

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG–104464–18]

RIN 1545–BO55

**Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income; Correction****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Correction to a notice of proposed rulemaking.

**SUMMARY:** This document contains a correction to a notice of proposed rulemaking (REG–104464–18) that was published in the **Federal Register** on Wednesday, March 6, 2019. The proposed regulations provided guidance to determine the amount of the deduction for foreign-derived intangible income and global intangible low-taxed income.

**DATES:** Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking at 84 FR 8188 (March 6, 2019) are still being accepted and must be received by May 6, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Concerning proposed §§ 1.250(a)–1 through 1.250(b)–6, 1.962–1, 1.6038–2, 1.6038–3, and 1.6038A–2, Kenneth Jeruchim at (202) 317–6939; concerning proposed §§ 1.1502–12, 1.1502–13 and 1.1502–50, Michelle A. Monroy at (202) 317–5363 or Austin Diamond-Jones at (202) 317–6847; concerning submissions of comments and requests for a public hearing, Regina L. Johnson, (202) 317–6901 (not toll free numbers).

**SUPPLEMENTARY INFORMATION:****Background**

The proposed regulations that are the subject of this correction are under sections 250, 962, 1502, 6038, and 6038A of the Internal Revenue Code.

**Need for Correction**

As published, the proposed regulations contain errors which may prove to be misleading and need to be clarified.

**Correction of Publication**

Accordingly, the notice of proposed rulemaking published at 84 FR 8188 (March 6, 2019) is corrected as follows:

■ 1. On page 8190, in the preamble, under the heading: “2. Determination of DEI and FDDEI”, in the third column, in the 23rd line, add a sentence at the end

of the paragraph to read: “Finally, the proposed regulations define financial services income by reference to section 904(d)(2)(D) and proposed § 1.904–4(e)(1)(ii).”

**§ 1.250(b)–1 [Corrected]**

■ 2. On page 8216, first column, the last line of paragraph (d)(3)(ii)(B)(2)(i), the language “distributive of PRS’s gross FDDEI” is corrected to read “distributive share of PRS’s gross FDDEI”.

**Martin V. Franks,**

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**BILLING CODE 4830–01–P****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA–R09–OAR–2018–0744; FRL–9992–01–Region 9]

**Air Plan Approval; Hawaii; Regional Haze Progress Report****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve Hawaii’s Regional Haze Progress Report (“Progress Report” or “Report”) submitted by the State of Hawaii on October 20, 2017, as a revision to its state implementation plan (SIP). Hawaii submitted its Progress Report and a negative declaration stating that further revision of the existing regional haze plan is not needed at this time. The Progress Report addresses the federal Regional Haze Rule (RHR) requirements under the Clean Air Act (CAA) to submit a report describing progress in achieving reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the State’s existing plan addressing regional haze. Hawaii’s Progress Report notes that Hawaii has implemented the measures in the regional haze plan due to be in place by the date of the Progress Report and that visibility in Class I areas affected by emissions from Hawaii is improving. The EPA is proposing to approve Hawaii’s determination that the State’s regional haze plan is adequate to meet RPGs in Class I areas affected by emissions from Hawaii for the first implementation period, which extended through 2018, and requires no substantive revision at this time.

**DATES:** Comments must be received on or before May 13, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0744 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Wienke Tax, Air Planning Office, EPA Region IX, (415) 947–4192, [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

**Table of Contents**

- I. Background
  - A. Description of Regional Haze
  - B. History of Regional Haze Rule
  - C. Hawaii’s Regional Haze Plan
- II. Context for Understanding Hawaii’s Progress Report
  - A. Framework for Measuring Progress
  - B. Data Sources for Hawaii’s Progress Report
- III. The EPA’s Evaluation of Hawaii’s Progress Report
  - A. Status of Implementation of All Measures Included in the Regional Haze Implementation Plan
  - B. Summary of Emissions Reductions
  - C. Summary of Visibility Conditions
  - D. Determination of Adequacy
  - E. Consultation With FLMs
- IV. The EPA’s Proposed Action
- V. Statutory and Executive Order Reviews

**I. Background****A. Description of Regional Haze**

Regional haze is visibility impairment produced by many sources and activities located across a broad geographic area that emit fine particles

that impair visibility by scattering and absorbing light, thereby reducing the clarity, color, and visible distance that one can see. These fine particles also can cause serious health effects and mortality in humans and contribute to environmental impacts, such as acid deposition and eutrophication of water bodies.

