States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Maryland's Regional Haze Plan for the first implementation period, through 2018 may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 13, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for the Maryland Regional Haze Plan at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Maryland Regional Haze Plan	Statewide	2/13/12	7/6/2012 [*Insert page number where the document begins*].	

[FR Doc. 2012–16417 Filed 7–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0598; FRL–9683–6]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Illinois State Implementation Plan, submitted on June 24, 2011, addressing regional haze for the first implementation period. EPA received comments disputing its proposed finding regarding best available retrofit technology, but EPA continues to believe that Illinois' plan limits power plant emissions as well as would be achieved by directly requiring best available retrofit technology. Therefore, EPA finds that the Illinois regional haze plan satisfactorily addresses Clean Air Act section 169A and Regional Haze Rule requirements for states to remedy any existing and prevent future anthropogenic impairment of visibility at mandatory Class I areas. EPA is also approving two state rules and incorporating two permits into the state implementation plan.

DATES: This final rule is effective on August 6, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0598. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. Synopsis of Proposed Rule
II. Comments and Responses
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Synopsis of Proposed Rule

Illinois submitted a plan on June 24, 2011, to address the requirements of Clean Air Act section 169A and the Regional Haze Rule, as codified in Title 40 Code of Federal Regulations Part 51.308 (40 CFR 51.308).

EPA published a notice of proposed rulemaking evaluating Illinois' submittal on January 26, 2012, at 77 FR 3966. This notice described the nature of the regional haze problem and the statutory and regulatory background for EPA's review of Illinois' regional haze plan. The notice provided a lengthy delineation of the requirements that Illinois intended to meet, including requirements for mandating BART, consultation with other states in establishing goals representing reasonable progress in mitigating anthropogenic visibility impairment, and adoption of limitations as necessary to implement a long-term strategy for reducing visibility impairment.

Of particular interest were EPA's findings regarding BART. States are required to address the BART

requirements for sources with significant impacts on visibility, which Illinois defined as having at least 0.5 deciview impact on a Class I area. Using modeling performed by the Lake Michigan Air Directors Consortium (LADCO), Illinois identified 10 power plants and two refineries as having sufficient impact to warrant being subject to a requirement representing BART.[1]

Seven of the power plants that were identified as being subject to the requirement for BART are addressed in one of two sets of provisions of Illinois' rules known respectively as the Combined Pollutant Standards (CPS), 35 Ill. Administrative Code 225.233, and the Multi-Pollutant Standards (MPS), 35 Illinois Administrative Code 225.293–225.299. These provisions are included in Illinois' mercury rules. These rules offer the affected utilities (Midwest Generation, Dynegy, and Ameren) a choice of limitations, either to include 1) specific mercury emission limitations effective in 2015 with no limits on emissions of sulfur dioxide (SO_2) or nitrogen oxides (NO_X) or 2) work practice requirements for installation of mercury control equipment in conjunction with limits on SO_2 and NO_X emissions. Illinois' submittal includes letters from the affected companies choosing the option that includes SO_2 and NO_X emission limits, which pursuant to Illinois' rules establishes these limits as enforceable limits. In the case of Midwest Generation, three of its power plants meet the criteria for being subject to BART, and six plants are governed by the SO_2 and NO_X limits in the Multi-Pollutant Standards. In the case of Dynegy, one of its power plants meets the criteria for being subject to BART, and four coal-fired power plants are governed by the SO_2 and NO_X limits in the (CPS). In the case of Ameren, three of its power plants meet the criteria for being subject to BART, and five coal-fired plants are governed by the SO_2 and NO_X limits in the (CPS). In the notice of proposed rulemaking, EPA proposed to conclude that the emission reductions from the (MPS) and the (CPS) would be greater than the reductions that would occur with unit-specific implementation of BART on the subset of these sources that meet the criteria for being subject to BART. Therefore, EPA proposed to find that the (MPS) and the (CPS) suffice to address the BART requirement for the power plants of these three utilities.

