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December 6, 2012

Attention: Filing Center
Public Utility Commission of Oregon
550 Capitol Street NE, #215
PO Box 2148
Salem, OR 97308-2148
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Re: *In the Matter of IDAHO POWER COMPANY Request for General Rate Revision*
PUC Docket No.: UE 233
DOJ File No.: 860115-GB0563-11

Enclosed for filing are an original and one copy of Revised Staff's Request to the Administrative Law Judge to Take Official Notice in the above-captioned docket for filing with the PUC today.

Sincerely,

Stephanie S. Andrus
Senior Assistant Attorney General
Business Activities Section

Enclosures
SSA:jrs/#3807924
c: UE 233 Service List (electronic copy only)

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 233

In the Matter of IDAHO POWER COMPANY Request for a General Rate Revision (Phase II)	REVISED STAFF REQUEST TO THE ADMINISTRATIVE LAW JUDGE TO TAKE OFFICIAL NOTICE

Pursuant to OAR 860-001-0460(1)(b), Staff of the Public Utility Commission of Oregon submits this revised request to the administrative law judge (ALJ) to take official notice of the following rules and notices of proposed rules issued by the Environmental Protection Agency. Staff has made corrections to the citations for the second and ninth documents listed in this request. And, because the first document listed, "*Visibility Protection for Federal Class I Areas,*" 45 FR 80086, is not easy to obtain on-line, a copy of this document is attached to this request.

- *Visibility Protection for Federal Class I Areas*, 45 FR 80086
- *Regional Haze Regulations (NOPR)*, 62 FR 41138 (1997 WL 425017)
- *Regional Haze Regulations*, 64 FR 35714 (1999 WL 438259)
- *Proposed Revisions to Regional Haze Rule to Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States (NOPR)*, 67 FR 30418 (2002 WL 848905)
- *Revisions to the Regional Haze Rule to Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes within that Geographic Area*, 68 FR 33764 (2003 WL 21280718)
- *Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations*, 70 FR 39104 (2005 WL 1551591)
- *Regional Haze Regulations; Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations*, 71 FR 60612 (2006 WL 2918149)

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- *Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze (NOPR)*; 77 FR 33022 (2012 WL 2152963) (§309(g))
- *Approval and Promulgation of State Implementation Plans; New Mexico; Regional Haze Requirements for Mandatory Class I Areas (NOPR)*; 77 FR 36044 (2012 WL 186515)
- *Approval and Promulgation of State Implementation Plans; State of Wyoming; Regional Haze Rule Requirements for Mandatory Class I Areas (NOPR)*; 77 FR 30953 (2012 WL 1865152)
- *Approval and Promulgation of State Implementation Plans; State of Wyoming; Regional Haze Requirements for Mandatory Class I Areas under 40 C.F.R. 51.309,* http://www.epa.gov/region8/air/RulemakingActionOnWyoming309RegionalHazePlanNov2012.pdf
- *Clean Air Act Final Interim Approval of Operating Permits Program; State of Wyoming,* 60 FR 3766 (1995 WL 16938)
- *Clean Air Act Full Approval of Operating Permit Program; Approval of Expansion of State Program Under Section 112(I); State of Wyoming*, 64 FR 8523 (1999 WL 78932)

The proposed rules and rules listed in this request are referenced in the Staff Final Brief and help to establish the regulatory context for Idaho Power's investment in the Scrubber Upgrade at issue in this docket. Accordingly, Staff asks that the ALJ take official notice of the rules and proposed rules.

DATED this 10th day of December 2012.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD FRL-1671-8, Docket No. A-79-40]

Visibility Protection for Federal Class I Areas

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Today's action promulgates regulations to assure reasonable progress toward "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." The responsibility for developing the program and making any substantive decisions will lie with the thirty-six States which contain mandatory Class I Federal areas.

The principal effect of these regulations will be to establish long-range goals, a planning process, and implementation procedures. Preliminary analyses have identified no existing sources which will need to install additional controls under these regulations. Some large new sources will be required to analyze their potential impact on visibility in mandatory Class I Federal areas; the State will retain final authority over construction permits for those sources.

Several changes have been made to the regulations as proposed on May 22, 1980. Included among the more significant changes are requirements giving States more authority over substantive decisions and provisions that the State may consider energy and economic impacts when evaluating sources which have visibility impacts on integral vistas of mandatory Class I Federal areas.

DATE: These rules are effective January 2, 1981. Petitions for review of these regulations must be filed in the United States Court of Appeals for the District of Columbia by February 2, 1981.

ADDRESS: Docket No. A-79-40, containing material relevant to this action, is located in West Tower Lobby, Gallery 1, U.S. Environmental Protection Agency, Central Docket Section, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Johnnie L. Pearson, Office of Air Quality Planning and Standards (MD-15), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: (919) 541-5497.

