result in a decrease in overall emissions from the source. Similarly, J K Spruce Units 1 and 2 have high performing scrubbers and emit at emission rates much lower than the co-located BART-eligible coal-fired units (J T Deely Units 1 and 2).[69] In addition, because these units not covered by the program are on average better controlled for SO_2 than the covered sources and emit far less SO_2 per unit of energy produced, we conclude that in general, based on the current emission rates of the EGUs, should a portion of electricity generation shift to those units not covered by the program, the net result would be a decrease in overall SO_2 emissions, as these non-participating units are on average much better controlled. Relative to current emission levels, should participating units increase their emissions rates and decrease generation to comply with their allocation, emissions from non-participating units may see a small increase. Therefore, we have not included Fayette Unit 3, WA Parish Unit 8 (WAP8), and J K Spruce Units 1 and 2 in the trading program. The table below lists those coal-fired units that are co-located with BART-eligible units that have been identified for inclusion in the trading program.

TABLE 3—COAL-FIRED EGUS CO-LOCATED WITH BART-ELIGIBLE EGUS AND PARTICIPATING IN THE TRADING PROGRAM

Facility	Unit
Harrington Station (Xcel)	063B
WA Parish (NRG)	WAP7
Welsh Power Plant (AEP)	3

In addition to these sources, we also evaluated other EGUs for inclusion in the trading program based on their potential to impact visibility at Class I areas. Addressing emissions from sources with the largest potential to impact visibility is required to make progress towards the goal of natural visibility conditions and to address emissions that may otherwise interfere with measures required to protect visibility in other states. EPA, states, and Regional Planning Organizations (RPOs) have historically used a Q/D analysis to identify those facilities that have the potential to impact visibility at a Class I area based on their emissions and distance to the Class I area. Where,

1. Q is the annual emissions in tons per year (tpy), and
2. D is the nearest distance to a Class I Area in kilometers (km),

We used a Q/D value of 10 as a threshold for identification of facilities that may impact visibility at Class I areas and could be included in the trading program in order to meet the goals of achieving greater reasonable progress than BART and limiting visibility transport. We selected this value of 10 based on guidance contained in the BART Guidelines, which states:

Based on our analyses, we believe that a State that has established 0.5 deciviews as a contribution threshold could reasonably exempt from the BART review process sources that emit less than 500 tpy of NO_X or SO_2 (or combined NO_X and SO_2), as long as these sources are located more than 50 kilometers from any Class I area; and sources that emit less than 1000 tpy of NO_X or SO_2 (or combined NO_X and SO_2) that are located more than 100 kilometers from any Class I area.[70]

The approach described above corresponds to a Q/D threshold of 10. This approach has also been recommended by the Federal Land Managers' Air Quality Related Values Work Group (FLAG)[71] as an initial

[64] Dynegy purchased the Coleto Creek power plant from Engie in February 2017. Note that Coleto Creek may still be listed as being owned by Engie in some of our supporting documentation which was prepared before that sale.

[65] 40 CFR 51.308(e)(2)(vi)(A).

[66] See the BART FIP TSD, available in the docket for this action (Document Id: EPA–R06–OAR–2016–0611–0004), for evaluation of the performance of scrubbers on Fayette Units 1 and 2.

[67] The annual average emission rate for 2016 for this unit was 0.01 lb/MMBtu.

[68] Parish Units 5 and 6 are coal-fired BART-eligible units. Parish Unit 7 is not BART-eligible, but is a co-located coal-fired EGU. Unlike Parish Unit 8, these three units do not have an SO_2 scrubber installed.

[69] The annual average emission rate for 2016 for J K Spruce Units 1 and 2 was 0.03 lb/MMBtu and 0.01 lb/MMBtu, respectively. The annual average emission rate for 2016 for J T Deely Units 1 and 2 was 0.52 lb/MMBtu and 0.51 lb/MMBtu, respectively.

[70] See 40 CFR part 51, App. Y, § III (How to Identify Sources "Subject to BART").

[71] Federal Land Managers' Air Quality Related Values Work Group (FLAG), Phase I Report—Revised (2010).

Natural Resource Report NPS/NRPC/NRR—2010/232, October 2010. Available at http://

ED_002918_00017284-00012

screening test to evaluate the potential impact of a new or modified source on air quality related values (AQRV) at a Class I area and screen out sources from further visibility analysis. For this purpose, a Q/D value is calculated using the combined annual emissions in tons per year of SO_2, NO_X, PM_{10}, and sulfuric acid mist (H_2SO_4) divided by the distance to the Class I area in km. A Q/D value greater than 10 for a new or modified major source seeking a permit under the Prevention of Significant Deterioration Program or Nonattainment New Source Review Program is recommended to have a Class I area AQRV analysis conducted.[72]

We considered the results of an available Q/D analysis based on 2009 emissions to identify facilities that may impact air visibility at Class I areas.[73] Table 4 summarizes the results of that Q/D analysis for EGU sources in Texas with a Q/D value greater than 10 with respect to the nearest Class I area to the source.

TABLE 4—Q/D ANALYSIS FOR TEXAS EGUS

[Q/D Greater than 10, 2009 annual emissions]

Facility	Maximum Q/D
H.W. Pirkey (AEP)	35.8
Big Brown (Luminant)	182.9
Sommers-Deely (CPS)	56.9
Coleto Creek (Dynegy)	46.0
Fayette (LCRA)	61.0
Gibbons Creek (TMPA)	30.8
Harrington Station (Xcel)	107.8
San Miguel	32.9
Limestone (NRG)	85.1
Martin Lake (Luminant)	367.4
Monticello (Luminant)	425.4
Oklaunion (AEP)	85.0
Sandow (Luminant)	63.0
Tolk Station (Xcel)	148.5
Twin Oaks	14.2
WA Parish (NRG)	84.3
Welsh (AEP)	230.1