Illinois also developed source-specific limits to mandate BART for three additional power plants. These limits are adopted into two permits, one for Kincaid Generation's Kincaid Station and one for City Water, Light, and Power's (CWLP) Dallman Station and Lakeside Station. CWLP shutdown Lakeside Station in 2009, and the CWLP permit requires that the Lakeside Station never resume operation. Finally, Illinois found that Federal consent decrees regulating emissions from the two refineries with units subject to BART (facilities owned by ExxonMobil and Citgo) mandate control at the refineries in Illinois at least as much as would be required as BART. EPA proposed to conclude that Illinois satisfied BART requirements for the affected Illinois power plants and refineries.

As stated in the notice of proposed rulemaking, Illinois did not rely on the Clean Air Interstate Rule (CAIR) for its BART determinations. Illinois is in the CAIR region. However, it used its state rules, permits, and consent decrees to achieve emission reductions that satisfy BART. This means that Illinois is not reliant on CAIR and, thus, it has avoided the issues of other CAIR region states that relied on CAIR. For similar reasons, Illinois' satisfaction of regional haze rule requirements is not contingent on the Cross-State Air Pollution Rule (CSAPR) and thus is not affected by the stay of that rule.

II. Comments and Responses

EPA received comments from three commenters on its proposed rulemaking on the Illinois regional haze plan. These commenters included ExxonMobil, the U.S. Forest Service, and the Environmental Law and Policy Center (ELPC).

ExxonMobil comments that section 169A(b)(2)(A) requires sources to implement BART *as determined by the state* (emphasis in the original), and agrees with Illinois' and EPA's conclusion that ''emission limits established by the consent decrees may be relied upon by Illinois for addressing the BART requirement for these facilities.'' While EPA has the responsibility to evaluate whether it believes that states have made appropriate determinations as to what restrictions constitute BART, EPA appreciates the comment supporting its position, which EPA has no reason to change, that the Federal consent decrees for ExxonMobil and Citgo adequately mandate BART for the two Illinois refineries.

The U.S. Forest Service wrote to express its appreciation to Illinois for addressing prior Forest Service comments and to express support for EPA's proposed approval of Illinois' plan.

ELPC sent extensive comments objecting that control requirements for power plants in Illinois do not suffice to meet the BART requirements and leave Illinois short of meeting reasonable progress requirements. These comments are addressed in detail in the discussion that follows.

Comment: ELPC argues that ''the plain language of the Clean Air Act precludes alternatives to BART.'' Since the Illinois plan establishes limits that govern the collective emissions of multiple power plants owned by pertinent utilities, the plan relies on an alternative to BART as described in 40 CFR 51.308(e)(2) rather than mandating BART on a source-specific basis. ELPC states that BART at BART-eligible sources is expressly mandated in Clean Air Act section 169A(b)(2)(A). ELPC acknowledges that the Clean Air Act authorizes limited exemptions from BART, in cases which EPA determines pursuant to section 169A(c)(1) that ''the source does not either by itself or in combination with other sources 'emit any air pollutant which may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I federal area.' '' ELPC observes that ''[n]owhere in Section 169A did Congress contemplate or sanction sweeping alternative programs'' such as Illinois uses to address BART for many of its BART-subject power plants ''in lieu of source specific BART.''

ELPC acknowledges that EPA promulgated regulations reflecting its interpretation that BART requirements may be satisfied by alternative programs, and ELPC acknowledges that ''the DC Circuit Court of Appeals has upheld [these] regulations.'' Nevertheless, ''because these [court rulings] cannot be reconciled with the plan language of the Clean Air Act,'' ELPC urges that ''EPA should not rely on [this interpretation] to exempt Illinois from implementing BART.''

Response: In several previous rules, EPA has concluded that Clean Air Act section 169A may reasonably be interpreted to provide that the requirement for BART may be satisfied by an alternative program that provides greater visibility protection in lieu of limitations that directly mandate BART for individual sources determined to be subject to the BART requirement. See 40 CFR 51.308(e), 64 FR 35741–35743 (July 1, 1999), and 70 FR 39136 (July 6, 2005).