### B. History of Regional Haze Rule

In section 169A(a)(1) of the CAA Amendments of 1977, Congress created a program to protect visibility in designated national parks and wilderness areas, establishing 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 manmade air pollution.” In accordance with section 169A of the CAA and after consulting with the Department of the Interior, the EPA promulgated a list of 156 mandatory Class I federal areas where visibility is identified as an important value.<sup>1</sup> In this notice, we refer to mandatory Class I federal areas on this list as “Class I areas.”

With the CAA Amendments of 1990, Congress added section 169B to address regional haze issues. The EPA promulgated the RHR on July 1, 1999.<sup>2</sup> In the RHR, the EPA revised the existing visibility regulations to integrate provisions addressing regional haze impairment and to establish a comprehensive visibility protection program for Class I areas. As defined in the RHR, the RPGs must provide for an improvement in visibility for the most impaired days (“worst days”) over the period of the implementation plan and ensure no degradation in visibility for the least impaired days (“best days”) over the same period.<sup>3</sup> The first implementation plan generally covers the period from 2000–2018 (also known as the first planning period).

Five years after submittal of the initial regional haze plan, states were required to submit progress reports that evaluate progress towards the RPGs for each Class I area within the state and in each Class I area outside the state which may be affected by emissions from within the state.<sup>4</sup> States were also required to

submit, at the same time as the progress report, a determination of the adequacy of the state’s existing regional haze plan.<sup>5</sup>

### C. Hawaii’s Regional Haze Plan

Hawaii did not submit an initial regional haze SIP. Consequently, the EPA developed a regional haze federal implementation plan (FIP), which was promulgated on October 9, 2012.<sup>6</sup>

On October 20, 2017, the State of Hawaii submitted the Progress Report to meet the requirements of 40 CFR 51.308(g) and (h). In accordance with these requirements, the Progress Report describes the status of the implementation of measures included in the regional haze implementation plan,<sup>7</sup> emissions reductions from these measures, and improvements in visibility conditions at the State’s Class I areas. The Progress Report also includes a negative declaration stating that further revision of the existing implementation plan is not needed in accordance with 40 CFR 51.308(h)(1).

The EPA is proposing to approve Hawaii’s Progress Report.

## II. Context for Understanding Hawaii’s Progress Report

To better understand Hawaii’s Progress Report as well as the EPA’s evaluation of it, this section provides background on the regional haze program in Hawaii.

### A. Framework for Measuring Progress

The EPA has established a metric for determining visibility conditions at Class I areas referred to as the “deciview index,” which is measured in deciviews (dv), as defined in 40 CFR 51.301. A deciview expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Deciviews are determined by using air quality data collected from the Interagency Monitoring of Protected Visual Environments (IMPROVE) network monitors to estimate light extinction, and then transforming the value of light extinction using a logarithmic function.

Hawaii has two Class I areas within its borders: Haleakala National Park (NP) on Maui Island and Hawaii Volcanoes NP on the island of Hawaii. For this Progress Report, monitoring data representing visibility conditions in Hawaii’s two Class I areas were based on the three IMPROVE monitors

identified in Table 1.<sup>8</sup> As shown in the table, the HACR1 and HALE1 monitoring sites represent Haleakala NP, and the HAVO1 site represents Hawaii Volcanoes NP.

TABLE 1—HAWAII IMPROVE MONITORING SITES AND REPRESENTED CLASS I AREAS

Class I area	Site code
Haleakala NP .....	<sup>a</sup> HACR1. <sup>b</sup> HALE1.
Hawaii Volcanoes NP .....	HAVO1.

<sup>a</sup>Monitoring at the HACR1 site began in 2007.

<sup>b</sup>The HALE1 monitoring site operated from 2001 to 2011.