Based on the above Q/D analysis, we identified additional coal-fired EGUs for participation in the SO_2 trading program due to their emissions, proximity to Class I areas, and potential to impact visibility at Class I areas. While Gibbons Creek is identified by the Q/D analysis, the facility does not include any BART-eligible EGUs and has installed very stringent controls such that current emissions are approximately 1% of what they were in 2009.[74] Therefore, we do not consider Gibbons Creek to have significant potential to impact visibility at any Class I area and do not include it in the trading program. The Twin Oaks facility, consisting of two units, is also identified as having a Q/D greater than 10. However, the Q/D for this facility is significantly lower than that of the other facilities, the facility does not include any BART-eligible EGUs, and the estimated Q/D for an individual unit would be less than 10. We do not consider the potential visibility impacts from these units to be significant relative to the other coal-fired EGUs in Texas with Q/Ds much greater than 10 and do not include it in the trading program. The Oklaunion facility consists of one coal-fired unit that is not BART-eligible. Annual emissions of SO_2 in 2016 from this source were 1,530 tons, less than 1% of the total annual emissions for EGUs in the state and only 988 tons in 2017. The most recent emissions from this facility are small relative to other non-BART units included in the program and we have not included Oklaunion in the trading program. Finally, San Miguel is identified as having a Q/D greater than 10. The San Miguel facility consists of one coal-fired unit that is not BART-eligible. In our review of existing controls at the facility performed as part of our action to address the remaining regional haze obligations for Texas, we found that the San Miguel facility has upgraded its SO_2 scrubber system to perform at the highest level (94% control efficiency) that can reasonably be expected based on the extremely high sulfur content of the coal being burned, and the technology currently available.[75] Since completion of all scrubber upgrades,[76] emissions from the facility on a 30-day boiler operating day[77] rolling average basis have remained below 0.6 lb/MMBtu and the 2016 annual average emission rate was 0.44 lb/MMBtu. Therefore, we found the facility is well controlled and did not include San Miguel in the trading program. Other coal-fired EGUs in Texas that are not included in the trading program either had Q/D values less than 10 based on 2009 emissions or were not yet operating in 2009. New units beginning operation after 2009 have been or would be permitted and constructed using emission control technology determined under either Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) review, as applicable, and we do not consider the potential visibility impacts from these units to be significant relative to those coal-fired EGUs participating in the program. See Table 8 and accompanying discussion in the section below for additional information on coal-fired EGUs not included in the trading program. The table below lists the additional units identified by the Q/D analysis described above as potentially significantly impacting visibility that are included in the trading program. We note that all of the other coal-fired units identified for inclusion in the trading program due to their BART-eligibility or by the fact that they are co-located with BART-eligible coal units would also be identified for inclusion in the trading program if the Q/D analysis were applied to them.

TABLE 5—ADDITIONAL UNITS IDENTIFIED FOR INCLUSION IN THE TRADING PROGRAM

Facility	Unit
H.W. Pirkey (AEP)	1
Limestone (NRG)	1
Limestone (NRG)	2
Sandow (Luminant)	4
Tolk (Xcel)	171B
Tolk (Xcel)	172B

EPA proposes to affirm our determination that the inclusion of all of these identified sources (Tables 2, 3, and 5) in an intrastate SO_2 trading program will both: (1) Achieve emission levels that are similar to those projected in the 2012 "CSAPR better than BART" determination from original projected participation by all Texas EGUs in the CSAPR program for trading of SO_2; and (2) achieve greater reasonable progress than BART. In addition to being a sufficient alternative to BART, the trading program secures reductions consistent with visibility transport requirements and is part of the long-term strategy to meet the reasonable progress requirements of the Regional Haze Rule.[78] The combination of the

www.nature.nps.gov/air/Pubs/pdf/flag/FLAG2010.pdf.

[72] We also note that TCEQ utilized a Q/D threshold of 5 in its analysis of reasonable progress sources in the 2009 Texas Regional Haze SIP. See Appendix 10–1 of the 2009 Texas Regional Haze SIP.

[73] See the TX RH FIP TSD that accompanied our December 2014 proposal to address Reasonable Progress requirements 79 FR 74818 (Dec 16, 2014) ;) and 2009statesum_Q_D.xlsx, available in the docket for that action.

[74] Gibbons Creek's 2016 annual SO_2 emissions were only 138 tons compared to 11,931 tons in 2009.

[75] 79 FR 74818 (Dec. 16, 2014).

[76] San Miguel Electric Cooperative FGD Upgrade Program Update, URS Corporation, June 30, 2014. Available in the docket for our December 2014 Proposed action, 79 FR 74818 (Dec 16, 2014) as "TX166–008–066 San Miguel FGD Upgrade Program."

[77] A boiler operating day (BOD) is any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit. See 70 FR 39172 (July 6, 2005).

[78] EPA is not determining at this time that this final action fully resolves the EPA's outstanding

Continued

ED_002918_00017284-00013

source coverage for this program, the total allocations for EGUs covered by the program, and recent and foreseeable emissions from EGUs not covered by the program will result in future EGU emissions in Texas that on average will be no greater than what was forecast in the 2012 "CSAPR better than BART" demonstration for Texas EGU emissions which assumed CSAPR participation by Texas. EPA requests comment on our proposal to affirm the identification of sources participating in the trading program in the October 2017 final rule.

2. Texas SO_2 Trading Program as a BART Alternative

40 CFR 51.308(e)(2) contains the required plan elements and analyses for an emissions trading program or alternative measure designed as a BART alternative.

In our October 2017 final action, we finalized our list of all BART-eligible sources in Texas, which serves to satisfy 51.308(e)(2)(i)(A). We are not reopening the identification of BART-eligible sources, and thus are not requesting comment on this element.

This proposal includes a list of all EGUs covered by the trading program, satisfying the first requirement of 51.308(e)(2)(i)(B). All BART-eligible coal-fired units, some additional coal-fired EGUs, and some BART-eligible gas-fired and oil-and-gas-fired units are covered by the alternative program.[79] This coverage and our determinations that the BART-eligible gas-fired and oil-and-gas-fired EGUs not covered by the program are not subject-to-BART for NO_X, SO_2 and PM satisfy the second requirement of 51.308(e)(2)(i)(B).[80]

Regarding the requirements of 40 CFR 51.308(e)(2)(i)(C), we are proposing to affirm our determination that it is not necessary to make determinations of BART for each source subject to BART and covered by the program. Under that provision, the demonstration for a BART alternative does not need to include determinations of BART for each source subject to BART and covered by the program when the "alternative measure has been designed to meet a requirement other than BART." The Texas trading program meets this condition, as discussed elsewhere, because it has been designed to meet multiple requirements other than BART. This BART alternative extends beyond all BART-eligible coal-fired units to include a number of additional coal-fired EGUs, and some BART-eligible gas-fired and oil-and-gas-fired units, capturing the majority of emissions from EGUs in the State, and is designed to provide the measures that are needed to address interstate visibility transport requirements for several NAAQS. This is because for all sources covered by the Texas SO_2 trading program, those sources' CSAPR allocations for SO_2 are incorporated into the BART alternative, and the BART FIP obtains more emission reductions of SO_2 and NO_X than the level of emissions reductions relied upon by other states during consultation and assumed by other states in their own regional haze SIPs, including their reasonable progress goals for their Class I areas. This BART alternative, addressing emissions from both BART eligible and non-BART eligible sources, that in combination provides for greater reasonable progress than BART, is also designed to be part of the long-term strategy needed to meet the reasonable progress requirements of the Regional Haze Rule, which remain outstanding after the remand of our reasonable progress FIP by the Fifth Circuit Court of Appeals. In our January 4, 2017 proposal on BART, we noted that the Fifth Circuit Court of Appeals has remanded without vacatur our prior action on the Texas' 2009 Texas Regional Haze SIP and part of the Oklahoma Regional Haze SIP.[81] We contemplate that future action on this remand, will bring closure to the reasonable progress requirement. For these reasons, we find that it is not necessary for us to make determinations of BART for each source subject to BART and covered by the program. In this context, 51.308(e)(2)(i)(C) provides that we may "determine the best system of continuous emission control technology and associated emission reductions for similar types of sources within a source category based on both source-specific and category-wide information, as appropriate." In this action, we are relying on the determinations of the best system of continuous emission control technology and associated emission reductions for EGUs as was used in our 2012 determination that showed that CSAPR as finalized and amended in 2011 and 2012 achieves more reasonable progress than BART ("CSAPR better than BART"). These determinations were based largely on category-wide information.