[1] The notice of proposed rulemaking lists 10 EGUs as being subject to BART (including two facilities owned by City Water Light and Power (CWLP)) but states that only 9 EGUs are subject to BART. This is because CWLP shut down the Lakeside plant that was subject to BART in 2009.

As ELPC acknowledges, the Court of Appeals for the District of Columbia Circuit supports that interpretation, *Center for Energy and Economic Development* v. *EPA,* 398 F.3d 653, 660 (D.C. Cir. 2005) (''*CEED*'') (finding reasonable EPA's interpretation of CAA section 169(a)(2) as requiring BART only as necessary to make reasonable progress), as has the Ninth Circuit, *Central Arizona Water Conservation District* v. *EPA,* 990 F.2d 1531, 1543 (9th Cir. 1993) Therefore, EPA views Illinois' approach as an acceptable means of addressing the BART requirement in section 169A.

Comment: ELPC comments that ''Illinois was required, but failed, to make a BART determination for each source subject to BART in the state.'' ELPC lists the elements of a BART analysis that a state ''*must submit*'' (emphasis in original) pursuant to 40 CFR 51.308(e)(2), and ELPC states that Illinois has failed to make the BART determination based on source-specific information that EPA's regulations require. ''Rather than make a BART determination for each individual source subject to BART that would be covered by Illinois' proposed alternative,'' ELPC objects that the state ''simply compared projected emissions reductions [from the adopted restrictions] to presumptive BART emissions.'' ELPC comments that ''[b]ecause Illinois entirely failed to use source-specific information or undertake a comprehensive five factor analysis to determine BART, its proposed Regional Haze State Implementation Plan (SIP) may not be approved.

Response: The primary requirement, as specified in Clean Air Act section 169A, is for sources to procure, install, and operate BART. In some cases this requirement is met with an analysis of potential controls considering five factors set out in EPA's regional haze rule (a ''five-factor analysis''). 40 CFR 51.308(e)(1)(ii)(A). As noted above, EPA has determined that this requirement can be met by a state establishing an alternative set of emission limits which mandate greater reasonable progress toward visibility improvement than direct application of BART on a source-by-source basis.

In promulgating the 1999 regional haze regulations, EPA stated that to demonstrate that emission reductions of an alternative program would result in greater emission reductions, ''the State must estimate the emission reductions that would result from the use of BART-level controls. To do this, the State could undertake a source-specific review of the sources in the State subject to BART, or it could use a modified approach that simplifies the analysis.'' 64 FR 35742 (July 1, 1999).

In guidance published on October 13, 2006, EPA offered further clarification for states for assessing alternative strategies, in particular regarding the benchmark definition of BART to use in judging whether the alternative is better. See 71 FR 60612. In this rulemaking, EPA stated in the preamble that the presumptive BART levels given in the BART guidelines would be a suitable baseline against which to compare alternative strategies where the alternative has been designed to meet a requirement other than BART. 71 FR at 60619; *see also* 40 CFR 51.308(e)(2)(i)(C). Illinois' analysis is fully consistent with EPA's conclusions in this rulemaking.

Nevertheless, EPA undertook further analysis comparing Illinois' strategy against more stringent definitions of BART. In brief, EPA found that the alternative restrictions imposed by Illinois can be demonstrated to provide greater emission reductions and greater visibility improvement than even very conservative definitions of BART, even without a full analysis of the emission levels that constitute BART. The demonstration is discussed below, in the context of response to comments addressing the magnitude of controls at Illinois power plants.