Under the RHR, a state’s initial regional haze SIP must establish two RPGs for each of its Class I areas: One for the 20 percent least impaired days and one for the 20 percent most impaired days. The RPGs must provide for an improvement in visibility on the 20 percent most impaired days and ensure no degradation in visibility on the 20 percent least impaired days, as compared to visibility conditions during the baseline period. In establishing the RPGs, a state must consider the uniform rate of visibility improvement from the baseline to natural conditions in 2064 and the emission reduction measures needed to achieve that uniform rate. The typical method for determining RPGs is to use meteorological and air quality modeling to predict the visibility at Class I areas for the end of the planning period (2018 in this case). However, the dominant cause of visibility impairment in Hawaii’s Class I areas is sulfate compounds, and over 96 percent of the sulfate emissions are from Hawaii’s volcano. Volcanic eruptions vary greatly from year to year with no discernable patterns. As a result, modeling to project overall visibility conditions has little value for Hawaii’s Class I areas. Consequently, the EPA set the RPGs for Hawaii’s two Class I areas based on island-specific inventories for Maui and Hawaii, the islands that contain Class I areas.<sup>9</sup>

### B. Data Sources for Hawaii’s Progress Report

To demonstrate visibility progress, Hawaii used data from the Western

<sup>8</sup> The HALE1 IMPROVE monitor began operation on Maui in 1990 at a site about 3.5 miles outside of Haleakala NP. In 2007, a second IMPROVE monitor (HACR1) was installed at a higher elevation within Haleakala NP. The HACR1 site was considered more representative of visibility conditions within Haleakala NP and replaced the HALE1 monitoring station in 2012. See Progress Report, 3, and Appendix A.

<sup>9</sup> 77 FR 31692, 31707–13 (May 29, 2012).

<sup>1</sup> The Class I areas are listed at 40 CFR part 81, subpart D. Areas designated as Class I areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)).

<sup>2</sup> 64 FR 35714 (July 1, 1999). The rule was subsequently revised on July 6, 2005 (70 FR 39104), October 13, 2006 (71 FR 60612), and January 10, 2017 (82 FR 3078).

<sup>3</sup> 40 CFR 51.308(d)(1).

<sup>4</sup> 40 CFR 51.308(g).

<sup>5</sup> 40 CFR 51.308(h).

<sup>6</sup> 77 FR 61478.

<sup>7</sup> “Implementation plan,” as defined in 40 CFR 51.301, includes FIP provisions, as well as SIPs.

Regional Air Partnership (WRAP) Technical Support System (TSS). Hawaii used the most recent visibility information available from the WRAP TSS as a technical basis for its progress report. It also used the technical data and analyses in a report titled “Western Regional Air Partnership Regional Haze Rule Reasonable Progress Summary Report” (“WRAP Report”), dated June 28, 2013.<sup>10</sup> The WRAP Report was prepared for WRAP, “on behalf of the 15 western state members in the WRAP region, to provide the technical basis for use by the western states to develop the first of RHR individual Progress Reports.”<sup>11</sup> Hawaii’s Progress Report presented data for both of its Class I areas, comparing visibility conditions for the 20 percent most impaired and 20 percent least impaired days during the baseline period (2000–2004), the current period for the Progress Report (2011–2015), and years between those periods.

### III. The EPA’s Evaluation of Hawaii’s Progress Report

This section describes the contents of Hawaii’s Progress Report and the EPA’s review of the report, the determination of adequacy required by 40 CFR 51.308(h), and the requirement for state and Federal Land Manager (FLM) coordination in 40 CFR 51.308(i).

#### A. Status of Implementation of All Measures Included in the Regional Haze Implementation Plan

In its Progress Report, Hawaii described the status of the control measures that the EPA and the State relied on to implement the regional haze program: The sulfur dioxide (SO<sub>2</sub>) emissions cap from the FIP; the State’s renewable portfolio standard and energy efficiency programs; the North American Emissions Control Area (ECA); federal mobile source regulations; the State’s open burning regulations; and facility closures. Hawaii included a description of these programs, which are summarized below. Hawaii also explained that the FIP did not include any controls to implement best available retrofit technology (BART).

#### 1. SO<sub>2</sub> Emissions Cap for Electricity Generating Units (EGUs)

The Hawaii regional haze FIP established an SO<sub>2</sub> emissions cap in 40

CFR 52.633(d). Affected EGUs shall not emit or cause to be emitted more than 3,550 tons per year (tpy), summed over 5 units using a rolling 12-month period. These units are Kanoelehua Hill Generating Station, boilers Hill 5 and Hill 6; Puna Power Plant, boiler 1; and Shipman Power Plant, boilers S–3 and S–4. The primary fuel for these boilers is fuel oil number 6. The Shipman Power Plant permanently closed on December 31, 2015; thus, the SO<sub>2</sub> emissions cap applies only to the affected EGUs at Kanoelehua Hill and Puna. The Hawaii Department of Health (DOH) provided copies of the current air permits for each facility to the EPA in November 2018 to document the State’s implementation of the FIP.<sup>12</sup>

