

EPA Region 7 Administrator, Mark Hague, signed the following proposed rule on January 18, 2017, and EPA is submitting it for publication in the Federal Register (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDsys website (<http://fdsys.gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-R07-OAR-2017-0039.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2017-0039; FRL-_____ Region 7]

**Approval and Promulgation of Air Quality Implementation Plans;
Nebraska Regional Haze Federal Implementation Plan;
Reconsideration**

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise portions of the Nebraska Regional Haze Federal Implementation Plan (FIP) applicable to the Gerald Gentleman Station, owned and operated by the Nebraska Public Power District (NPPD). In 2012, EPA finalized a partial approval/partial disapproval of Nebraska's State Implementation Plan (SIP) that addressed regional haze for the first implementation period and finalized a FIP addressing the deficiencies in Nebraska's plan. EPA's final action was challenged in the United States Court of Appeals for the 8th Circuit. In the litigation, EPA requested and was granted a remand related to EPA's reliance on the Cross-State Air Pollution Rule (CSAPR) to satisfy the deficiencies in Nebraska's

regional haze plan related to the long-term strategy (LTS) requirements at the Gerald Gentleman Station for sulfur dioxide (SO₂). Upon remand, EPA has re-evaluated our record and basis for the original FIP. In this action, EPA is proposing a revised FIP that will limit SO₂ emissions at the Gerald Gentleman Station. EPA believes that SO₂ emission reductions are needed to make reasonable progress toward Congress' natural-visibility goal at Class I areas affected by visibility-impairing emissions from Nebraska. This proposal addresses only the remanded portion of the Nebraska FIP.

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

Requests for a public hearing and inquiries regarding the status of the public hearing should be made to Amy Algoe-Eakin using the contact information provided below or they may consult the following link: http://www.epa.gov/region7/public_notices/.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2017-0039, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to our public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets..>

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913-551-7942, or by email at algoe-eakin.amy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

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I. What is Being Addressed in this Document?

EPA is addressing the portion of the Nebraska Regional Haze FIP¹ that was remanded by the 8th Circuit upon motion by EPA. EPA is proposing a new FIP provision to address the long-term strategy requirements of the Regional Haze Rule for SO₂ at the Gerald Gentleman Station. This is the only aspect of the FIP on

¹ 77 FR 40149 (July 6, 2012).

which we are requesting comment. EPA is not reopening our prior partial approval and disapproval of Nebraska's Regional Haze SIP, nor is EPA soliciting comment on our previous analysis of the Nebraska SIP.

II. What Action is EPA Taking?

EPA has reviewed our record on the previous action, undertaken an analysis of the long-term strategy requirements in the FIP for Nebraska in accordance with the Regional Haze Rule and is proposing an SO₂ emission limit of 0.060 lb/mmBtu calculated on a 30-boiler operating day average rate, for each unit at the Gerald Gentleman Station. EPA believes that this SO₂ emission rate is necessary to make reasonable progress at Class 1 areas affected by sources in Nebraska and will help to achieve natural visibility conditions.

III. Background

A. Summary of Statutory and Regulatory Requirements of the Regional Haze Rule

Congress created a program for protecting visibility in the nation's national parks and wilderness areas in section 169A of the 1977 Amendments to the Clean Air Act (CAA). This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment

results from man-made air pollution.”² It also directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate best available retrofit technology (BART) controls. These sources are referred to as “BART-eligible” sources.³ In addition, the CAA requires states to adopt long-term strategies for making reasonable progress towards remedying visibility impairment. In the 1990 CAA Amendments, Congress amended the visibility provisions in the CAA to focus attention on the problem of regional haze, which is visibility impairment produced by a multitude of sources and activities located across a broad geographic area.⁴

² CAA section 169A(a)(1); 42 U.S.C. 7941(a)(1).

³ 40 CFR 51.301.

⁴ See CAA section 169B, 42 U.S.C. 7492.

We promulgated the Regional Haze Rule in 1999, which requires states to develop and implement SIPs to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas⁵ by reducing emissions that cause or contribute to regional haze.⁶ 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 visibility in a Class I area⁷ and to develop long-term strategies to address regional haze.

The Regional Haze Rule provides that the long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals established by states having mandatory Class I areas.⁸ There are a number of requirements a state must meet when establishing their long-term strategy, including the following: (1) states must consult with downwind states to develop coordinated management strategies that address regional haze visibility;⁹ (2) where multiple states cause or contribute

⁵ Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas, and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal area."

⁶ See generally 40 CFR 51.308.

⁷ 40 CFR 51.308(e).

⁸ 40 CFR 51.308(d)(3).

⁹ 40 CFR 51.308(d)(3)(i).

to visibility impairment in a Class I area, each state must demonstrate that it has included in their SIP all measures necessary to obtain their share of emissions reductions needed to meet the progress goal for the Class I area;¹⁰ and (3) each state must provide and document the technical basis on which the state is relying to determine their share of emissions reductions necessary to achieve reasonable progress for the Class I area it affects.¹¹

The Regional Haze Rule requires that where a state has emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I area located in another state or states, it must consult with the other state(s) to develop coordinated emissions management strategies.¹² The Regional Haze Rule requires that the state document the technical basis including modeling, monitoring, and emissions information, on which it is relying to determine their apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I area it affects.¹³

¹⁰ 40 CFR 51.308(d)(3)(ii).

¹¹ 40 CFR 51.308(d)(3)(iii)-(iv).

¹² 40 CFR 51.308(d)(3)(i).

¹³ 40 CFR 51.308(d)(3)(iii).

In addition to enacting section 169A, Congress also amended section 110 of the CAA to require that all SIPs "contain adequate provisions prohibiting ... any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will ... interfere with measures required to be included in the applicable implementation plan for any other State ... to protect visibility."¹⁴ A Senate Committee Report described this provision and similar requirements as being "intended to equalize the positions of the States with respect to interstate pollution by making a source at least as responsible for polluting another State as it would be for polluting its own State."¹⁵

A full background of the Regional Haze Rule can be found in our 2012 final action as well as in other regional haze actions.^{16 17}

B. Summary of 40 CFR 51.308(d)(1) and (d)(3)

Section 51.308(d)(1) of the Regional Haze Rule requires states with Class I areas to "establish goals (expressed in deciviews) that provide for reasonable progress towards

¹⁴ CAA Section 110(a)(2)(D)(i)(II).

¹⁵ S. Rep. No. 95-127, at 41 (1977).

¹⁶ 79 FR 74818 (February 16, 2014).