Comment: ELPC believes that the pertinent requirements in Illinois' plan ''will not achieve greater reasonable progress toward natural visibility conditions than BART.'' Furthermore, ''the MPS/CPS contains absolutely no requirements for specific control equipment to be installed or operated at any source subject to BART in Illinois.'' ELPC identifies several examples of BART units that are expected to comply with the MPS or CPS with controls that are less effective than BART-level controls. ELPC also finds it problematic that ''requirements for 2017 for Ameren exceed presumptive BART requirements for NO_X at one of the three plants subject to BART, and far exceed presumptive SO_2 BART limits at *all three* (emphasis in original) Ameren plants subject to BART.'' ELPC raises similar concerns in relation to specified Midwest Generation (MWG) plants. For this reason, ''and because Ameren and MWG need not meet even those weak requirements at their plants subject to BART, the MPS/CPS is not 'better' than presumptive BART limits.''

Response: ELPC appears to misunderstand the applicable test for alternate strategies for addressing BART. In particular, ELPC appears to believe that under the alternative approach, Illinois must require BART-level controls at each unit subject to BART. In fact, the underlying principle of EPA's guidance on alternative measures is to offer states the flexibility to require less control at BART units than BART-level control, provided the states provide additional control at non-BART units that more than compensates for any degree to which control at BART units falls short of BART. Illinois is using precisely this flexibility. Irrespective of the degree to which control at individual power plant BART units may be less stringent than the limits that for those particular units would be defined as BART, Illinois is requiring control across a universe of sources that includes many sources that are not subject to BART, thereby providing reductions that under EPA's rules and BART guidelines on alternative measures can compensate for any shortfall in control at BART units.

In response to these comments, EPA conducted further analysis of whether Illinois' requirements, addressing a substantial number of sources, can be expected to provide greater reasonable progress toward visibility protection than application of BART to the more limited number of units subject to a requirement for BART. EPA's analysis did not rely on a full five-factor analysis of BART at each BART-subject unit. Instead of using presumptive limits, EPA used emission limits described in EPA's RACT/BACT/LAER Clearinghouse as being applied to new sources. These limits, namely 0.06 pounds per million British Thermal Units (#/MMBTU) for NO_X and also 0.06 #/MMBTU for SO_2, are as stringent and are probably more stringent than would generally be expected to be met at existing power plants, due to the design constraints that are sometimes inherent in controlling emissions at an existing facility.

A more complete description of EPA's analysis is provided in the technical support document being placed in the docket for this rule. Table 1 provides a summary of the results of this analysis.

TABLE 1—EMISSION REDUCTIONS MANDATED BY ILLINOIS' PLAN AND CONSERVATIVE ESTIMATES OF BART REDUCTIONS

Company	BART units	Total units	NO_X reductions (tons/year)		SO_2 reductions (tons/year)	
			IL Plan	Lowest BART	IL Plan	Lowest BART
Ameren	5	24	24,074	23,849	111,997	74,349
Dynegy	3	10	23,867	18,551	47,378	22,444
MWG	9	19	37,819	28,061	61,292	38,963
CWLP	3	3	5,375	5,560	4,875	5,619
Kincaid	2	2	16,874	18,970	12,827	15,730
Totals	22	58	108,009	94,991	238,369	157,105

This table shows that the reductions from Illinois' plan, including reductions from the MPS, the CPS, and the permits for CWLP and Kincaid Generation, provide significantly greater emission reductions, especially for SO_2 but also for NO_X, than even very conservative definitions of BART for the BART-subject units. While Illinois' limits for the CWLP and Kincaid facilities viewed individually are subject to limits at approximately presumptive levels, and thus mandate less reduction than would be mandated by conservative definitions of BART, this analysis indicates that the collective emission reductions from Illinois power plants are greater than those that would be achieved by requiring achievement of even very conservative limits at the units that are subject to a BART requirement.