#### 2. Renewable Portfolio Standard (RPS) and Energy Efficiency Programs

Hawaii has state-level renewable energy and energy efficiency programs for greenhouse gas reduction that have reduced electricity generation. These programs have also resulted in reductions in emissions of SO<sub>2</sub> and nitrogen oxides (NO<sub>x</sub>) due to reduced fuel use. As part of Hawaii’s RPS, Hawaiian Electric Light Company (HELCO) plans to achieve 100 percent renewable energy by 2045.<sup>13</sup>

#### 3. Hawaii Agricultural and Open Burning Programs

The Hawaii DOH regulates open burning, including agricultural, residential, and prescribed burning. For agricultural burning, the State has established a permit program for burning green waste, which may be restricted during times of drought, fire hazard, or designated “No Burn” periods. Hawaii Commercial and Sugar Company (HC&S) on Maui had agricultural burn permits to burn cane, but the facility closed in 2016.<sup>14</sup>

#### 4. Facility Closures

Table 2.2–1 in the Progress Report lists three sources that have closed, including HC&S Puunene Sugar Mill, Maui Pineapple Company, and HELCO Shipman. Although these closures were not required under the FIP, all of these closures have reduced emissions of visibility-impairing pollutants.<sup>15</sup>

#### 5. North American ECA

The North American ECA became enforceable in August 2012 and

regulates emissions of NO<sub>x</sub>, SO<sub>2</sub>, and fine particulate from ships. The North American ECA includes waters adjacent to the eight main Hawaiian Islands. The North American ECA emissions standards include a decreasing fuel sulfur limit and engine NO<sub>x</sub> standards, both of which will contribute to reductions of visibility-impairing pollutants near Class I areas in Hawaii.

#### 6. Federal Mobile Source Controls

In its Progress Report, Hawaii discussed several rules the EPA has promulgated to reduce emissions from mobile sources. In 2001, the EPA promulgated a rule with an emissions limit for NO<sub>x</sub> from heavy-duty highway vehicles of 0.20 grams per brake-horsepower-hour, which was phased in between 2007 and 2010.<sup>16</sup> In 2004, the EPA promulgated a Clean Air Nonroad Diesel Rule to reduce emissions from nonroad diesel engines and/or fuels, including construction, agricultural, industrial, airport, locomotive, and marine vessel engines. The rule established limits to be phased in by 2014.<sup>17</sup> The EPA also issued new fuel sulfur requirements for ultra-low sulfur diesel fuel in 2006.<sup>18</sup> Federal Tier II fuel standards reduced the sulfur content of gasoline by up to 90 percent.<sup>19</sup>

#### B. Summary of Emissions Reductions

Section 5.0 of the Hawaii Progress Report includes a summary of the emissions reductions achieved throughout the State through implementation of the control measures relied upon to achieve reasonable progress. In addition, the Progress Report summarizes changes in emissions inventories for all major visibility-impairing pollutants from point, area, on-road mobile, non-road mobile, marine, and anthropogenic fire source categories in the State. For these summaries, emissions during the baseline years are represented using a 2005 inventory, which was the most complete inventory available at the time the regional haze FIP was developed. It was developed with support from ENVIRON International Corporation and some emissions estimates were refined by Hawaii DOH. The EPA also worked with contractors at the University of North Carolina and ICF International on estimating on-road emissions.<sup>20</sup>

<sup>16</sup> 66 FR 5002 (January 18, 2001).

<sup>17</sup> 69 FR 38958 (June 29, 2004).

<sup>18</sup> 65 FR 6698 (February 10, 2000).

<sup>19</sup> See <https://www.epa.gov/gasoline-standards/gasoline-sulfur>.

<sup>20</sup> Technical Support Document for the Proposed Action on the Federal Implementation Plan for the Regional Haze Program in the State of Hawaii, U.S. EPA Region 9, May 14, 2012.