¹⁷ EPA recently published revisions to the Regional Haze Rule. *See* EPA-HQ-OAR-2015-0531 (December 14, 2016) The revisions do not substantively affect 40 CFR 51.308(d) which applied to our original action and applies to this reconsideration.

achieving natural visibility conditions."¹⁸ In establishing a reasonable progress goal (RPG), a state must consider the four statutory factors outlined in section 169A(g)(1) of the CAA—"the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources."¹⁹ This requirement is commonly referred to as a four-factor analysis. States analyze the four factors to determine a reasonable set of control measures that will reduce visibility impairing emissions. The visibility improvement that will result from these emission reductions is then factored into the state's reasonable progress goals.

In addition to conducting a four-factor analysis to determine what control measures are reasonable for a state's own sources, the state with a Class I area or areas, i.e., a downwind state, "must consult with those States which may reasonably be anticipated to cause or contribute to visibility impairment in the mandatory Class I Federal area,"²⁰ i.e., an upwind states. The purpose of the consultation requirement is to ensure that the upwind states that affect visibility in a Class I area adopt control measures sufficient to address their

¹⁸ 40 CFR 51.308(d)(1).

¹⁹ Id. 51.308(d)(1)(i)(A).

²⁰ Id. n 51.308(d)(1)(iv).

apportionment of emission reductions necessary to achieve reasonable progress and that the downwind state's reasonable progress goals properly account for the visibility improvement that will result from the reasonable control measures identified and included in the upwind states' long-term strategies. Where a downwind state and an upwind state cannot agree on the proper apportionment of emission reductions necessary to achieve reasonable progress, the downwind state "must describe in its [SIP] submittal the actions taken to resolve the disagreement."²¹

Section 51.308(d)(3) of the Regional Haze Rule requires all states (both downwind and upwind) to "submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State which may be affected by emissions from the State."²² As explained in other actions, a state's long-term strategy is inextricably linked to the reasonable progress goals because the long-term strategy "must include enforceable emission limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by states having mandatory Class I Federal areas."²³ In

²¹ Id.

²² Id. 51.308(d)(3).

²³ Id.

establishing their long-term strategy, a state must meet a number of requirements, three of which pertain to visibility transport. First, as a corollary to section 51.308(d)(1)(iv), upwind states "must consult with [downwind] State(s) in order to develop coordinated management strategies."²⁴ Second, where multiple states cause or contribute to visibility impairment in a Class I area, each state must demonstrate that it has included in their implementation plan "all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the area."²⁵ This requirement directly addresses situations where an upwind state agrees to achieve certain emission reductions during the consultation process, and downwind states rely upon those reductions when setting their reasonable progress goals, but the upwind state ultimately fails to include sufficient control measures in their long-term strategy to ensure that the emission reductions will be achieved. Finally, each state "must document the technical basis, including modeling, monitoring and emissions information, on which the State is relying to determine its apportionment of emission reduction obligations necessary for achieving

²⁴ Id. 51.308(d)(3)(i).

²⁵ Id. 51.308(d)(3)(ii). Similarly, "[i]f the State has participated in a regional planning process, the State must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process." Id.

reasonable progress in each mandatory Class I Federal area it affects.”²⁶ To reiterate, section 169A(g)(1) of the CAA requires states to determine “reasonable progress” by considering the four statutory factors.²⁷ Therefore, this provision requires states to consider both their own Class I areas and downwind Class I areas when they develop the technical basis underlying their four-factor analyses. This documentation is necessary so that the interstate consultation process can proceed on an informed basis and so that downwind states can properly assess whether any additional upwind emission reductions are necessary to achieve reasonable progress at their Class I areas. The regulations further provide that, “States may meet this requirement by relying on technical analyses developed by the regional planning organization and approved by all State participants.”²⁸ Thus, states have the option of meeting this requirement by relying on the four-factor analyses and associated technical documentation prepared by a regional planning organization on behalf of their member states,²⁹ to the extent that such analyses and documentation were conducted. In

²⁶ Id. 51.308(d)(3)(iii).

²⁷ 42 U.S.C. Section 7491(g)(1).

²⁸ 40 CFR 51.308(d)(3)(iii).

²⁹ See *WildEarth Guardians v. EPA*, 2014 U.S. App. LEXIS 20145, at *55 (10th Cir. October 21, 2014) (explaining that 40 CFR 51.308(d)(3)(iii) “permits a State conducting a reasonable-progress determination” “to rely on [a regional planning organization’s] four-factor analysis.”).

situations where a regional planning organization's analyses are limited, incomplete or do not adequately assess the four factors, however, then states must fill in any remaining gaps to meet this requirement.

C. History of the Nebraska Long-Term Strategy FIP

Determination

On July 6, 2012, EPA took final action on Nebraska's Regional Haze SIP for the first planning period.³⁰ In that final action, EPA partially approved and partially disapproved the state's SIP. EPA disapproved the state's SO₂ BART determinations for Gerald Gentleman Station Units 1 and 2 and the state's long-term strategy, which had relied on the state's flawed BART determinations. The reasons for EPA's disapproval are outlined in both the proposed rule and the final rule.³¹ In the same action, EPA also promulgated a FIP to address the deficiencies in Nebraska's Regional Haze Plan. For those deficiencies associated with the state's SO₂ control decisions for Gerald Gentleman Station Units 1 and 2, EPA relied on CSAPR to meet both the BART and long-term strategy requirements.³² Specifically, EPA relied on our finding in a separate national

³⁰ 77 FR 40149.

³¹ See 77 FR 12770 (March 2, 2012) (proposed rule); 77 FR 40149 (July 6, 2012) (final rule).

³² The Eighth Circuit upheld EPA's SIP disapproval and BART FIP. *Nebraska v. EPA*, 812 F.3d 662 (8th Cir. 2016).

rulemaking that found that CSAPR provides for greater reasonable progress on average across all affected Class I areas than source-specific BART in those states covered by CSAPR (the "Better than BART Rule").³³ In that separate rulemaking, EPA revised our regulations to provide that states could choose to rely on CSAPR as an alternative to BART. Consistent with this regulatory provision, EPA relied in our FIP on CSAPR as an alternative to BART for SO₂ emissions from the Gerald Gentleman Station. In addition, EPA concluded in our FIP that reliance on CSAPR would remedy the deficiency in Nebraska's long-term strategy associated with the state's reliance on their faulty SO₂ BART analysis for the Gerald Gentleman Station.

Subsequently, Sierra Club, the NPCA, the State of Nebraska, and NPPD filed petitions for review challenging EPA's final action in the Eighth Circuit Court of Appeals.³⁴ In response to arguments raised by the Sierra Club and NPCA during briefing on the petitions, EPA moved for a voluntary remand without vacatur of the long-term strategy FIP for Nebraska as it related to SO₂ for the Gerald Gentleman Station.³⁵ EPA explained in the motion

³³ 77 FR 33642.

³⁴ NPPD dismissed their petition voluntarily, but remained as an intervenor in the other petitions. See Order, *Neb. Pub. Power Dist. v. EPA*, No. 12-3061 (8th Cir. November 4, 2014).