Regarding the requirement of 40 CFR 51.308(e)(2)(i)(D), our analysis is that the Texas trading program will effectively limit the aggregate annual SO_2 emissions of the covered EGUs to be no higher than the sum of their allowances. The Texas SO_2 Trading Program is an intrastate cap-and-trade program for listed covered sources in the State of Texas modeled after the EPA's CSAPR SO_2 Group 2 Trading Program. Authorizations to emit SO_2, known as allowances, are allocated to affected units. As discussed elsewhere, the program includes a Supplemental Allowance Pool with additional allowances that may be allocated to subject units and sources to provide compliance assistance. The average total annual allowance allocation for all covered sources is 238,393 tons, with and an additional 10,000 tons allocated to the Supplemental Allowance pool. In addition, while the Supplemental Allowance pool may grow over time as unused supplemental allowances remain available and allocations from retired units are placed in the supplemental pool, the total number of allowances that can be allocated to sources in a control period from the supplemental pool is limited to a maximum 54,711 tons plus the amount of any allowances placed in the pool that year from retired units and corrections. Therefore, annual average emissions for the covered sources will be less than or equal to 248,393 tons, and although there will be some with year- to- year variability, that variability will be constrained by the number of banked allowances and number of allowances that can be allocated in a control period from the supplemental pool. The projected SO_2 emission reduction that will be achieved by the program, relative to any selected historical baseline year, is therefore the difference between the aggregate historical baseline emissions of the covered units and the average total annual allocation. For example, the aggregate 2014 SO_2 emissions of the covered EGUs were 309,296 tons per year, while the average total annual allocation for the covered EGUs is 248,393 tons/year.[82] Therefore, compared to 2014 emissions, the Texas trading program is projected to achieve an average reduction of approximately

obligations with respect to reasonable progress that resulted from the Fifth Circuit's remand of our reasonable progress FIP. We intend to take future action to address the Fifth Circuit's remand.

[79] See Table 3 above for list of participating units and identification of BART-eligible participating units.

[80] EPA's determination that these EGU units not covered by the program are not subject to BART is final and we are not reopening that determination here.

[81] *Texas* v. *EPA*, 829 F.3d 405 (5th Cir. 2016).

[82] Texas sources were subject to the CSAPR SO_2 trading program in 2015 and 2016 but are no longer subject to that program. We therefore select 2014 as the appropriate most recent year for this comparison.

ED_002918_00017284-00014

60,903 tons per year.[83] We note that the trading program allows additional sources to opt-in to the program. Should sources choose to opt-in in the future, the average total annual allocation could increase, up to a maximum of 289,740 tons. For comparison, the aggregate 2014 SO_2 emissions of the covered EGUs including all potential opt-ins were 343,425 tons per year. Therefore, compared to 2014 emissions, the Texas trading program including all potential opt-ins is projected to achieve an average reduction of approximately 53,685 tons per year.

Regarding the requirement of 40 CFR 51.308(e)(2)(i)(E), the BART alternative EPA is proposing to affirm here is supported by our determination that, the clear weight of the evidence is that in the context of the operation of the CSAPR ozone-season NO_X trading program and the operation of CSAPR annual NO_X and SO_2 trading programs, the Texas trading program achieves greater reasonable progress than would be achieved through the installation and operation of BART at the covered sources.[84] The 2012 demonstration showed that CSAPR as finalized and amended in 2011 and 2012 meets the Regional Haze Rule's criteria for a demonstration of greater reasonable progress than BART. This 2012 demonstration is the primary evidence that the Texas trading program achieves greater reasonable progress than BART. However, the states participating in CSAPR are now slightly different than the geographic scope of CSAPR assumed in the 2012 analytic demonstration. In September 2017, we determined that the changes resulting from EPA's responses to the D.C. Circuit's remand in *EME Homer City II* to the emissions budgets and emissions distributions in states participating in CSAPR trading programs had no adverse impact on the 2012 determination that CSAPR participation remains better-than-BART.[85] Regarding SO_2 emissions from Texas, as detailed below, the BART alternative is projected to accomplish emission levels from Texas EGUs that are similar to the emission levels from Texas EGUs that would have been realized from participation in the SO_2 trading program under CSAPR. The changes to the geographic scope of the NO_X CSAPR programs combined with the expectation that the Texas trading program will reduce the SO_2 emissions of EGUs in Texas to levels similar to CSAPR-participation levels, despite slight differences in EGU participation between the two SO_2 programs, lead to the proposed finding here that, in the context of the operation of the CSAPR ozone-season NO_X trading program and the operation of CSAPR annual NO_X and SO_2 trading programs, the Texas BART alternative program is better-than-BART.

The differences in Texas EGU participation in CSAPR and this BART alternative are either not significant or, in some cases, work to demonstrate the relative stringency of the BART alternative as compared to CSAPR. If Texas EGUs were still required to participate in CSAPR's SO_2 trading program, a determination that CSAPR is an acceptable BART alternative for Texas EGUs would be plainly consistent with EPA's previous findings and regulations. The Texas trading program will result in average annual emissions from the covered EGUs and other EGUs in Texas that are no higher than if Texas EGUs were still required to participate in CSAPR's SO_2 trading program, and thus the clear weight of evidence is that, overall, the Texas trading program in conjunction with CSAPR will provide more reasonable progress than BART. We have considered the question of whether, in applying this portion of the Regional Haze Rule, we should take as the baseline the application of source-specific BART at the covered sources. We are proposing to interpret the rule to not require that approach in this situation, given that 51.308(e)(2)(i)C) provides for an exception (which we are exercising) to the requirement for source-specific BART determinations for the covered sources. As discussed previously, we are not making any source-specific BART determinations in this action, nor did Texas do so in its 2009 Regional Haze SIP submission.

Table 6 identifies the participating units and their proposed unit-level allocations under the Texas SO_2 trading program. These allocations are the same as under CSAPR.