<sup>10</sup> See Progress Report, 3, and Western Regional Air Partnership Regional Haze Rule Reasonable Progress Summary Report (June 28, 2013). [http://www.wrapair2.org/documents/Fullpercent20Report/WRAP\\_RHRPR\\_Full\\_Report\\_without\\_Appendices.PDF](http://www.wrapair2.org/documents/Fullpercent20Report/WRAP_RHRPR_Full_Report_without_Appendices.PDF). (Also included as Appendix A of the Progress Report).

<sup>11</sup> Progress Report, Appendix A, 12.

<sup>12</sup> See letter dated November 15, 2018, from Bruce S. Anderson, Ph.D., Director of Health, Hawaii DOH, to Mr. Michael Stoker, Regional Administrator, U.S. EPA Region 9.

<sup>13</sup> Progress Report, 14.

<sup>14</sup> Id. at 16.

<sup>15</sup> Id. at 17.

Differences between inventories are represented as the difference between the 2005 inventory developed for the Hawaii regional haze FIP and a 2011 inventory based on the 2011 National Emissions Inventory.

Hawaii's Progress Report noted that in the SO<sub>2</sub> emissions inventory, volcanic emissions dominate the inventory, far exceeding anthropogenic sources of SO<sub>2</sub>. Likewise, nonanthropogenic particulate matter (PM<sub>10</sub>) emissions from sea spray dominate the PM<sub>10</sub> inventory. Specifically, Hawaii identified in the Progress Report:

- SO<sub>2</sub> emissions reductions achieved through controls on point and area

sources with slight (less than 1 percent of total SO<sub>2</sub> emissions) increases between 2005 and 2011 in other fire/prescribed burning;

- Decreases in NO<sub>x</sub> emissions from area sources and mobile sources, which more than offset increases in point source emissions and emissions from other fire/prescribed burning; and
- A slight (4 percent) increase in statewide volatile organic compound (VOC) emissions due to increases from point and area sources that was not offset by decreases from mobile sources.

The emissions inventories were complicated by the changes and enhancements that have occurred

between development of the baseline and current period emissions inventories. Hawaii stated that some of the differences between inventories are more reflective of changes in inventory methodology, rather than changes in actual emissions. For example, both biogenic VOC emissions and volcanic emissions were updated.<sup>21</sup>

Notwithstanding these differences between the 2005 and 2011 emissions inventory methodologies, estimated emissions for SO<sub>2</sub>, NO<sub>x</sub>, VOC, PM<sub>10</sub> and ammonia (NH<sub>3</sub>) are summarized in Tables 2 and 3 below.

TABLE 2—2005 STATEWIDE EMISSIONS INVENTORY

	SO <sub>2</sub>	NO <sub>x</sub>	VOC	PM <sub>10</sub>	NH <sub>3</sub>
<b>Anthropogenic Sources</b>					
Point Sources .....	27,072	22,745	2,695	3,536	12
Area Sources .....	3,716	1,509	16,920	33,408	11,136
Agricultural Burning .....	178	406	535	1,567	60
Other Fire .....	0	1	7	7	0
On-Road Mobile .....	321	20,642	12,066	638	1,085
Non-Road Mobile .....	669	6,296	6,383	649	0
Marine .....	3,619	5,624	209	398	0
<b>Total Anthropogenic .....</b>	<b>35,575</b>	<b>57,223</b>	<b>38,815</b>	<b>40,203</b>	<b>12,298</b>
<b>Natural Sources</b>					
Volcano .....	961,366	0	0	0	0
Sea Spray .....	0	0	0	382,637	0
Windblown Dust .....	0	0	0	46,808	0
Wildfire .....	591	2,156	4,729	4,771	540
Biogenic .....	0	4,617	130,153	0	0
<b>Total Natural .....</b>	<b>961,957</b>	<b>6,773</b>	<b>134,882</b>	<b>439,216</b>	<b>540</b>
<b>All Sources</b>					
<b>Total Emissions .....</b>	<b>997,531</b>	<b>63,996</b>	<b>173,697</b>	<b>479,419</b>	<b>12,838</b>

Source: Progress Report, 42.