An additional point to be addressed is whether Illinois' plan, achieving greater emission reductions overall than application of BART on BART-subject units, can be expected also to achieve greater visibility protection than application of BART on BART-subject units. In general, Illinois' power plants are substantial distances from any Class I area. The least distance from any BART-subject Illinois power plant to any Class I area is from Dynegy's Baldwin power plant to the Mingo Wilderness Area, a distance of about 140 kilometers. The CWLP and Kincaid facilities are in the middle of the State; for example, Kincaid Station is about 300 kilometers from the Mingo Wilderness Area. Given these distances, and given that the averaging in Illinois' plan (averaging among Illinois plants of an individual company) is only authorized within the somewhat limited region within which each utility's plants are located, a reallocation of emission reductions from one plant to another is unlikely to change the impact of those emission reductions significantly. Consequently, in these circumstances, EPA is confident that the significantly greater emission reductions that Illinois mandates will yield greater progress toward visibility protection as compared to the benefits of a conservative estimate of BART.

Comment: ELPC comments that the ''MPS/CPS does not require that all necessary emissions reductions take place during the first long-term strategy for regional haze.''

Response: EPA does not prohibit reductions after the BART compliance deadline (in 2017); Illinois is only required to mandate at least measures that will achieve greater reasonable progress by the BART compliance deadline. While the MPS and the CPS establish a series of progressively more stringent limits extending to 2017 and beyond, both Illinois' analysis and the EPA analysis discussed above (summarized in Table 1) evaluate satisfaction of BART requirements by considering the emission limits in effect in 2017. The conclusion of that analysis is that the reductions necessary to meet BART requirements occur by the deadline for such reductions to occur. The fact that Illinois' plan requires additional reductions after 2017 is not a shortcoming of Illinois' plan.

Comment: ELPC expects the affected utilities to use the reductions mandated here to comply with CSAPR. ELPC concludes that these reductions cannot be considered surplus and thus are not creditable for meeting BART requirements.

Response: Under 40 CFR 51.308(e)(2), the alternative measures need only be surplus to reductions from measures adopted to meet requirements of the Clean Air Act as of the baseline date of the SIP, i.e. 2002. (See 40 CFR 51.308(e)(2)(iv).) In addition, 40 CFR 51.308(e) expressly provides that the BART requirements may be met by compliance with a trading program of adequate stringency even without establishment of state-specific limits. Therefore, the existence of a trading program, and influence that the state limits have on a utility's strategy for complying with the trading program requirements, cannot be grounds for disapproving a state plan that satisfies alternative BART requirements without reliance on the trading program.

Comment: ELPC expresses a number of concerns about the BART analysis for Kincaid Station. ELPC particularly expresses concern that the company analyzes wet flue gas desulfurization for a scenario based on a relatively high sulfur Illinois coal but analyzes dry sorbent injection based on a low sulfur western coal, biasing the comparison toward a conclusion that use of the control that is least effective at removing SO_2 nevertheless achieves the lowest emissions of SO_2.

Response: EPA agrees that use of higher sulfur coal in the scenario of wet flue gas desulfurization creates a mismatch in comparing this control to the other control options. However, ELPC does not demonstrate that a more appropriate comparison would yield a different result. Indeed, given how much more expensive wet flue gas desulfurization has been estimated to be for this facility as compared to dry sorbent injection (company estimates of annualized costs of $125 million versus $25 million), EPA believes that a revised BART analysis that used the same fuel for all scenarios, and thus achieved lower emissions with wet flue gas desulfurization, would still show that wet flue gas desulfurization is not cost-effective for this facility. Therefore, EPA continues to believe that Illinois made the appropriate BART determination for this facility.

Comment: ELPC objects to the use of annual average limits, expressing concern that annual average limits allow individual days of concern to have excessive visibility impairment.

Response: EPA's BART guidance establishes presumptive averaging times of 30 days or shorter, but EPA also finds Illinois' limits to be approvable. While a limit expressed as an annual average is inherently less stringent than the same limit expressed as a 30-day average, EPA believes that Illinois provides adequate compensation in part by setting some limits below presumptive levels and in part by

limiting several units that are not subject to a BART requirement.