TABLE 6—ALLOCATIONS FOR TEXAS EGUS SUBJECT TO THE FIP SO_2 TRADING PROGRAM

Owner/operator	Units	Allocations (tpy)
AEP	Welsh Power Plant Unit 1	6,496
	Welsh Power Plant Unit 2	7,050
	Welsh Power Plant Unit 3	7,208
	H W Pirkey Power Plant Unit 1	8,882
	Wilkes Unit 1	14
	Wilkes Unit 2	2
	Wilkes Unit 3	3
CPS Energy	JT Deely Unit 1	6,170
	JT Deely Unit 2	6,082
	Sommers Unit 1	55
	Sommers Unit 2	7
Dynegy/Vistra	Coleto Creek Unit 1	9,057
El Paso Electric	Newman Unit 2	1
	Newman Unit 3	1
	Newman Unit 4	2
LCRA	Fayette/Sam Seymour Unit 1	7,979
	Fayette/Sam Seymour Unit 2	8,019
Luminant/Vistra	Big Brown Unit 1	8,473
	Big Brown Unit 2	8,559
	Martin Lake Unit 1	12,024

[83] We note that for other types of alternative programs that might be adopted under 40 CFR 51.308(e)(2), the analysis of achievable emission reductions could be more complicated. For example, a program that involved economic incentives instead of allowances or that involved interstate allowance trading would present a more complex situation in which achievable emission reductions could not be calculated simply be comparing aggregate baseline emissions to aggregate allowances.

[84] EPA's determination that Texas' participation in CSAPR for ozone-season NO_X satisfies NO_X BART for EGUs is final and we are not reopening that determination here.

[85] 82 FR 45481 (Sept. 29, 2017).

ED_002918_00017284-00015

TABLE 6—ALLOCATIONS FOR TEXAS EGUS SUBJECT TO THE FIP SO_2 TRADING PROGRAM—Continued

Owner/operator	Units	Allocations (tpy)
	Martin Lake Unit 2	11,580
	Martin Lake Unit 3	12,236
	Monticello Unit 1	8,598
	Monticello Unit 2	8,795
	Monticello Unit 3	12,216
	Sandow Unit 4	8,370
	Stryker ST2	145
	Graham Unit 2	226
NRG	Limestone Unit 1	12,081
	Limestone Unit 2	12,293
	WA Parish Unit WAP4	3
	WA Parish Unit WAP5	9,580
	WA Parish Unit WAP6	8,900
	WA Parish Unit WAP7	7,653
Xcel	Tolk Station Unit 171B	6,900
	Tolk Station Unit 172B	7,062
	Harrington Unit 061B	5,361
	Harrington Unit 062B	5,255
	Harrington Unit 063B	5,055
Total		238,393

The total annual allocation for all sources in the Texas SO_2 trading program is 238,393 tons. In addition, a Supplemental Allowance pool initially holds an additional 10,000 tons for a maximum total annual allocation of 248,393 tons. The Administrator may allocate a limited number of additional allowances from this pool to sources whose emissions exceed their annual allocation, pursuant to the provisions in the FIP. [86] Under CSAPR, the total allocations for all existing EGUs in Texas is 279,740 tons, for a total of 294,471 tons including the state new-unit set aside of 14,430 tons and the Indian country new-unit set aside.[87] As shown in Table 7, the coverage of the Texas SO_2 trading program represents 81% of the total CSAPR allocation for Texas and 85% of the CSAPR allocations for existing units. The Supplemental Allowance pool contains an additional 10,000 tons, compared to the new unit set aside (NUSA) allowance allocation under CSAPR of 14,430 tons. Examining 2016 emissions, the EGUs covered by the program represent 89% of total Texas EGU emissions.

TABLE 7—COMPARISON OF TEXAS SO_2 TRADING PROGRAM ALLOCATIONS TO PREVIOUSLY APPLICABLE CSAPR ALLOCATIONS AND TO 2016 EMISSIONS

	Annual allocations in the Texas trading program (tons per year)	% of total previously applicable CSAPR allocations (294,471 tons per year)	2016 Emissions (tons per year)	2017 Emissions (tons per year)
Texas SO_2 Trading program sources	238,393	81	218,291	245,870
Total EGU emissions			245,737	275,965
Supplemental Allowance pool	10,000	3.4		
Existing Sources not covered by trading program	No allocation	16	27,446	30,096

The remaining 11% of the total 2016 or 2017 emissions due to sources not covered by the program come from coal-fired units that on average are better controlled for SO_2 than the covered sources (26,795 tons in 2016; 29,514 tons in 2017) and gas units that rarely burn fuel oil (651 tons in 2016; 582 tons in 2017). The table below lists these coal-fired units. We note that Sandow 5A and 5B were shut down in early 2018.[88] The aggregate annual emission rate in 2016 and 2017 was 0.50 lb/MMBTU for the coal-fired units participating in the trading program compared to 0.12 lb/MMBTU for the coal-fired units not covered by the program.[89] Therefore, we expect that in general, based on the current emission rates of the EGUs, should a portion of electricity generation shift to units not covered by the program, the net result would be a decrease in overall SO_2 emissions, as these non-participating units are on average much better controlled and emit far less SO_2 per unit of energy produced.

[86] *See* 40 CFR 97.912.

[87] An Indian Country new unit set-aside is established for each state under the CSAPR that provides allowances for future new units locating in Indian Country. The Indian Country new unit set-aside for Texas is 294 tons. See 40 CFR 97.710.

[88] See letter dated February 14, 2018 from Kim Mireles of Luminant to the TCEQ requesting to cancel certain air permits and registrations for Sandow 5 Units 5A and 5B available in the docket for this action.

[89] See "Texas EGUs 2016 and 2017 annual emissions.xlsx" available in the docket for this action.

ED_002918_00017284-00016

TABLE 8—COAL-FIRED EGUS NOT COVERED BY THE TEXAS SO_2 TRADING PROGRAM

	Previously applicable CSAPR allocation (tons)	2016 Emissions (tons)	2016 Annual average emission rate (lb/MMBtu)
Fayette/Sam Seymour Unit 3	2,955	231	0.01
Gibbons Creek Unit 1	6,314	138	0.02
JK Spruce Unit 1	4,133	467	0.03
JK Spruce Unit 2	158	151	0.01
Oak Grove Unit 1	1,665	3,334	0.11
Oak Grove Unit 2 *	N/A	3,727	0.12
Oklaunion Unit 1	4,386	1,530	0.11
San Miguel Unit 1	6,271	6,815	0.44
Sandow Station Unit 5A	773	1,117	0.11
Sandow Station Unit 5B	725	1,146	0.10
Sandy Creek Unit 1 *	N/A	1,842	0.09
Twin Oaks Unit 1	2,326	1,712	0.21
Twin Oaks Unit 2	2,270	1,475	0.23
WA Parish Unit WAP8	4,071	3,112	0.16
Total	36,047	26,795	

* Oak Grove Unit 2 and Sandy Creek Unit 1 received allocations from the new unit set aside under the CSAPR program.