TABLE 3—2011 STATEWIDE EMISSIONS INVENTORY

	SO <sub>2</sub>	NO <sub>x</sub>	VOC	PM <sub>10</sub>	NH <sub>3</sub>
<b>Anthropogenic Sources</b>					
Point Sources .....	22,047	28,982	3,059	2,813	1,031
Area Sources .....	3,331	1,176	18,425	34,803	7,547
Agricultural Burning .....	178	405	535	1,567	148
Other Fire .....	36	389	1,672	853	59
On-Road Mobile .....	102	15,503	11,180	305	412
Non-Road Mobile .....	7	3,842	5,428	403	6
Marine .....	2,037	4,895	154	338	3
<b>Total Anthropogenic .....</b>	<b>27,738</b>	<b>55,192</b>	<b>40,453</b>	<b>41,420</b>	<b>9,749</b>
<b>Natural Sources</b>					
Volcano .....	406,030	0	0	0	0
Sea Spray .....	0	0	0	382,637	0
Windblown Dust .....	0	0	0	46,808	0
Wildfire .....	9	99	390	162	12

<sup>21</sup> See Progress Report, 42, footnotes 4 and 5 to Table 5.0-3.

TABLE 3—2011 STATEWIDE EMISSIONS INVENTORY—Continued

	SO <sub>2</sub>	NO <sub>x</sub>	VOC	PM <sub>10</sub>	NH <sub>3</sub>
Biogenic .....	0	4,617	130,153	0	0
Total Natural .....	406,039	4,716	130,543	429,607	12
<b>All Sources</b>					
Total Emissions .....	433,768	59,808	170,996	471,027	9,761

Source: Progress Report, 42.

Changes in emissions from 2005 to 2011 for SO<sub>2</sub>, NO<sub>x</sub>, and VOC, respectively, are noted in absolute value and as a percentage of baseline emissions presented in tables 4, 5, and 6.

TABLE 4—CHANGES IN ANTHROPOGENIC SO<sub>2</sub> EMISSIONS AND PERCENT CHANGES FROM 2005–2011

Source category	Statewide SO <sub>2</sub> (tpy)			
	2005	2011	Change	Percent change
Point Sources .....	27,072	22,047	–5,025	–19
Area Sources .....	3,716	3,331	–385	–10
Agricultural Burning .....	178	178	0	0
Other Fire/Prescribed Burning .....	0	36	36	>100
On-Road Mobile Sources .....	321	102	–219	–68
Non-Road Mobile Sources .....	669	7	–662	–99
Marine .....	3,619	2,037	–1,582	–44
Total Anthropogenic .....	35,575	27,738	–7,837	–22

Source: Progress Report, 44.

TABLE 5—CHANGES IN ANTHROPOGENIC NO<sub>x</sub> EMISSIONS AND PERCENT CHANGES FROM 2005–2011

Source category	Statewide SO <sub>2</sub> (tpy)			
	2005	2011	Change	Percent change
Point Sources .....	22,745	28,892	6,237	27
Area Sources .....	1,509	1,176	–333	–22
Agricultural Burning .....	406	405	–1	–0.2
Other Fire/Prescribed Burning .....	1	389	388	>100
On-Road Mobile Sources .....	20,642	15,503	–5,139	–25
Non-Road Mobile Sources .....	6,296	3,842	–2,454	–39
Marine .....	5,624	4,895	–729	–13
Total Anthropogenic .....	57,223	55,192	–2,031	–4

Source: Progress Report, 45.

TABLE 6—CHANGES IN ANTHROPOGENIC VOC EMISSIONS AND PERCENT CHANGES FROM 2005–2011

Source category	Statewide SO <sub>2</sub> (tpy)			
	2005	2011	Change	Percent change
Point Sources .....	2,695	3,059	364	14
Area Sources .....	16,920	18,425	1,505	9
Agricultural Burning .....	535	535	0	0
Other Fire/Prescribed Burning .....	7	1,672	166	>100
On-Road Mobile Sources .....	12,066	11,180	–886	–25
Non-Road Mobile Sources .....	6,383	5,428	–955	–15
Marine .....	209	154	–55	–26
Total Anthropogenic .....	38,815	40,452	1,638	4

Source: Progress Report, 46.

In its Progress Report, Hawaii concluded that the control strategies in the existing regional haze plan are adequate to meet the 2018 RPGs. Progress includes significant reductions in SO<sub>2</sub> and NO<sub>x</sub> emissions from Maui and Hawaii Island point sources, including the SO<sub>2</sub> emissions cap,

renewable energy projects, the retirement of some units, and facility closures.