³⁵ EPA's Motion for Partial Voluntary Remand, *Nebraska v. EPA*, 812 F.3d 662 (8th Cir. 2015) (No.12-3084).

that the agency's rationale for declining to require additional SO₂ controls at the Gerald Gentleman Station as part of the long-term strategy was not fully or clearly explained. EPA also stated that the explanation in the record could potentially be construed in a manner that is inconsistent with EPA's interpretation of the relevant statutory and legal requirements. As a result, EPA determined that a remand was appropriate to afford the agency an opportunity to amend or further explain our rationale for declining to require additional SO₂ controls beyond CSAPR to address the long-term strategy, more fully respond to comments submitted by the public, or to take further action if necessary.

IV. EPA's Reconsideration of Long-Term Strategy for SO₂ at the Gerald Gentlemen Station

In this action, EPA is proposing to act on the remanded portion of our FIP as it relates to long-term strategy requirements for SO₂ for the Gerald Gentleman Station. Upon reconsideration, EPA is proposing that our record for the original action is incomplete and that the complete record we have created in this action indicates that a different action is appropriate. In EPA's final action, EPA relied on the implementation of the previously adopted CSAPR FIP for all Nebraska EGUs to satisfy the long-term strategy requirements of

the Regional Haze Rule for SO₂, including for the Gerald Gentleman Station. At the time of the final action, EPA did not further evaluate whether, with respect to the Gerald Gentleman Station, CSAPR was an appropriate and sufficient measure needed for reasonable progress towards natural visibility conditions at the Badlands, Wind Cave, and Rocky Mountain National Parks. The environmental petitioners pointed out this deficiency in their briefing challenging EPA's final action. EPA is now clarifying the record in accordance with the Regional Haze Rule.

Nebraska participated in the Central Regional Air Planning Association (CENRAP), and incorporated the CENRAP-developed visibility modeling into their regional haze SIP. The SIP relied on the CENRAP modeling, which assumed SO₂ controls at a rate of 0.15 lb/mmBtu at Gerald Gentleman Station³⁶. Nebraska consulted with both South Dakota and Colorado during the first planning period. As explained in our prior action on the Nebraska regional haze SIP, source-specific CALPUFF modeling shows a significant visibility impact from Gerald Gentleman Station on South Dakota's Class I areas, Wind Cave and Badlands National Parks.³⁷ The Colorado Department of Public Health and the

³⁶ For comparison, the SO₂ emission rate at Gerald Gentleman Station was about 0.58 lb/mmBtu during 2002, which was the period used as the baseline by Nebraska when it developed its SIP and is about 0.57 lb/mmBtu in 2015. The proposed FIP emission limit is 0.060 lb/mmBtu.

³⁷ 77 FR at 12776.

Environment also commented on Nebraska's regional haze SIP, requesting that the state reconsider the question of whether the Gerald Gentleman Station should install SO₂ controls, given Gerald Gentleman Station's impacts on Rocky Mountain National Park³⁸. Based on their BART determination, Nebraska did not require BART-level controls at Gerald Gentleman Station as part of their long-term strategy in their regional haze SIP.

Nebraska used CENRAP CAMx photochemical source apportionment modeling to identify the pollutants (e.g., sulfates, nitrates) and source categories (e.g., elevated point EGUs) that most impact visibility at Class I areas located in surrounding states. A summary of the annual emissions used for Nebraska elevated point sources and Gerald Gentleman Station in the 2002 base year and 2018 future year CENRAP modeling is shown in table 1 of the Technical Support Document for this action.

The 2018 CENRAP modeling included an SO₂ control rate of 0.15 lb/mmBtu at Gerald Gentleman Station. The modeling showed combined Gerald Gentleman Station Units 1 and 2 SO₂ emissions decreasing from 32,152 ton per year (tpy) in 2002 to 8,732 tpy in 2018 (with controls to achieve the 0.15 lb/mmBtu SO₂ emission limit assumed to be in operation in 2018). This reduction of

³⁸ 77 FR 12776-12777.

modeled SO₂ emissions at Gerald Gentleman Station helps lower the projected SO₂-caused light extinction at Badlands National Park contributed by Nebraska elevated point sources from 0.98 MM⁻¹ in 2002 to 0.47 MM⁻¹ in 2018. The decrease in the SO₂ extinction at Badlands National Park from Nebraska elevated point sources is due to the decrease in modeled emissions from 2002 to 2018, and in particular the decrease in modeled SO₂ emissions at Gerald Gentleman Station due to the assumption of the achievement of a 0.15 lb/mmBtu emission rate in 2018.

In 2012, EPA evaluated Nebraska's SIP and determined that Nebraska's SIP, among other things, did not appropriately address the long-term strategy requirements of the Regional Haze Rule related to Gerald Gentleman Station. Although there were modeled visibility impacts and improvements from the installation of cost-effective controls at Gerald Gentleman Station at Class I areas, Nebraska did not require any reduction in SO₂ emissions from Gerald Gentleman Station. EPA partially disapproved Nebraska's long-term strategy based on the state's deficient SO₂ control determination for Gerald Gentleman Station. EPA promulgated a FIP in which we relied on CSAPR to address this deficiency in Nebraska's SIP. Based on the modeling done by CENRAP, EPA knew at the time that Gerald Gentleman Station contributed to visibility impairment at the Wind Cave and

Badlands National Parks in South Dakota and at Rocky Mountain National Park in Colorado, and that cost-reasonable controls were available, but EPA did not evaluate whether additional controls beyond CSAPR at Gerald Gentleman Station were required to ensure reasonable progress. As a result, the record for our FIP was incomplete.

In order to properly evaluate whether CSAPR was sufficient to satisfy Nebraska's obligation to address the visibility impacts of their emissions at the Class I areas it affects, EPA has reviewed the record from the proposed and final actions. EPA has found that the reductions expected (and now observed) from the implementation of CSAPR do not equate to the reductions presumed by the CENRAP modeling that were found to be achievable at a reasonable cost by both Nebraska and EPA. Moreover, we are proposing to conclude that the CSAPR budgets for Nebraska are inadequate to ensure reasonable progress at neighboring Class I areas.