A useful perspective is to examine the metrics by which regional haze is evaluated. These metrics are averages of visibility across 20 percent of the days of the year, in particular across the 20 percent of days with the worst visibility and across the 20 percent of days with the best visibility. (See 64 FR 35734) Twenty percent of 365 days in a year is 73 days. Furthermore, the days that have better or worse visibility are distributed throughout the year, so that allowance of greater variability in daily or monthly emissions would not necessarily yield worse (or better) visibility. Thus, while a 30-day average limit would be better suited to assuring appropriate mitigation of visibility impairment, EPA finds Illinois' annual average limitations to be adequately commensurate with the averaging time inherent in the visibility metrics being addressed.

Another facet of the use of annual rather than 30-day or shorter averages is stringency. Given normal variability in emissions, an annual average limitation is by definition less stringent than a 30-day or shorter average limitation set at the same level. In some contexts, especially those involving short-term air quality standards, EPA would not accept an annual average limitation without a demonstration that the limitation suffices to mandate that short-term average emission levels must remain below some definable, adequate level. However, different criteria are warranted in the context of regional haze, for which the relevant emissions are the emissions on the 20 percent of days with worst visibility and the 20 percent of days with best visibility. Examining the stringency of the particular limitations that Illinois has adopted, and considering degree of variability in 73-day average emissions that might be expected with an annual average emission limit, EPA finds that Illinois' annual average limitations are sufficiently stringent to conclude that emissions on a 30-day average basis can be expected to provide the visibility improvement that Illinois is required to provide.

Comment: ELPC comments that Illinois' long-term strategy must be disapproved. ELPC expresses particular concern that Illinois' plan does not mandate emission reductions for two power plants, specifically Ameren's Joppa plant and Southern Illinois Power Company's Marion plant, which ELPC believes must be mandated ''to achieve the reasonable progress goals for Class I areas affected by the state.'' ELPC notes that ''Illinois claimed that existing or soon-to-be-implemented regulatory program''—in particular, the MPS/CPS and CSAPR—''would require sufficient emissions reductions on the 15 most significant sources so as to ensure achievement of reasonable progress goals in impacted Class I areas.'' ELPC acknowledges that the Joppa Plant is addressed to the extent that Ameren's plants are collectively limited under the MPS, but ELPC observes that Ameren has the choice to comply with the MPS ''without making any reductions at Joppa,'' even though the plant has ''a Q/D ratio'' (dividing emissions by distance to the nearest Class I area) that is ''nearly three times larger than any other evaluated source.'' ELPC also objects that CSAPR ''also does not ensure emission reductions at either Joppa or Marion, because (1) the rule is under legal challenge, is currently stayed, and may never go into effect, (2) ''does not require emission reductions at particular plants,'' and (3) by restricting annual emissions does not necessarily limit emissions in seasons when the most degradation in visibility may occur.

Response: Achievement of the applicable reasonable progress goals is not contingent on Illinois limiting emissions from the Joppa or Marion plants in particular. Given the distances of the sources in Illinois from affected Class I areas, the least of which is about 120 kilometers from the Joppa plant to Mingo Wilderness Area, the impact on visibility is primarily dependent on the total emission reductions and not on the geographical distribution of those reductions. That is, even if Ameren for example were to opt to control its Coffeen plant (about 240 kilometers from Mingo Wilderness Area) more than its Joppa plant, the net effect on visibility would likely be similar.

EPA recognizes that CSAPR is under challenge and is currently stayed. However, Illinois is not relying on additional reductions from CSAPR to provide its appropriate contribution toward achieving reasonable progress in visibility protection. Therefore, the litigation status of CSAPR is not germane to the approvability of Illinois' regional haze plan.

III. What action is EPA taking?

EPA is approving Illinois' regional haze plan as satisfying the applicable requirements in 40 CFR 51.308. Most notably, EPA concludes that Illinois has satisfied the requirements for BART in 40 CFR 51.308(e) and has adopted a long-term strategy that reduces emissions in Illinois that, in combination with similar reductions elsewhere, EPA expects to suffice to achieve the reasonable progress goals at Class I areas affected by Illinois.