I. Background

A. The Statute

Section 169A of the Clean Air Act requires visibility protection for mandatory Class I Federal areas where it has been determined that visibility is an important value. "Mandatory Class I Federal areas" are all international parks and certain national parks and wilderness areas as described in Section 162(a) of the Clean Air Act (Act). To work toward meeting the national visibility goal set out in Section 169A(a)(1) of the prevention of any future and remedying of any existing man-made visibility impairment in such areas, Section 169A requires that the:

- Department of Interior review all mandatory Class I Federal areas and identify those where visibility is an important value [Section 169A(a)(2)].
- EPA, after consulting with the Department of Interior, promulgate a list of the mandatory Class I Federal areas in which visibility is an important value [Section 169A(a)(2)].
- EPA prepare a report to Congress on methods for achieving progress toward the visibility goal. The report must include methods to determine visibility impairment, modeling techniques, methods for preventing and remedying man-made air pollution and resulting visibility impairment, and a discussion of visibility related pollutants and sources [Section 169A(a)(3)].
- EPA promulgate regulations to assure reasonable progress toward the national visibility goal which will, among other things, (1) provide guidelines to States for including visibility protection in State Implementation Plans (SIPs); (2) require SIPs to include emission limits, schedules for compliance, and other measures as may be necessary to make reasonable progress toward meeting the national visibility goal; and (3) provide guidelines for determining emission limitations representing best available retrofit technology for fossil-fuel fired power plants in excess of 750 megawatts generating capacity [Section 169A(a)(4) and Section 169A(b)].
- EPA approve or disapprove SIP revisions submitted in response to the promulgated requirements [Section 110(a)(2)] and promulgate regulations for those States which submit inadequate regulations or fail to submit regulations in response to EPA's requirements [Section 110(c)].

In addition, Congress also included visibility protection requirements in the preconstruction review for prevention of significant deterioration (PSD) [Section 165] by:

- Giving Federal Land Managers "an affirmative responsibility" to protect the visibility values of a Federal Class I area and the right to recommend the denial of a PSD permit if an adverse impact on visibility would result, even if the Class I PSD increments would be met [Section 165(d)].

Requiring PSD permit applicants to analyze the visibility at the site of the proposed construction and any area potentially affected by the proposed construction [Section 165(e)].

B. Rulemaking

On November 30, 1979, the Agency published an Advance Notice of Proposed Rulemaking (ANPRM) (44 FR 69116), and also published its final determination under Section 169A(a)(2) of mandatory Class I Federal areas where visibility is an important value (44 FR 69122). The purpose of that ANPRM was to inform the public of the impending regulatory development effort and to solicit comment on various major issues needing resolution during regulatory development. EPA, on May 22, 1980 (45 FR 34762), published a Notice of Proposed Rulemaking (NPRM) and solicited comments on the regulatory approach presented. The Agency also announced two public hearings which were held in Washington, D.C., (June 30, 1980) and Salt Lake City, Utah, (July 2, 1980) for the purpose of receiving oral public comment on the proposed rules. The Agency subsequently announced (45 FR 49110, July 23, 1980) the availability of certain draft guideline documents, solicited comments on those guidelines, and established a public hearing for the purpose of obtaining oral public comment on these guidelines. This hearing was held on August 25, 1980 in Washington, D.C. On July 31, 1980 (45 FR 50825), EPA extended the public comment period on the regulations to August 22, 1980 in order to provide sufficient time for commenters to consider the guidelines and their effect on the proposed regulatory program. Transcripts of all public hearings and copies of the public comments received have been placed in Docket A-79-40. The Agency received a total of 383 comments from the public relating to the various aspects of the proposed programs. This promulgation is based upon the material in the docket including EPA's review and consideration of all comments received during the public comment period. Notice of the changes made from the proposal is in the "Supplemental

Statement of Basis and Purpose" which follows the regulatory language. Additionally, EPA has prepared a document, "Summary of Comments and Responses on the May 22, 1980 Proposed Regulations for Visibility Protection for Federal Class I Areas," which specifically responds to the comments received. This document has been placed in Docket A-79-40 and, depending upon available supplies, a copy may be obtained from: EPA Library (MD-35), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

A copy of this document will be sent to all commenters on the ANPRM, NPRM, and guidelines.

C. Document Availability

The following documents were developed by EPA and should be of use to persons affected by today's promulgation. These documents are in Docket No. A-79-40 and are also available from the sources indicated below.

(1) "Protecting Visibility: An EPA Report to Congress" (EPA-450/5-79-008), National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161.

(2) "The Development of Mathematical Models for the Prediction of Anthropogenic Visibility Impairment" (EPA-450/3-78-110 a, b, c), National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161 (PB 293119, PB 293120, PB 293121).

(3) "Guidelines for Determining Best Available Retrofit Technology for Coal-Fired Power Plants and Other Existing Stationary Facilities," (EPA-450/3-80-009b), National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161.

(4) "Assessment of Economic Impacts of Visibility Regulations," National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161.

(5) "User's Manual for the Plume Visibility Model (PLUVUE)," (EPA 450/5-80-032) National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161.