EPA's determination in 2012 that CSAPR provides for greater reasonable progress than BART was based on an assessment that CSAPR would provide for greater visibility improvement, on average, across all affected Class I areas.³⁹ In our assessment

³⁹ 77 FR 33642 (June 7, 2012).

of the relative impacts of CSAPR and BART on visibility, EPA considered separately the average visibility improvement across the 60 Class I areas in the eastern portion of the CSAPR modeling domain and the average impact across all 140 Class I areas in the 48 contiguous states with sufficiently complete monitoring data to support our analysis.⁴⁰ In both cases, the Agency concluded that CSAPR would provide for greater reasonable progress than BART on a regional basis. Both assessments showed, however, that BART would provide for greater visibility improvement than CSAPR in a number of Class I areas west of the Mississippi River but east of the Rocky Mountains, including at the Wind Cave and Badlands National Parks in South Dakota.⁴¹ As EPA has explained in the past, the fact that an alternative to BART would provide for greater reasonable progress on average across a number of Class I areas does not mean that the alternative satisfies all reasonable progress requirements.⁴²

The CSAPR budget for Nebraska resulted in some emission reductions of SO₂ for the state of Nebraska, but did not result in significant SO₂ emission reductions at Gerald Gentleman Station. In assessing the impacts of CSAPR on SO₂ emissions from

⁴⁰ 76 FR 82219, 82225-82227(December 30, 2011).

⁴¹ 77 FR at 33650; TSD for CSPAR > BART found at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2011-0729-0014>

⁴² 70 FR. 39104, 39143-144 (July 6, 2005).

Nebraska, EPA estimated that CSAPR would result in a overall 1,900 ton reduction in SO₂ emissions as compared to the state's 2014 base case emissions. Further, CSAPR did not drive significant SO₂ reductions at the Gerald Gentleman Station. Given the scale of reductions required by CSAPR in Nebraska coupled with the history outlined above regarding Nebraska's consultation with neighboring states, EPA is proposing to conclude that it is inappropriate to rely on CSAPR to ensure reasonable progress without further consideration of appropriate SO₂ control measures for Gerald Gentleman Station.

Because in our previous final action, EPA did not conduct a four-factor analysis as required by the Regional Haze Rule, in this action, EPA has undertaken a four-factor analysis to assure that we appropriately consider whether additional emission reduction measures are necessary at the Gerald Gentleman Station to fulfill the long-term strategy requirements of the Regional Haze Rule.

A. Approach to Reasonable Progress and Long-Term Strategy

To complete the reasonable progress four-factor analysis EPA must look at the following: the costs of compliance; the time necessary for compliance; the energy and non-air environmental impacts of compliance; and the remaining useful

life of any potentially affected sources.⁴³ Our Reasonable Progress Guidance⁴⁴ notes the similarity between some of the reasonable progress factors and the BART factors contained in 40 CFR § 51.308(e)(1)(ii)(A), and suggests that the BART Guidelines be consulted regarding cost, energy and non-air quality environmental impacts, and remaining useful life. We are therefore relying on our BART Guidelines for assistance in quantifying and considering those reasonable progress factors, as applicable.

Each of the elements of the four-factor analysis is discussed below.

1. Factor 1 - The Costs of Compliance

a. EPA's Evaluation of Costs in the 2012 Proposed and Final Rule

In the 2012 proposed and final action, EPA and Nebraska evaluated the cost of installation of wet FGD on Gerald Gentleman Station. Nebraska, in their SIP, concluded that these costs were reasonable on a cost per ton basis for both units combined (\$2,726/ton). Nebraska also evaluated controls at Gerald Gentleman Station on a dollars per deciview basis.⁴⁵

⁴³ 40 CFR 51.308(d)(1)(i).

⁴⁴ Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, June 1, 2007.

⁴⁵ As explained in the final action in 2012, the BART Guidelines require the costs of controls to be evaluated on a dollar per ton basis. In their BART determinations, Nebraska used a threshold of \$40 million/dv/year; in their review

Nebraska determined that while costs on a dollar per ton basis were reasonable, costs on a dollar per deciview basis were not reasonable.⁴⁶ Nebraska also saw water consumption of wet flue-gas desulfurization (FGD) controls as significant and concluded that because of this unique situation, wet FGD controls were unreasonable for Gerald Gentleman Station Units 1 and 2.⁴⁷

EPA agreed with Nebraska that the cost per ton for FGD was reasonable and that Nebraska's analysis showed significant visibility improvement both at Badlands National Park and on a cumulative basis.⁴⁸ EPA also found that Nebraska inappropriately ruled out dry sorbent injection (DSI), because EPA found that costs were reasonable and visibility improvement was significant.⁴⁹

EPA also found that Nebraska made several errors in determining the cost of controls.⁵⁰ EPA determined that Nebraska made incorrect assumptions about Gerald Gentleman Station's SO₂ emissions and the capability of certain controls. Nebraska also

of the BART analysis for GGS, EPA concluded that Nebraska had overestimated the cost of control and underestimated the control efficiency of scrubbers and ignored the cumulative visibility impacts of controls at GGS. If Nebraska had appropriately estimated the cost of control and considered cumulative benefits, scrubbers would have been found to be cost effective on a dollars per deciview basis under the threshold set by Nebraska. See 77 FR 40157.

⁴⁶ 77 FR 12770 at 12779.

⁴⁷ Id.

⁴⁸ 77 FR 12770 at 12780.

⁴⁹ Id.

⁵⁰ Id.

deviated from EPA's Cost Control Manual when evaluating costs.⁵¹

EPA did our own evaluation in accordance with the Cost Control Manual and found that the cost per ton of SO₂ controls ranged from \$1,972 to \$2,310 for each Gerald Gentleman Station unit.⁵²

EPA determined that the costs for control were reasonable and visibility improvement was significant and disapproved

Nebraska's SIP.⁵³ EPA's disapproval of Nebraska's SO₂ BART

determination for Gerald Gentleman Station was upheld by the 8th

Circuit and we are not reconsidering that decision in this

proposed rulemaking.⁵⁴

b. EPA's Updated Cost Evaluation

In this action, EPA has again evaluated the feasibility and costs of installing several types of SO₂ control systems at Gerald Gentleman Station.⁵⁵ Specifically, EPA has analyzed costs for DSI, spray dry absorber (SDA), and wet FGD. We have looked at each of these control technologies at various control rates to determine which rate/control scenarios are cost effective. EPA proposes to determine that spray dry absorber to meet an

⁵¹ Id.

⁵² Id. This analysis and determination were conducted consistent with previous actions where cost of control analyses were submitted with deviations from the Control Cost Manual. 77 FR 12770 (March 2, 2012); 77 FR 40149 (July 6, 2012); 79 FR 74817 (December 26, 2014); 81 FR 295 (January 5, 2016).

⁵³ Id.; 77 FR 40149.

⁵⁴ State of Nebraska v. EPA, 812 F.3d 662 (8th Cir. 2015).