The exclusion of a large number of gas-fired units that rarely burn fuel oil further limits allowances in the program as compared to CSAPR because CSAPR allocated these units allowances that are higher than their recent and current emissions. In 2016, these units emitted 651 tons of SO_2, but received allowances for over 5,000 tons. By excluding these sources from the program, those unused allowances are not available for purchase by other EGUs. We note the trading program does allow non-participating sources that previously had CSAPR allocations to opt-in to the trading program and receive allocations equivalent to their CSAPR allocation. Should some sources choose to opt-in to the program, the total number of allowances will increase by the collective amount of the allowances they receive. This will serve to increase the percentage of CSAPR allowances represented by the Texas SO_2 trading program and increase the portion of emissions covered by the program, with the result that the Texas program will more closely resemble the CSAPR program as it would have applied to Texas.

Finally, the Texas SO_2 trading program does not allow EGUs to purchase allowances from sources in other states. Under CSAPR, Texas EGUs were allowed to purchase allowances from other Group 2 states, a fact which could, and was projected in CSAPR modeling to, result in an increase in annual allowances used in the State above its budget. CSAPR also included a variability limit that was set at 18% of the State budget and an assurance level equal to the State's budget plus the variability limit. The assurance level for Texas was set at 347,476 tons. The CSAPR assurance provisions are triggered if the State's emissions for a year exceed the assurance level. These assurance provisions require some sources to surrender two additional allowances per ton beyond the amount equal to their actual emissions, depending on their emissions and annual allocation level. In effect, under CSAPR, EGUs in Texas could have emitted above the allocation if willing to pay the market price of allowances, and the cost associated with each incremental ton of emissions could triple if in the aggregate they exceeded the assurance level.

The Texas trading program, by contrast, will have 248,393 tons of allowances allocated every year, with no ability to purchase additional allowances from sources outside of the State, preventing an increase beyond that annual allocation.[90] This includes an annual allocation of 10,000 allowances to the Supplemental Allowance pool. The Supplemental Allowance pool may grow over time as unused supplemental allowances remain available and allocations from retired units are placed in the supplemental pool, but the total number of allowances that can be allocated in a control period from in this supplemental pool is limited to a maximum 54,711 tons plus the amount of any allowances placed in the pool that year from retired units and corrections. The 54,711-ton value is equal to 10,000 tons annually allocated to the pool plus 18% of the total annual allocation for participating units, mirroring the variability limit from CSAPR. The total number of allowances that can be allocated in a single year is therefore 293,104, which is the sum of the 238,393 budget for existing units plus 54,711. Annual average emissions for the covered sources will be less than or equal to 248,393 tons with some year to year variability constrained by the number of banked allowances and allowances available to be allocated during a control period from the Supplemental Allowance pool. If additional units opt into the program, additional allowances will be available corresponding to the amounts that those units would have been allocated under CSAPR. The projected SO_2 emissions from the affected Texas EGUs in the CSAPR + BART-elsewhere scenario were 266,600 tons per year. In a 2012 sensitivity analysis memo, EPA conducted a sensitivity analysis that confirmed that CSAPR would remain better-than-BART if Texas EGU emissions increased to approximately 317,100 tons.[91] Under the Texas SO_2

[90] We note the trading program does allow non-participating sources that previously had CSAPR allocations to opt-in to the trading program and receive an allocation equivalent to the CSAPR level allocation. Should some sources choose to opt-in to the program, the total number of allowances will increase by that amount.

[91] For the projected annual SO_2 emissions from Texas EGUs, *see* 2011 CSAPR/BART Technical Support Document, at Table 2–4, available in the docket for this action. Certain CSAPR budgets were increased after promulgation of the CSAPR final rule (and the increases were addressed in the 2012 CSAPR/BART sensitivity analysis memo), *See* memo titled "Sensitivity Analysis Accounting for Increases in Texas and Georgia Transport Rule State Emissions Budgets," Docket ID No. EPA–HQ–OAR–2011–0729–0323 (May 29, 2012), available in the docket for this action. The increase in the Texas

Continued

ED_002918_00017284-00017

trading program, annual average EGU emissions are anticipated to remain well below 317,100 tons per year as annual allocations for participating units are held at 248,393 tons per year. Sources not covered by the program emitted less than 27,500 tons of SO_2 in 2016 and are not projected to significantly increase from this level. Any new units would be required to be well controlled and, similar to the existing units not covered by the program, they would not significantly increase total emissions of SO_2. Furthermore, as discussed above, any load shifting to these new non-participating units would be projected to result in a net decrease in emissions per unit of electricity generated and at most a small increase in total SO_2 emissions compared to them not having been brought into operation. We note that total emissions of SO_2 from all EGU sources in Texas in 2016 were 245,737 tons.

We also note that state-wide EGU SO_2 emissions in Texas have decreased considerably since the 2002 baseline period, reflecting market changes and reductions due to requirements such as CAIR/CSAPR. In 2002, Texas EGU emissions were 560,860 tons of SO_2 compared to emissions of 245,737 tons in 2016, a reduction of over 56%. The Texas SO_2 trading program locks in the large majority of these reductions by limiting allocation of allowances to 248,393 tons per year for participating sources. While the Texas program does not include all EGU sources in the State, as discussed above, the EGUs outside of the program contribute relatively little to the total state emissions and these units on average are better controlled for SO_2 than the units subject to the Texas program.

In sum, we propose to affirm and request comment on the determination that the Texas Trading Program will result in SO_2 emissions from Texas EGUs similar to emissions anticipated under CSAPR and thus that the weight of evidence supports the conclusion that the SO_2 Trading Program meets the requirements of a BART alternative. The differences in source coverage are either not significant, or, in some cases, work to demonstrate the relative stringency of the Program compared to CSAPR.

C. Specific Texas SO_2 Trading Program Features

The Texas SO_2 Trading Program is an intrastate cap-and-trade program for listed covered sources in the State of Texas. The EPA is proposing to affirm our promulgation of the Texas SO_2 Trading Program under 40 CFR 52.2312 and subpart FFFFF of part 97. The State of Texas may choose to remain under the Texas SO_2 Trading Program in our FIP or replace it with an appropriate SIP if it chooses to develop and submit one to EPA and EPA is able to approve it. If the State of Texas is interested in pursuing delegation of the Texas SO_2 Trading Program, the request would need to provide a demonstration of the State's statutory authority to implement any delegated elements.