### C. Summary of Visibility Conditions

Hawaii's Progress Report provided visibility data during the baseline period (2000–2004), the current period for the Progress Report (2011–2015), and

for the rolling 5-year periods between the baseline and current periods, based on IMPROVE data that were available at the time Hawaii developed the Progress Report. These RPGs are listed in Table 7 along with the baseline and current (as of submission of the Progress Report) visibility conditions.

TABLE 7—HAWAII CLASS I AREA VISIBILITY CONDITIONS ON THE 20 PERCENT MOST AND LEAST IMPAIRED DAYS

Hawaii Class I area	Monitor/region	20% Most impaired days				20% Least impaired days			
		2000–04 Baseline (dv)	2005–09 First progress period (dv)	2011–15 current period (dv)	2018 RPGs (dv)	2000–04 Baseline (dv)	2005–09 First progress period (dv)	2011–15 Current period (dv)	2018 RPGs (dv)
Haleakala NP .....	<sup>a</sup> HACR1 .....	<sup>b</sup> 9.5	<sup>b</sup> 10.8	<sup>c</sup> 9.7	<sup>d</sup> 13	<sup>e</sup> 1.0	<sup>e</sup> 0.9	<sup>f</sup> 0.6	<sup>g</sup> 4.5
	HALE1 .....	<sup>b</sup> 13.3	<sup>b</sup> 14.8			<sup>e</sup> 4.5	<sup>e</sup> 4.4		
Hawaii Volcanoes NP	HAVO1 .....	<sup>b</sup> 18.9	<sup>h</sup> 24.9	<sup>i</sup> 18.0	<sup>d</sup> 18.7	<sup>e</sup> 4.1	<sup>k</sup> 3.8	<sup>l</sup> 3.4	<sup>m</sup> 4.0

<sup>a</sup> The HACR1 IMPROVE monitor began operation in 2007, thus 2007–2009 data used for Haleakala NP for the 2005–2009 period. See Progress Report, 26–27.

<sup>b</sup> Progress Report, Appendix A, Table 6.5–4.

<sup>c</sup> Id., Table 4.1–1.

<sup>d</sup> Id., Table 6.5–5.

<sup>e</sup> 77 FR 31692, 31713 (May 29, 2012). The RPG for Haleakala was based on monitoring data from HALE1.

<sup>f</sup> Progress Report, Table 4.1–1.

<sup>g</sup> Id., Table 7.0–2 (sum of values for all species under “2018 With FIP”).

<sup>h</sup> Id., Table 4.2–3.

<sup>i</sup> Id., Table 4.1–3.

<sup>j</sup> Id., Table 4.2–4.

<sup>k</sup> Id.

<sup>l</sup> Id., Table 4.1–4.

<sup>m</sup> Id., Table 7.0–2 (sum of values for all species under “2018 With FIP”).

Based on the information in Chapter 4.0 of the Progress Report, Hawaii demonstrated that both Class I areas experienced improvements in visibility for the 20 percent most and least impaired days between the baseline (2000–2004) and current (2011–2015) visibility periods, as summarized in table 7 above and shown in tables 4.0–1, 4.0–2, 4.0–3, 4.1–1 and 4.1–2 of the Progress Report. Table 7 also shows that the five-year average worst days and best days during the current period (2011–2015) were below (*i.e.*, better than) the 2018 RPGs. Thus, both of the State's Class I areas are on track to meet or surpass their 2018 RPGs.

Hawaii's Progress Report included an analysis of progress and impediments to progress. Hawaii evaluated visibility trends from 2007 to 2015 from the HACR1 monitor and 2001 to 2015 at the HAVO1 monitor.<sup>22</sup> Hawaii noted that five-year rolling averages of the haze index show slight visibility improvements on both the 20 percent most-impaired days and more significant visibility improvements for the 20 percent least-impaired days for both Class I areas.<sup>23</sup> Hawaii's Progress Report concluded that control strategies in the existing regional haze plan are adequate to meet the 2018 RPGs. The average trends for least-impaired days

show improvement at both monitoring locations. Similarly, average trends for most-impaired days show improvement. The Progress Report also contains a review of Hawaii's visibility monitoring strategy. In the Progress Report, Hawaii concludes that the IMPROVE network continues to comply with the monitoring requirements in the Regional Haze Rule and that no modifications to Hawaii's visibility monitoring strategy are necessary at this time.