⁵⁵ EPA has included in the record for this action documents submitted by NPPD pursuant to the CAA Section 114 request that have not been claimed as Confidential Business Information (CBI) by NPPD.

emission limit of 0.060 lb/mmBtu are feasible at Gerald Gentleman Station and will have a cost per ton that is reasonable.⁵⁶ As explained below, EPA is proposing that a FIP emission limit of 0.060 lb/mmBtu, which is based on dry scrubbing, is necessary to make reasonable progress and will fill the gap resulting from our previous disapproval of the reasonable progress element of Nebraska's regional haze plan. This emission limit can also be met cost-effectively with wet FGD, and the owners of Gerald Gentleman Station could use wet FGD to meet a final FIP emission limit of 0.060 lb/mmBtu if EPA finalizes that limit. EPA is also proposing to conclude that an emission limit of 0.040 lb/mmBtu could be cost-effectively met with wet FGD. However, we are not proposing that an emission limit of 0.040 lb/mmBtu is necessary to make reasonable progress, because of its higher water requirements. EPA is not relying on the possible use of wet FGD to support the proposed 0.060 lb/mmBtu BART emission limit. While EPA has also investigated DSI, we are not proposing to rely on any conclusions about the cost or effectiveness of DSI. The owners of Gerald Gentleman Station may or may not be able to use DSI to meet the proposed FIP emission limit.

⁵⁶ EPA has included in the record for this action documents submitted by NPPD pursuant to the CAA Section 114 request that have not been claimed as Confidential Business Information (CBI) by NPPD.

EPA used cost methodologies used in the IPM model, Version 5.13. These methodologies are described in detail in appendix A of the TSD, available in the docket of this proposed action.⁵⁷

EPA evaluated the cost of DSI at Gerald Gentleman Station Units 1 and 2 using control efficiency rates of 50, 80, and 90 percent.⁵⁸ Units 1 and 2 do not differ with respect to any design feature that affects the estimated cost of DSI. EPA is proposing to find that the cost of DSI would be \$2,138/ton; \$2,168/ton and \$2,315/ton, respectively, for these levels of control. We are proposing to conclude that each control scenario using DSI is cost effective.

EPA has also evaluated the cost of dry scrubbers using a control efficiency rate of just under 91 percent at Gerald Gentleman Station Units 1 and 2, corresponding to an emission rate of 0.060 lb/mmBtu. EPA analyzed the cost of dry scrubbers using this removal rate and emission limit because the lowest available SO₂ emission guarantees from original equipment manufacturers of SDA systems are 0.060 lb/mmBtu. EPA is proposing

⁵⁷ The use of the IPM cost model is consistent with other EPA Regional Haze actions and is based on reliable and accurate technical tools widely utilized by EPA to assess control scenarios at electric generating units and other large sources.

⁵⁸ The 50 percent rate for DSI was selected based on known operating performance of installed DSI systems. The 80 percent rate for DSI was selected based on the use of milled trona along with a baghouse. Both GGS units have baghouses installed. EPA included the higher rate (90%) for comparison to other SO₂ control technologies. As discussed in more detail in the Cost TSD, a 90% removal efficiency for a DSI system alone has not been demonstrated at any currently operating DSI system.

to find that the cost of dry scrubbing to meet this emission limit is cost effective for both units, at \$2,443/ton for Unit 1 and \$2,350/ton for Unit 2. The cost of a baghouse to collect the particles from the operation of the dry scrubbers was not included in our cost estimate because Gerald Gentleman Station currently operates a baghouse on both units. EPA invites comment on the feasibility and cost-effectiveness of a higher control efficiency, and lower emission rate, using dry scrubbing at Gerald Gentleman, supported by evidence.

Finally, EPA has evaluated the cost of a wet scrubber at Gerald Gentleman Station Units 1 and 2. EPA used control efficiencies of 91 percent and 94 percent corresponding to emission rates of 0.060 and 0.040 lb/mmBtu, respectively.⁵⁹ EPA is proposing to determine that wet scrubber controls are cost effective at both units and both control efficiencies. EPA is proposing to find the costs to be \$2,424/ton and \$2,327/ton at 94 percent control efficiency at Units 1 and 2, respectively.

⁵⁹ EPA analyzed the cost of wet scrubbers based on limits of 0.040 and at 0.060 lb/mmBtu. The first analysis at 0.040 lb/mmBtu evaluates wet FGD which is the lowest rate that vendors of the technology will guarantee. The IPM presumptive control model uses a removal efficiency of 98 percent. Because a 98 percent removal efficiency results in SO₂ rates less than 0.040 lb/mmBtu for the Gerald Gentleman Station units, we limited the control efficiency in the cost algorithm to just under 94 percent to assure that NPPD can obtain a performance guarantee for the wet scrubber. The second analysis allows direct comparison to SDA at similar reduction efficiencies of just under 91 percent.

EPA is proposing to find the costs to be \$2,502/ton and \$2,402/ton at 91 percent control efficiency at Units 1 and 2, respectively.

Based on our cost assessment, EPA is proposing to conclude that NPPD can meet an SO₂ emission limit of 0.060 lb/mmBtu with cost effective controls.

The remaining useful life affects the cost effectiveness estimates for the control technologies. As discussed in more detail in appendix A of the TSD, available in the docket of this proposal, and in section IV.A.4. below, EPA has used 30 years as the remaining useful life of the units and any new controls installed on them. EPA believes that even if the remaining useful life of the units is as short as 20 years, the proposed control rate and associated control technologies are still cost effective.

2. Factor 2 - The Time Necessary for Compliance

EPA believes five years is the appropriate time period for installation of wet FGD or SDA except where there are unusual circumstances. In response to a section 114 information request, NPPD submitted several documents that demonstrate that between 2009 and 2014 NPPD considered installing wet FGD controls on

Gerald Gentleman Station Units 1 and 2⁶⁰. The engineering documents and requests for bids from this process included a timeline of five years from design to completion. EPA believes this is an appropriate timeframe for installation of wet FGD controls at Gerald Gentleman Station. We believe that SDA could be installed within the same timeframe. DSI may be able to be installed in a time frame of two to three years.

Due to the timing of this action, it is highly unlikely that the SO₂ controls that EPA is proposing will be installed and operational within the first planning period, which ends in 2018. Therefore, we request that Nebraska consider the visibility improvements anticipated from any necessary FIP controls implemented after 2018 when the state develops their next regional haze SIPs due July 31, 2021.⁶¹ Further, EPA anticipates that Colorado and South Dakota will account for the additional controls on Gerald Gentleman Station when they set 2028 reasonable progress goals in the second implementation period.

⁶⁰ See NPPD Clean Air Act Section 114 Response; NPPDRH114_0000892, NPPDRH114_0001321, NPPDRH114_0001584, NPPDRH114_0002059, NPPDRH114_0005017

⁶¹ On December 14, 2016, EPA finalized Protection of Visibility: Amendments to Requirements for State Plans rule, which moves the state deadline for the second round of regional haze SIPs to July 31, 2021. 81 FR 26942, May 4, 2016. The final rule was published on January 10, 2017. 82 FR 3078 (January 10, 2017).