The Texas SO_2 Trading Program is modeled after the EPA's CSAPR SO_2 Group 2 Trading Program, and we are proposing to affirm that the Program satisfies the requirements of 51.308(e)(2)(vi). Similar to the CSAPR SO_2 Group 2 Trading Program, the Texas SO_2 Trading Program sets an SO_2 emission budget for affected units and sources in the State of Texas. Authorizations to emit SO_2, known as allowances, are allocated to affected units. The Texas SO_2 Trading Program provides flexibility to affected units and sources by allowing units and sources to determine their own compliance path; this includes adding or operating control technologies, upgrading or improving controls, switching fuels, and using allowances. Sources can buy and sell allowances and bank (save) allowances for future use as so long as each source holds enough allowances to account for its emissions of SO_2 by the allowance transfer deadline shortly after the end of the compliance period.

Pursuant to the requirements of 51.308(e)(2)(vi)(A), the applicability of the Texas SO_2 Trading Program is defined in 40 CFR 97.904. Section 97.904(a) identifies the subject units, which include all BART-eligible coal-fired EGUs, additional coal-fired EGUs, and several BART-eligible gas-fired and gas/fuel oil-fired EGUs, all of which were previously covered by the CSAPR SO_2 Group 2 Trading Program. Additionally, pursuant to 40 CFR 97.904(b), the Trading Program provides an opportunity for any other unit in the State of Texas that was subject to the CSAPR SO_2 Group 2 Trading Program to opt-in to the Texas SO_2 Trading Program. We discuss in Section IV.B how the applicability results in coverage of the Texas SO_2 trading program representing 81% of the total CSAPR allocation for Texas and 85% of the CSAPR allocations for existing units, and how potential shifts in generation would result in a reduction of emissions or, at worst, an insignificant increase in emissions. The Texas SO_2 Trading Program establishes the statewide SO_2 budget for the subject units at 40 CFR 97.910(a). This budget is equal to the sum of the allowances for each subject unit identified under 97.904(a) and 97.911(a). As units opt-in to the Texas SO_2 Trading under 97.904(b), the allowances for each of these units will equal their CSAPR SO_2 Group 2 allowances under 97.911(b). We specifically solicit comment on retention or elimination of the provision that provides opportunity for certain units to opt-in to the Texas SO_2 trading Program.

Additionally, the EPA has established a Supplemental Allowance Pool with a budget of 10,000 tons of SO_2 to provide compliance assistance to subject units and sources. Section 40 CFR 97.912 establishes how allowances are allocated from the Supplemental Allowance Pool to sources (collections of participating units at a facility) that have reported total emissions for that control period exceeding the total amounts of allowances allocated to the participating units at the source for that control period (before any allocation from the Supplemental Allowance Pool). For any control period, the maximum supplemental allocation from the Supplemental Allowance Pool that a source may receive is the amount by which the total emissions reported for its participating units exceed the total allocations to its participating units (before any allocation from the Supplemental Allowance Pool). If the total amount of allowances available for allocation from the Supplemental Allowance Pool for a control period is less than the sum of these maximum allocations, sources will receive less than the maximum supplemental allocation from the Supplemental Allowance Pool, where the amount of supplemental allocations for each source is determined in proportion to the source's respective maximum allocations, with one exception. While all other sources required to participate in the trading program have flexibility to transfer allowances among multiple participating units under the same owner/operator when planning operations, Coleto Creek consists of only one coal-fired unit and, as of the issuance of the October 2017 final action, was the only coal-fired unit in Texas owned and operated by Dynegy. It was conceivable that insufficient incentives would exist to compel Dynegy's competitors in the electric market to make their additional allowances available for purchase by Dynegy. To provide this source additional flexibility, Coleto Creek will be allocated its maximum supplemental

SO_2 budget was 50,517 tons which, when added to the Texas SO_2 emissions projected in the CSAPR + BART-elsewhere scenario of 266,600 tons, yields total potential SO_2 emissions from Texas EGUs of approximately 317,100 tons.

ED_002918_00017284-00018

allocation from the Supplemental Allowance Pool as long as there are sufficient allowances in the Supplemental Allowance Pool available for this allocation, and its actual allocation will not be reduced in proportion with any reductions made to the supplemental allocations to other sources. We note that Dynegy and Vistra—which owns other units that are subject to the trading program, some of which have ceased operation and thus will not need to use their allowances—have recently merged, and we specifically solicit comment on whether we should retain or eliminate this additional flexibility for Coleto Creek in light of this recent change in ownership.[92]

Section 97.921 establishes how the Administrator will record the allowances for the Texas SO_2 Trading Program and ensures that the Administrator will not record more allowances than are available under the program consistent with 40 CFR 51.308(e)(2)(vi)(B). The monitoring, recordkeeping, and reporting provisions for the Texas SO_2 Trading Program at 40 CFR 97.930–97.935 are consistent with those requirements in the CSAPR SO_2 Group 2 Trading Program. The provisions in 40 CFR 97.930–97.935 require the subject units to comply with the monitoring, recordkeeping, and reporting requirements for SO_2 emissions in 40 CFR part 75; thereby satisfying the requirements of 51.308(e)(2)(vi)(C)–(E). The EPA will implement the Texas SO_2 Trading Program using the Allowance Management System, which will provide a consistent approach to implementation and tracking of allowances and emissions for the EPA, subject sources, and the public consistent with the requirements of 40 CFR 51.308(e)(2)(vi)(F). The requirements at 40 CFR 97.913–97.918 for designated and alternate designated representatives are consistent with the requirements of 40 CFR 51.308(e)(2)(vi)(G) and are also consistent with the EPA's other trading programs under 40 CFR part 97. Allowance transfer provisions for the Texas SO_2 Trading Program at 40 CFR 97.922 and 97.923 provide procedures that allow timely transfer and recording of allowances; these provisions will 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, consistent with 40 CFR 51.308(e)(2)(vi)(H). Compliance provisions for the Texas SO_2 Trading Program at 40 CFR 97.924 prohibit a source from emitting a total tonnage of SO_2 that exceeds the tonnage value of its SO_2 allowance holdings as required by 40 CFR 51.308(e)(2)(vi)(I). The Texas SO_2 Trading Program includes automatic allowance surrender provisions at 40 CFR 97.924(d) that apply consistently from source to source and the tonnage value of the allowances deducted shall equal at least three times the tonnage of the excess emissions, consistent with the penalty provisions at 40 CFR 51.308(e)(2)(vi)(J). The Texas SO_2 Trading Program provides for banking of allowances under 40 CFR 97.926; Texas SO_2 Trading Program allowances are valid for compliance in the control period of issuance or may be banked for future use, consistent with 40 CFR 51.308(e)(2)(vi)(K). 40 CFR 51.308(e)(2)(vi)(L) requires 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. The CAA and EPA's implementing regulations require comprehensive periodic revisions of implementation plans for regional haze under 40 CFR 51.308(f) and periodic review of the state's regional haze approach under 40 CFR 51.308(g) to evaluate progress towards the reasonable progress goals for Class I areas located within the State and Class I areas located outside the State affected by emissions from within the State. Because the Texas SO_2 Trading Program is a BART-alternative and part of the long-term strategy for Texas' Regional Haze obligations, this program will be reviewed in each comprehensive periodic revision and progress report. We anticipate these revisions and progress reports will provide the information needed to assess program performance, as required by 40 CFR 51.308(e)(2)(vi)(L). In sum, the EPA is proposing to affirm our determination that the promulgation of the Texas SO_2 Trading Program meets the requirements of 40 CFR 51.308(e)(2) as a BART alternative for Texas' Regional Haze obligations.