In this action, EPA is also approving a set of rules and two permits for incorporation into the state implementation plan. Specifically, EPA is approving the following rules: Title 35 of Illinois Administrative Code Rules 225.233 (paragraphs a, b, e, and g), 225.291, 225.292, 225.293, 225.295, 225.296 (except paragraph d), and 225 Appendix A. While the rules provide the SO_2 and NO_X limits as one of two options that the affected utilities may choose between, EPA is incorporating into the SIP Illinois' submittal of letters from the affected utilities choosing the option including the SO_2 and NO_X limits, which under the approved rules makes these limits permanently enforceable. Therefore, these SO_2 and NO_X limits are state enforceable and, with this SIP approval, now become federally enforceable as well. EPA also considers the limits of the state permits and the refinery consent decrees to be enforceable. While Illinois adopted the above rules as part of a state rulemaking which mostly addressed mercury emissions, the mercury provisions are not germane to this rulemaking, Illinois did not submit the mercury-related rules, and the limited set of rules that Illinois submitted suffice to mandate the SO_2 and NO_X emission controls that are pertinent to this action.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 29, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(192) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(192) On June 24, 2011, Laurel Kroack, Illinois Environmental Protection Agency, submitted Illinois' regional haze plan to Cheryl Newton, Region 5, EPA. This plan includes a long-term strategy with emission limits for mandating emission reductions equivalent to the reductions from implementing best available retrofit technology and with emission reductions to provide Illinois' contribution toward achievement of reasonable progress goals at Class I areas affected by Illinois. The plan specifically includes regulations establishing Multi-Pollutant Standards and Combined Pollutant Standards, along with letters from the affected electric utilities establishing the applicability and enforceability of the option that includes sulfur dioxide and nitrogen oxide emission limits. The plan also includes permits establishing sulfur dioxide and nitrogen oxide emission limits for three additional electric generating plants and two consent decrees establishing sulfur dioxide and nitrogen oxide emission limits for two refineries.

(i) Incorporation by reference.

(A) The following sections of Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 225, Control of Emissions from Large Combustion Sources, published at 33 IL Reg 10427, effective June 26, 2009, are incorporated by reference:

(*1*) Subpart B: Control Of Mercury Emissions From Coal-Fired Electric Generating Units, Section 225.233 Multi-Pollutant Standards (MPS), only subsections (a), (b), (e), and (g), Section 225.291 Combined Pollutant Standard: Purpose, Section 225.292 Applicability of the Combined Pollutant Standard, Section 225.293 Combined Pollutant Standard: Notice of Intent, Section 225.295 Combined Pollutant Standard: Emissions standards for NO_X and SO_2, and Section 225.296 Combined Pollutant Standard: Control Technology Requirements for NO_X, SO_2, and PM Emissions, except for 225.296(d).

(*2*) Section 225.Appendix A Specified EGUs for Purposes of the CPS (Midwest Generation's Coal-Fired Boilers as of July 1, 2006).

(B) Joint Construction and Operating Permit: Application Number 09090046, Issued on June 23, 2011, to City Water, Light & Power, City of Springfield.

(C) Joint Construction and Operating Permit: Application Number 09050022, Issued on June 24, 2011, to Kincaid Generation, LLC.

(ii) Additional material.

(A) Letter from Guy Gorney, Midwest Generation to Dave Bloomberg, Illinois EPA, dated December 27, 2007, choosing to be subject to provisions of the Multi-Pollutant Standards that include emission limits for sulfur dioxide and nitrogen oxides.

(B) Letter from R. Alan Kelley, Ameren, to Jim Ross, Illinois EPA, dated December 27, 2007, choosing to be subject to provisions of the Combined Pollutant Standards that include emission limits for sulfur dioxide and nitrogen oxides.

(C) Letter from Keith A. McFarland, Dynegy, to Raymond Pilapil, Illinois EPA, dated November 26, 2007, choosing to be subject to provisions of the Combined Pollutant Standards that include emission limits for sulfur dioxide and nitrogen oxides.

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