3. Factor 3 - The Energy and Non-Air Quality Environmental Impacts of Compliance

To analyze energy impacts, the BART Guidelines advise, "You should examine the energy requirements of the control technology and determine whether the use of that technology results in energy penalties or benefits."⁶² As discussed above in our cost analyses for DSI, SDA, and wet FGD, our cost model allows for the cost of additional auxiliary power required for pollution controls to be included in the variable operating costs. EPA chose to include this additional auxiliary power in all cases. Consequently, we believe that any energy impacts of compliance have been adequately considered in our analyses.

Regarding the analysis of non-air quality environmental impacts, the BART Guidelines advise:

Such environmental impacts include solid or hazardous waste generation and discharges of polluted water from a control device. You should identify any significant or unusual environmental impacts associated with a control alternative that have the potential to affect the selection or elimination of a control alternative. Some control technologies may have potentially significant secondary

⁶² 70 FR 39168 (July 6, 2005).

environmental impacts. Scrubber effluent, for example, may affect water quality or land use. Alternatively, water availability may affect the feasibility and costs of wet FGD. Other examples of secondary environmental impacts could include hazardous waste discharges, such as spent catalysts or contaminated carbon. Generally, these types of environmental concerns become important when sensitive site-specific receptors exist, or when the incremental emission reductions potential of the more stringent control is only marginally greater than the next most-effective option. However, the fact that a control device creates liquid and solid waste that must be disposed of does not necessarily argue against selection of that technology as BART, particularly if the control device has been applied to similar facilities elsewhere and the solid or liquid waste is similar to those other applications. On the other hand, where you or the source owner can show that unusual circumstances at the proposed facility create greater problems than experienced elsewhere, this may provide a basis for the elimination of that control alternative as BART.⁶³

⁶³ 70 FR 39169 (July 6, 2005).

As referenced above, non-air environmental impacts may also take into account water availability to operate scrubbers. The Nebraska's Regional Haze SIP, the record for our previous actions on Nebraska's SIP, and information more recently obtained from NPPD, contain extensive information about water availability in the area of Gerald Gentleman Station.

In summary, Gerald Gentleman Station is located in western Nebraska, a semi-arid region dominated by agriculture. Water quantity in western Nebraska, both surface and groundwater availability, is governed by state statute and agreements with neighboring states and Federal agencies, such as the U.S. Fish and Wildlife Service, to protect, increase, and allocate the state's water resources. Specifically, the Nebraska Department of Natural Resources has responsibility for management of hydrologically connected surface water and groundwater resources, and must identify river basins that are fully or over-appropriated. Gerald Gentleman Station is located in a portion of the Twin Platte Natural Resource District that has been designated as over-appropriated, and pursuant to their Integrated Management Plan, construction of new groundwater wells greater than 50 gallons per minute or increasing irrigated acres is prohibited. New water needs must instead be obtained

through offsets of existing groundwater wells, such as irrigation wells, which must be retired before drilling a new groundwater well.

In addition, in 2007, the U.S. Department of the Interior, Colorado, Wyoming, and Nebraska entered into the Platte River Recovery and Implementation Program (PRRIP) to restore shortages to U.S. Fish and Wildlife Service target flows in the Platte River, thereby protecting endangered and threatened species whose habitat includes the Platte River. The threatened and endangered species identified for protection include the piping plover, pallid sturgeon, least tern, and whooping crane. Substantial offsets to current water use are required in order to meet the PRRIP needs; however, as was previously commented by the USFWS, the PRRIP inherently provides options to offset consumptive uses, and was developed knowing that it would be untenable to prevent all new water uses.⁶⁴ Thus, the approach was to devise ways to provide for the water-dependent needs of listed species while accommodating new uses.

While there is no question that any new surface water depletions to central Platte River flows in order to operate SO₂ controls would require surface or ground water offsets, those

⁶⁴ EPA-R07-OAR-2012-0158, Appendices to State Submittal Documents, Chapter 3.

offsets could be obtained at a cost. In EPA's previous BART cost analyses for wet FGD, we factored in potentially higher costs associated with obtaining water, including the cost of obtaining the fee title to irrigated land necessary to offset the water usage of wet FGD, and still found the costs to be reasonable, increasing the cost per ton by only \$313 per ton.⁶⁵ These costs would be lower for use of SDA, which uses less water and therefore would require less offsets. DSI would require less water than either wet FGD or SDA, which would be used for regular maintenance of the system.

In addition, based on information EPA received from NPPD, it appears NPPD has multiple lines of access to additional supplies of groundwater. Based on an area well survey,⁶⁶ NPPD already has access to additional water supply from groundwater wells it currently owns and leases to other parties for irrigation and livestock watering, totaling approximately 4.17 million gallons per day (173,880 gallons per hour), and currently unused groundwater well capacity of 316,800 gallons per day (13,200 gallons per hour). This capacity is more than

⁶⁵ As explained in our previous action, this figure is considered conservative for several reasons. First, NPPD's estimates of water use to operate wet FGD were 31 percent higher than the average of other facilities NDEQ provided in its SIP. Second, we did not offset the cost due to rental income from the property, value due to production of dry land crops, or the future value of the land in 20 years. 77 FR 40150, 40162.

⁶⁶ Information received from NPPD pursuant to a Clean Air Act section 114 information request issued to NPPD on March 21, 2016.

enough to operate SDA. In addition, NPPD may acquire groundwater offsets from surrounding areas and drill new wells.

EPA also notes that the overall water requirements of scrubbers at Gerald Gentleman Station would be a very small percentage of the water use requirements for Gerald Gentleman Station overall, only approximately 0.22-0.30 percent of total plant needs, which are largely for cooling. Therefore, we do not believe that the increase in water usage due to operation of scrubbers, in general, is prohibitive.

EPA acknowledges the water availability concerns, and the great care Nebraska takes in managing limited water resources. We also acknowledge the goals of the Integrated Management Plans and obligations of the Platte River Recovery Plan. As was noted above, the BART Guidelines provide that these types of environmental concerns become important when the incremental emission reduction potential of the more stringent control is only marginally greater than the next most-effective option. As discussed in the cost analysis above, wet FGD requires approximately 2.54 million gallons per day (106,000 gallons per hour), compared to SDA at 1.85 million gallons per day (77,000 gallons per hour), and is only marginally more effective at an achievable rate of 0.040 lb/mmBtu, compared to 0.060 lb/mmBtu, respectively, a difference of 1,354 tons per year.

The SO₂ control technologies EPA considered in our analyses - DSI, SDA, and wet FGD - are in wide use in the coal-fired electricity generation industry. All three technologies would add spent reagent to the waste stream already generated by Gerald Gentleman Station, but do not present any unusual environmental waste impacts. As discussed in our cost analyses for DSI, SDA, and wet FGD, our cost model includes waste disposal costs in the variable operating costs. Therefore, EPA believes that any non-air quality environmental impacts related to waste have been adequately considered in our analyses.