As previously discussed, the EPA modeled the Texas SO_2 Trading Program after the EPA's CSAPR SO_2 Group 2 Trading Program. Relying on a trading program structure that is already in effect enables the EPA, the subject sources, and the public to benefit from the use of the Allowance Management System's forms, and of familiar and tested monitoring, recordkeeping, and reporting requirements. However, there are a few features of the Texas SO_2 Trading Program that are separate and unique from the EPA's CSAPR. First, the program does not address new units that are built after the inception of the program; these units would be permitted and constructed using emission control technology determined under either BACT or LAER review, as applicable, and would emit at emission rates much lower than the average emission rate of those units participating in the program. Second, the Texas SO_2 Trading Program provides that Texas sources that were previously covered under the CSAPR SO_2 Group 2 Trading Program, but that are not subject to the requirements of subpart FFFFF of part 97, can opt-in to the Texas SO_2 Trading Program at the allocation level established under CSAPR. Finally, the Texas SO_2 Trading Program includes a Supplemental Allowance Pool to provide some compliance assistance to units whose emissions exceed their allocations. The amount of allocations to the Supplemental Allowance Pool each year is less than the portion of the Texas budget under the CSAPR SO_2 Group 2 Trading Program that would have been set aside each year for new units (and which would have been allocated to existing units to the extent not needed by new units).

D. Recent Retirements

Vistra permanently retired Big Brown,[93] Monticello,[94] and Sandow[95] this year. This is new information that arose after we issued our October 2017 FIP. There are now a significant amount of allowances that would be allocated to retired units. We also note that Welsh Unit 2 shut down in 2016[96] and the JT Deely units have been announced for retirement at the end of 2018. After all these recent and planned shutdowns, 74,313 tons of allowances would be allocated to retired units. In 2017, these units emitted 105,844 tons of SO_2. We

[92] https://www.vistraenergy.com/vistra-dynegy-merger/.

[93] 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.

[94] 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.

[95] See letter dated February 14, 2018 from Kim Mireles of Luminant to the TCEQ requesting to cancel certain air permits and registrations for Sandow 5 Units 5A and 5B available in the docket for this action.

[96] Welsh Unit 2 was retired on April 16, 2016 pursuant to a Consent Decree (No. 4:10–cv–04017–RGK) and subsequently removed from the Title V permit (permit no. O26). We have included the Consent Decree, permitting notes, and new Title V permit showing that the Unit is removed in the docket for this action.

ED_002918_00017284-00019

specifically solicit comment on how these shutdowns should impact the provision at 40 CFR 97.911(a)(2) regarding allocations to retired units for a period of five years, including comment on the alternative proposal described below.

In light of these shutdowns, we solicit comment on a different approach to calculating the total number of allowances that can be allocated in a control period from the supplemental allowance pool. The 54,711-ton value discussed above is equal to 10,000 tons annually allocated to the pool plus 18% of the total annual allocation for participating units, mirroring the variability limit from CSAPR (40 CFR 97.912(b)). In this alternative approach, the total limit would be 41,335 tons, calculated as 10,000 tons annually allocated to the pool plus 18% of the total annual allocation for participating units *minus the annual allocation for the participating units that have been permanently retired as of January 1, 2019.* The total number of allowances that can be allocated in a single year would therefore be not 293,104, but rather 279,728, which is the sum of the 238,393 budget for existing units plus 41,335.[97] Annual average emissions for the covered sources will be less than or equal to 248,393 tons, and although there will be with some year-to-year variability, that variability will be constrained by the number of banked allowances and allowances available to be allocated during a control period from the Supplemental Allowance pool.

E. Interstate Visibility Transport

In our October 2017 final action, we determined that the BART alternatives to address SO_2 and NO_X BART at Texas' EGUs provided measures that are adequate to ensure that emissions from the State do not interfere with measures to protect visibility in nearby states, and thus the October 2017 final action satisfies the interstate visibility transport requirements. An EPA guidance document (2013 Guidance) on infrastructure SIP elements states that CAA section 110(a)(2)(D)(i)(II)'s interstate visibility transport requirements can be satisfied by approved SIP provisions that the EPA has found to adequately address a state's contribution to visibility impairment in other states.[98] The EPA interprets interstate visibility transport to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.[99] The 2013 Guidance lays out two ways in which a state's infrastructure SIP submittal may satisfy interstate visibility transport. One way is through a state's confirmation in its infrastructure SIP submittal that it has an EPA approved regional haze SIP in place. In the absence of a fully approved regional haze SIP, a demonstration that emissions within a state's jurisdiction do not interfere with other states' plans to protect visibility meets this requirement. Such a demonstration should point to measures that limit visibility-impairing pollutants and ensure that the resulting reductions conform with any mutually agreed emission reductions under the relevant regional haze regional planning organization (RPO) process.[100]

To develop its 2009 Regional Haze SIP, TCEQ worked through its RPO, the Central Regional Air Planning Association (CENRAP), to develop strategies to address regional haze, which at that time were based on emissions reductions from CAIR. To help states in establishing reasonable progress goals for improving visibility in Class I areas, the CENRAP modeled future visibility conditions based on the mutually agreed emissions reductions from each state. The CENRAP states then relied on this modeling in setting their respective reasonable progress goals.

We are proposing to affirm our determination that the October 2017 final action is adequate to ensure that emissions from Texas do not interfere with measures to protect visibility in nearby states because the BART FIP emission reductions are consistent with the level of emission reductions relied upon by other states during consultation. The 2009 Texas Regional Haze SIP relied on CAIR to meet SO_2 and NO_X BART requirements for EGUs. Under CAIR, Texas EGU sources were projected to emit approximately 350,000 tpy of SO_2. As discussed elsewhere, Texas EGU SO_2 emissions for sources covered by the trading program will be constrained by the number of available allowances. Average annual emissions for the covered sources will be less than or equal to 248,393 tons with some year to year variability constrained by the number of banked allowances and number of allowances that can be allocated in a control period from the supplemental pool. Sources not covered by the program emitted less than 27,500 tons of SO_2 in 2016 and are not projected to significantly increase from this level. Any new units would be required to be well controlled and similar to the existing units not covered by the program, they would not significantly increase total emissions of SO_2. Additionally, the FIP relies on CSAPR as an alternative to EGU BART for NO_X, which exceeds the emission reductions relied upon by other states during consultation. As such, we are proposing to affirm that the BART alternatives in the October 2017 final action are sufficient to address the interstate visibility transport requirement under CAA section 110(a)(2)(D)(i)(II) for the six NAAQS, and request comment on this determination.