The Progress Report did not expressly address Class I areas outside the state. As explained in our proposed regional haze FIP:

Hawaii lies approximately 2,390 miles southwest of the Continental United States and has been included by EPA in the regional haze program, “because of the potential for emissions from sources within [its] borders to contribute to regional haze impairment in Class I areas also located within [Hawaii's] own jurisdiction.”<sup>24</sup>

Therefore, we found that emissions from Hawaii were not reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal area located in another state or states.<sup>25</sup> For the same reasons, we now find that it was appropriate for Hawaii to exclude discussion of out-of-state areas in its Progress Report.

### D. Determination of Adequacy

Within the Progress Report, the State of Hawaii provided a negative declaration stating that further revision of the existing implementation plan is not needed in accordance with 40 CFR 51.308(h)(1).<sup>26</sup> The basis for the State's negative declaration is the information in the Progress Report and the determination that Hawaii was on track to achieve 2018 RPGs for the State's Class I areas. Given the reductions in SO<sub>2</sub> and NO<sub>x</sub> emissions and the improvements in visibility at the State's Class I areas achieved during the planning period, the EPA proposes to approve Hawaii's determination that the existing Hawaii regional haze plan requires no substantive revisions at this time to achieve the established RPGs for Class I areas.

### E. Consultation With FLMs

The State of Hawaii invited the FLMs to comment on its draft Progress Report on May 12, 2017, and provided a 60-day comment period prior to releasing the report for public comment.<sup>27</sup> In a letter dated July 6, 2017, the FLMs concurred with Hawaii's conclusion in its draft progress report that additional revisions

<sup>26</sup> See Progress Report, 81.

<sup>27</sup> See electronic mail dated May 12, 2017, from Michael Madsen, Hawaii DOH, to Susan Johnson and Patricia Brewer, National Park Service, requesting comment on Hawaii's Regional Haze Progress Report, in the docket for today's action.

<sup>22</sup> See Progress Report, 37.

<sup>23</sup> Id. at 31.

<sup>24</sup> 77 FR 31713 (quoting 64 FR 35714, 35720).

<sup>25</sup> Id.

to the State's regional haze implementation plan were not needed at this time.<sup>28</sup> The EPA proposes to find that Hawaii has addressed the requirements in 40 CFR 51.308(i).

#### IV. The EPA's Proposed Action

The EPA is proposing to approve the Hawaii Regional Haze Progress Report submitted to the EPA on October 20, 2017, as meeting the applicable requirements of the CAA and RHR, as set forth in 40 CFR 51.308(g). The EPA proposes to approve Hawaii's determination that the existing regional haze plan is adequate to meet the established RPGs in Class I areas affected by emissions from Hawaii and requires no substantive revision at this time. We propose to find that Hawaii fulfilled the requirements in 40 CFR 51.308(i) regarding state coordination with FLMs.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations.<sup>29</sup> Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed 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 proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because actions such as SIP approvals are exempted under Executive Order 12866;
- 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 this rulemaking does not involve technical standards; and
- Does not provide the 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 proposed action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

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

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

Dated: March 26, 2019.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2019-07212 Filed 4-10-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2018-0795; FRL-9992-13-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Negative Declaration for the Oil and Natural Gas Industry Control Techniques Guidelines

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a

state implementation plan (SIP) revision submitted by the State of Delaware. This revision pertains to a negative declaration for the October 2016 Oil and Natural Gas Control Techniques Guidelines (CTG) (2016 Oil and Gas CTG). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before May 13, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0795 at <https://www.regulations.gov>, or via email to [Spielberger.susan@epa.gov](mailto:Spielberger.susan@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Erin Trouba, (215) 814-2023, or by email at [trouba.erin@epa.gov](mailto:trouba.erin@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The revision consists of the State of Delaware's negative declaration for the October 2016 Oil and Natural Gas CTG. On October 27, 2016, EPA published in the **Federal Register** the "Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry." 81 FR 74798. The CTG provided information to state, local, and tribal air agencies to assist them in determining reasonably available control technology (RACT) for volatile organic compounds (VOC) emissions from select oil and natural gas industry emission sources. Section 182(b)(2)(A) of the CAA requires that for ozone nonattainment areas

<sup>28</sup> See letter dated July 6, 2017, from Patricia Brewer, National Park Service, to Michael Madsen, Hawaii DOH.

<sup>29</sup> 42 U.S.C. 7410(k); 40 CFR 52.02(a).