4. Factor 4 - The Remaining Useful Life of the Source
Regarding the analysis of remaining useful life, the BART Guidelines advise:

The "remaining useful life" of a source, if it represents a relatively short time period, may affect the annualized costs of retrofit controls. For example, the methods for calculating annualized costs in EPA's OAQPS Control Cost Manual requires the use of a specified time period for amortization that varies based upon the type of control. If the remaining useful life will clearly exceed this time period, the remaining useful life essentially has no effect on control costs and on the BART determination process. Where the remaining useful life is less than the time

period for amortizing costs, you should use the shorter time period in your cost calculations.

In determining the cost of scrubbers in the original SIP submission, Nebraska did not provide a specific useful life for the Gerald Gentleman Station:

The useful remaining life of Gerald Gentleman Station Units 1 and 2 is greater than 20 years under the current NPPD energy resource plan. Therefore, the remaining useful life has no impact on the annualized estimated control technology cost at this time. Nebraska Regional Haze SIP Section 10.6.4.9.

NPPD did not provide any additional information regarding the remaining useful life of the Gerald Gentleman Station Units in their section 114 response. NPPD's Integrated Resource Plan also does not provide any specific information regarding the remaining useful life of the units. The Integrated Resource Plan does indicate that NPPD intends to utilize the units for a significant period of time into the future.

EPA has used a 30 year lifetime approach in prior actions.⁶⁷ Therefore, we have used 30 years in the cost module of the IPM model when calculating costs for controls at the Gerald Gentleman Station.

EPA sees no reason to assume that a DSI system installation, which is a much less complex and costly (capital costs, as opposed to annualized costs) technology in comparison to a scrubber installation, should have a shorter lifetime. As with an wet FGD or SDA, we expect the boiler to be the limiting factor when considering the lifetime of a coal-fired power plant. EPA has therefore similarly assumed that the lifetime of a DSI system is 30 years. We propose to conclude that Units 1 and 2 have a remaining useful life of 30 years.

B. Proposed Long-Term Strategy Determinations for Gerald Gentleman Station

EPA believes the information described above supports this proposal that an SO₂ rate of 0.060 lb/mmBtu at the Gerald Gentleman Station is necessary to make reasonable progress at Class I areas affected by sources in Nebraska. The previous record showed that there would be positive visibility benefits to the affected Class I areas, if Gerald Gentleman Station

⁶⁷ See 76 FR 52388 (August 22, 2011); 76 FR 81728 (December 28, 2011); Oklahoma v. EPA, 723 F.3d 1201 (July 19, 2013), cert. denied (U.S. May 27, 2014).

installed SO₂ controls. Although visibility is not a required element of the four-factor analysis, EPA reviewed the visibility information from the original Nebraska Regional Haze SIP record to verify the impacts of Gerald Gentleman Station on the nearest Class I Federal Areas of Badlands, Wind Cave, and Rocky Mountain National Parks. Upon review, EPA confirmed that the existing record, which includes both the CENRAP and Nebraska CALPUFF modeling, showed significant impacts on the affected Class I areas.

Overall, both the previous CENRAP CAMx modeling and NDEQ BART CALPUFF modeling relied upon in the Nebraska Regional Haze SIP indicate a visibility improvement with the installation of SO₂ controls at Gerald Gentleman Station. The 2018 CENRAP modeling shows improvements in the visibility impairment contribution from Nebraska elevated sources at Badlands due to decreases in emissions from the SO₂ BART controls assumed at Gerald Gentleman Station in the modeling. CALPUFF modeling with either wet FGD or DSI at a control rate of 0.15 lb/mmBtu produced significant visibility improvements at the two South Dakota Class I areas and Rocky Mountain National Park when averaged over the 2001-2003 modeling period.

Therefore, although visibility is not a required element of the four-factor analysis, there will be significant visibility

benefit to the Class I areas as a result of meeting the proposed SO₂ emission rate at Gerald Gentleman Station. By meeting this proposed rate, EPA will ensure that Nebraska is achieving their fair share of emission reductions to allow Class I areas to reach natural visibility conditions.

As discussed in more detail in the Cost TSD (Appendix A), EPA is not able to find information showing that any coal-fired units in the U.S. are currently meeting the 0.060 lb/mmBtu rate proposed in this action with the use of DSI alone. Therefore, EPA is unable to say that use of DSI at the Gerald Gentleman Station can achieve the proposed 0.060 lb/mmBtu emission limit. Nevertheless, this proposed action only proposes a rate, not a control technology. Therefore, it does not foreclose NPPD from using DSI to meet the 0.060 lb/mmBtu rate, if site specific engineering factors allow. As described earlier, the IPM Model predicts DSI annualized capital and operating costs at 90 percent control are competitive with SDA and wet FGD. DSI has lower capital costs and higher operating costs, which may be a consideration that is important to NPPD. EPA wants to make clear that our proposed SO₂ emission rate of 0.060 lb/mmBtu is not tied to the feasibility of meeting this emission using DSI, since it is justified on the basis of the cost-effectiveness of both SDA and wet FGD.

Given the regional water concerns and greater water usage, EPA is proposing to eliminate the control efficiency rate of 0.040 lb/mmBtu from further consideration based on the non-air environmental impacts of water availability, because it can only be achieved with wet FGD.⁶⁸

Based on the four-factor analysis, EPA proposes that NPPD meet an emission rate of 0.060 lb/mmBtu on the basis of a rolling 30-boiler operating day averaging period. This rate would apply at all times, including periods of startup and shut down, which is consistent with our SSM policy.⁶⁹

V. Statutory and Executive Order Reviews

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

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866⁷⁰ and is therefore not subject to review under Executive Orders 12866 and 13563.⁷¹ The proposed FIP only applies to one facility. It is therefore not a rule of general applicability.

⁶⁸ See, 79 FR 74818, 74874 (February 16, 2014); 81 FR 296 at 320 (January 5, 2016); 77 FR 18052, 18061 (March 3, 2012)

⁶⁹ This proposed control rate will require the GGS units to be retrofitted with SO₂ control technology. NPPD will be required to obtain any permits necessary under the Nebraska SIP.

⁷⁰ 58 FR 51735 (October 4, 1993).

⁷¹ 76 FR 3821 (January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. Section 3501 et seq. Because this rule does not affect 10 or more entities, it does not contain any information collection activities the Paperwork Reduction Act does not apply. See 5 CFR 1320(c).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small

organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

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

D. Unfunded Mandates Reform Act (UMRA)

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, or tribal governments or the private sector. The EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action proposes to approve or disapprove

pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

This 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. This proposed rule does not impose significant economic costs on state or local governments. Thus, Executive Order 13132 does not apply to this proposed action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action applies to one facility in Nebraska and will affect Federal Class I areas in South Dakota and Colorado. This action does not apply on any Indian reservation land or any other areas where EPA or an Indian tribe

has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus Executive Order 13175 does not apply to this action.