V. Proposed Action

A. Regional Haze

We are proposing to affirm our approval of the portion of the Texas Regional Haze SIP that addresses the BART requirement for EGUs for PM. To address the SO_2 BART requirements for EGUs, we are proposing to affirm our FIP to replace Texas' reliance on CAIR with reliance on an intrastate SO_2 trading program for certain EGUs identified in Table 9. This proposed action would also be part of the long-term strategy to address the reasonable progress requirements for Texas EGUs, which remain outstanding after the remand of our reasonable progress FIP by the Fifth Circuit Court of Appeals.

In this proposed action we are also specifically soliciting comment on whether we should retain or eliminate the additional flexibility for Coleto Creek in Section 40 CFR 97.912 that establishes how allowances are allocated from the Supplemental Allowance Pool to this source in light of this recent change in ownership after the merger of Dynegy and Vistra. In light of recent and planned shutdowns, we specifically solicit comment on how these shutdowns should impact the provision at 40 CFR 97.911(a)(2) regarding allocations to retired units for a period of five years. We also solicit comment on a different approach to calculating the total number of allowances that can be allocated in a control period from the supplemental allowance pool pursuant to 40 CFR 97.912(b). In addition, we are specifically soliciting comment on

[97] See "Texas EGUs 2016 and 2017 annual emissions.xlsx," available in the docket for this action.

[98] *See* "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" included in the docket for this action.

[99] See id. at 33.

[100] *See id.*, at 34; 76 FR 22036 (April 20, 2011) (containing EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP).

ED_002918_00017284-00020

retention or elimination of the provision under 40 CFR 97.904(b) that provides opportunity for certain units to opt-in to the Texas SO_2 trading Program.

TABLE 9—TEXAS EGUS SUBJECT TO THE FIP SO_2 TRADING PROGRAM

Owner/ operator	Units
AEP	Welsh Power Plant Units 1, 2, and 3.
	H W Pirkey Power Plant Unit 1.
	Wilkes Units 1*, 2*, and 3*.
CPS Energy	JT Deely Units 1 and 2, Sommers Units 1* and 2*.
Dynegy	Coleto Creek Unit 1.
LCRA	Fayette/Sam Seymour Units 1 and 2.
Luminant/ Vistra.	Big Brown Units 1 and 2.
	Martin Lake Units 1, 2, and 3.
	Monticello Units 1, 2, and 3.
	Sandow Unit 4.
	Stryker ST2*.
	Graham Unit 2*.
NRG	Limestone Units 1 and 2.
	WA Parish Units WAP4*, WAP5, WAP6, WAP7.
Xcel	Tolk Station Units 171B and 172B.
	Harrington Units 061B, 062B, and 063B.
El Paso Electric.	Newman Units 2*, 3*, and 4*.

* Gas-fired or gas/fuel oil-fired units.

B. Interstate Visibility Transport

In our October 2017 final action, we determined that the BART alternatives to address SO_2 and NO_X BART at Texas' EGUs were adequate to satisfy the interstate visibility transport requirements for these NAAQS: (1) 1997 8-hour ozone; (2) 1997 $PM_{2.5}$ (annual and 24-hour); (3) 2006 $PM_{2.5}$ (24-hour); (4) 2008 8-hour ozone; (5) 2010 1-hour NO_2; and (6) 2010 1-hour SO_2. The emission reductions from Texas sources associated with these BART alternatives are consistent with the level of emission reductions relied upon by other states when setting their reasonable progress goals. Consistent with our decision in the October 2017 rulemaking, we are proposing to affirm that the measures in the FIP are therefore adequate to ensure that emissions from Texas do not interfere with measures to protect visibility in nearby states with respect to the NAAQS enumerated above in accordance with CAA section 110(a)(2)(D)(i)(II).

VI. Statutory and Executive Order Reviews

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

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

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

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

C. Paperwork Reduction Act

This proposed action does not impose any new information collection burden under the PRA. The information collection activities in the October 2017 final rule promulgating the Texas SO_2 Trading Program at 40 CFR part 97, subpart FFFFF are being submitted to the Office of Management and Budget (OMB) under the PRA as part of the current Information Collection Request (ICR) renewal for the CSAPR trading programs. OMB has previously approved the information collection activities for the CSAPR trading programs and has assigned OMB control number 2060–0667. The ICR document that the EPA prepared for the renewal has been assigned EPA ICR number 2391.05. You can find a copy of the ICR at *https://www.regulations.gov* under Docket ID Number EPA–HQ–OAR–2018–0209. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

D. Regulatory Flexibility Act

I certify that this proposed action will not have a significant impact on a substantial number of small entities. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This proposed rule does not impose any requirements or create impacts on small entities. This proposed FIP action under Section 110 of the CAA will not create any new requirement with which small entities must comply. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.*, emission limitations) may or will flow from this action does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this action. We have therefore concluded that this proposed action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

F. 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.

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

This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks [101] applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets E.O. 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the E.O. has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not economically

[101] 62 FR 19885 (Apr. 23, 1997).

ED_002918_00017284-00021

significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this proposed action present a disproportionate risk to children. This proposed action is not subject to E.O. 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of SO_2, the proposed rule will have a beneficial effect on children's health by reducing air pollution.

I. 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.

J. National Technology Transfer and Advancement Act (NTTAA)

This proposed action involves technical standards. The EPA has decided to use the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not recommending any revisions to part 75; however, EPA periodically revises the test procedures set forth in part 75. When EPA revises the test procedures set forth in part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under 40 CFR 75.66 before they are used.

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

The EPA believes that this proposed action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). We have determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The proposed rule limits emissions of SO_2 from certain facilities in Texas.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available retrofit technology.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur dioxides.

Dated: August 17, 2018.

Anne Idsal,

Regional Administrator.

[FR Doc. 2018–18497 Filed 8–24–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2017–0560; FRL–9982–78]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 10 chemical substances which were the subject of premanufacture notices (PMNs). The chemical substances are subject to Orders issued by EPA pursuant to section 5(e) of TSCA. This action would require persons who intend to manufacture (defined by statute to include import) or process any of these 10 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the intended use within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination. In addition to this notice of proposed rulemaking, EPA is issuing the action as a direct final rule elsewhere in this issue of the **Federal Register**.

DATES: Comments must be received on or before September 26, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0560, by one of the following methods:

- *Federal eRulemaking Portal:* http://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.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at http://www.epa.gov/dockets/contacts.html.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at http://www.epa.gov/dockets.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: moss.kenneth@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION: In addition to this notice of proposed rulemaking, EPA is issuing the action as a direct final rule elsewhere in this issue of the **Federal Register**. For further