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

Executive Order 13045: Protection from Environmental Health Risks and Safety Risks 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 risk to children. Moreover, "regulation" or "rule" is defined in Executive Order 12866 as "an agency statement of general applicability and future effect." E.O. 12866 does not define "statement of general applicability" but this term commonly refers to statements that apply to groups or classes, as opposed to statements which apply only to named entities. The proposed FIP, therefore, is not a rule of general applicability because its requirements apply and are tailored to only one individually identified facility. Thus it is not a "rule" or "regulation" within in the meaning of E.O. 12866. However, as this action will limit emissions of SO₂, it will have a beneficial effect on children's health by reducing air pollution.

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

This proposed action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

This proposed action involves technical standards. Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule would require the affected facility to meet 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 (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.

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

EPA believes the human health or environmental risk addressed by this proposed action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous 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. This proposed FIP limits emissions of SO₂ from one facility in Nebraska.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, Interstate transport of pollution, Regional haze.

Dated: 01-18-2017 /s/ Mark Hague

January 18, 2017.

Mark Hague,
Regional Administrator,
Region 7.

IDENTIFICATION OF DOCUMENT: Proposed rule; EPA-R07-OAR-2017-0039; Approval and Promulgation of Air Quality Implementation Plans; Nebraska Regional Haze Federal Implementation Plan; Reconsideration

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

Part 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart CC - NEBRASKA

2. § 52.1437 is proposed to be revised to read as follows:

§ 52.1437 Visibility protection.

(b) Measures Addressing Partial Disapproval Associated with SO₂. The deficiencies associated with the SO₂ BART determination, including those provisions of the long-term strategy addressing SO₂ emissions, for Nebraska Public Power District, Gerald Gentleman Station, Units 1 and 2 identified in EPA's partial disapproval of the regional haze plan submitted by Nebraska on July 13, 2011, are satisfied by § 52.1429 and subsection (c) of this section.

(c) Requirements for Gerald Gentleman Station Units 1 and 2 affecting visibility.

(1) *Applicability.* The provisions of this section shall apply to each owner, operator, or successive owners or operators of the coal burning equipment designated as Gerald Gentleman Station Units 1 and 2.

(2) *Compliance Dates*. Compliance with the requirements of this section is required by 5 years from the effective date of this rule for Gerald Gentleman Station Units 1 and 2.

(3) *Definitions*. All terms used in this part but not defined herein shall have the meaning given to them in the Clean Air Act and in parts 51 and 60 of this title. For the purposes of this section:

24-hour period means the period of time between 12:01 a.m. and 12 midnight.

Air pollution control equipment includes baghouses, particulate or gaseous scrubbers, sorbent injection systems, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

Boiler-operating-day means any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in a steam generating unit.

Heat input means heat derived from combustion of fuel in a unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be calculated in accordance with 40 CFR Part 75.

Owner or Operator means any person who owns, leases, operates, controls, or supervises any of the coal burning equipment designated in paragraph (a) of this section.

Regional Administrator means the Regional Administrator of Region 7 or his/her authorized representative.

Unit means each individual coal-fired boiler covered under paragraph (a) of this section.

(4) *Emissions Limitations*. SO₂ emission limit. The sulfur dioxide emission limit for each individual unit shall be as listed in the following table in pounds per million British thermal units (lb/mmBtu) as averaged over a rolling 30 boiler-operating-day period.

Unit	SO ₂ Emission limit (lbs/mmBtu)
Gerald Gentleman Station Unit 1	0.060
Gerald Gentleman Station Unit 2	0.060

For each unit, SO₂ emissions for each calendar day shall be determined by summing the hourly emissions measured in pounds of SO₂. For each unit, heat input for each boiler-operating-day shall be determined by adding together all hourly heat inputs, in millions of Btu. The 30-day rolling average SO₂ emission rate for each boiler-operating-day of the 30-day rolling average for a unit shall be determined by adding together the pounds of SO₂ from that day and the preceding 29 boiler-operating-days and

dividing the total pounds of SO₂ by the sum of the heat input during the same 30 boiler-operating-day period. The result shall be the 30 boiler-operating-day rolling average in terms of lb/mmBtu emissions of SO₂. Each 30 Boiler Operating Day Average Rate shall include all emissions that occur during all periods of operation within an operating day, including startup, shutdown and malfunction. If valid SO₂ pounds per hour or heat input is not available for any hour for a unit, that heat input and SO₂ pounds per hour shall not be used in calculation of the 30 boiler-operating-day rolling average for SO₂.

(5) *Testing and Monitoring.*

(i) No later than the compliance date of this regulation, the owner or operator shall install, calibrate, maintain and operate Continuous Emissions Monitoring Systems (CEMS) for sulfur dioxide (SO₂), diluent (%CO₂ or %O₂) and flow, for each unit listed in Section (1) in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. The SO₂, diluent, and flow CEMS data, expressed in units of the standard, shall be used to verify compliance for each unit.

(ii) Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO₂ and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each 15-minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventative maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid pounds per million Btu emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by EPA to provide emission data for a minimum of 18 hours in each 24-hour period and at least 22 out of 30 successive boiler operating days.

(6) *Recordkeeping and Reporting Requirements.* Unless otherwise stated all requests, reports, submittals, notifications and other communications to the Regional Administrator required by this section shall be submitted unless instructed otherwise to the Director, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. For each unit subject to the emissions limitation in this section and upon completion of CEMS as required in this section, the owner or operator shall comply with the following requirements:

(i) The following information shall be reported to the Regional Administrator, EPA Region 7, and the Nebraska Department of Environmental Quality, for each **boiler operating day**. The report shall be submitted no later than 30 days following the end of each semi-annual calendar period (e.g. June 30, December 31).

(1) Calendar date.

(2) The average SO₂ emission rates, in lb/mmBtu, for each 30 successive boiler operating day period, ending with the last 30-day period in the semi-annual reporting period; reasons for non-compliance with the emission standards; and, description of corrective actions taken.

(3) Identification of the boiler operating days for which pollutant or diluent data have not been obtained by an approved method for at least 75 percent of the hours of operation of the facility; justification for not obtaining sufficient data; and description of corrective actions taken.

(4) Identification of the "F" factor used for calculations, method of determination, and type of fuel combusted.

(5) Identification of times when hourly averages have been obtained based on manual sampling methods.

(6) Identification of the times when the pollutant concentration exceeded full span of the CEMS.

(7) Description of any modifications to CEMS which could affect the ability of the CEMS to comply with Performance Specifications 2 or 3 of 40 CFR 60.51 Subpart Da.

(7) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including the associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable

operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(8) *Enforcement.*

(i) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable implementation plan.

(ii) Emissions in excess of the level of the applicable emission limit or requirement that occur due to startup, shutdown or malfunction shall constitute a violation of the applicable emission limit.