(6) "Workbook for Estimating Visibility Impairment," (EPA 450/4-80-031) National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161.

(7) "Interim Guidance for Visibility Monitoring," (EPA 450/2-80-082) National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161.

II. Program Overview

This preamble provides a brief description of the regulatory program, serving to introduce the specific regulatory language. Following the regulatory language is a "Supplemental Statement of Basis and Purpose" which discusses the major changes between the final and proposed rules. In addition, we have placed in Docket No. A-79-40 a document containing EPA's response to comments.

The Problem

Congress has set aside certain international parks and national wilderness areas, national memorial parks, and national parks (mandatory Class I Federal areas) to preserve and enhance their beauty for present and future generations to enjoy. The intrinsic beauty of these areas, however, has been threatened by visibility-degrading air pollution.[1] Visibility is commonly referred to as the relative ease with which objects can be seen through the atmosphere under various conditions. Congress became aware of the need to protect visibility in these areas and directed EPA through the Clean Air Act to explore the relationship between man-caused pollution and visibility impairment.

From this research we can say there are generally two types of air pollution which reduce or impair visibility:

(1) Smoke, dust, colored gas plumes, or layered haze emitted from stacks which obscure the sky or horizon and are relatable to a single source or a small group of sources, and (2) widespread, regionally homogeneous haze from a multitude of sources which impairs visibility in every direction over a large area.

These types of pollution are caused by factories, plants, and other sources that emit particles and gases into the air. These substances either absorb or scatter the light, thus reducing the amount of light a person can receive from a viewed object. The practical effect is that impaired visibility degrades the aesthetic value of surrounding landscape by (1) discoloring the atmosphere to produce a visible plume, (2) whitening the horizon and causing objects to appear flattened so that landscape colors and textures become less discernible, or (3) in the case of a discernible plume, obscuring some portion of the landscape.

[1] The National Parks and Conservation Association, in addition to many individual commenters, stated in comments on the proposed regulations for the protection of visibility that air pollution may well be the major threat to the national parks in the 1980's.

The Program

A Phased Approach to the Problem

Congress, in recognition of the need to protect the aesthetic value of visibility in national parks and wilderness areas, established a national visibility goal. The goal specifies that existing pollution be remedied and future pollution that would interfere with visibility in mandatory Class I Federal areas be prevented. We reviewed the techniques for identifying, measuring, predicting, and controlling visibility impairment, and in November 1979, published "Protecting Visibility: An EPA Report to Congress" which discusses in detail the present scientific knowledge of visibility, including monitoring, modeling, and control of visibility impairment.

As described in that report, we determined that the present mathematical models and monitoring techniques show promise for being used in a regulatory manner. However, these techniques must be further evaluated according to standard Agency procedures before we can routinely require their use in a regulatory program for sources, either new or existing, that may impair visibility. In some instances we can identify the origin of visibility impairment caused by a single source or small group of sources without the use of sophisticated analytical techniques. Simple monitoring techniques such as visual observation (either ground based or with aircraft) can often identify sources which contribute to the impairment.

Recognizing the need to initiate protection as soon as possible, while also realizing that certain scientific and technical limitations do exist, we are today promulgating, essentially as proposed, a phased approach to visibility protection. Representatives of industry, environmental groups, States, Federal Land Managers, and the public generally supported this phased approach to regulatory development.

Phase I of this program will:

1. Require control of impairment that can be traced to a single existing stationary facility or small group of existing stationary facilities,

2. Evaluate and control new sources to prevent future impairment, and

3. Require States to adopt strategies such as review and possible control of other existing sources not meeting the more stringent source-size requirements for existing stationary facilities in order to remedy existing and prevent future visibility impairment.

Information derived from modeling and monitoring can, in some cases, aid the States in development and

implementation of the visibility program. In the first phase, the States are required to consider available modeling and monitoring information. The use of such information will be at the discretion of the State, and the States are not required to establish monitoring networks or perform modeling analyses.

Future phases will extend the visibility program by addressing more complex problems such as regional haze and urban plumes. We will propose and promulgate future phases when improvement in monitoring techniques provides more data on source-specific levels of visibility impairment, regional scale models become refined, and our scientific knowledge about the relationships between emitted air pollutants and visibility impairment improves.

The Program—In Detail

We are promulgating regulations that require the 36 States containing mandatory Class I Federal areas to submit revisions to their SIPs within 9 months.[2] These regulations require that these States (1) revise their SIPs to assure reasonable progress toward the national visibility goal of preventing future and remedying existing impairment of visibility in mandatory Class I Federal areas, (2) determine whether certain existing stationary facilities should install the Best Available Retrofit Technology (BART) for controlling those pollutants which impair visibility (3) develop, adopt, implement, and evaluate long-term strategies for making reasonable progress toward remedying existing and preventing future impairment in the mandatory Class I Federal areas, and (4) adopt certain measures regarding visibility impacts that will supplement the State's new source review program.

The assistance of the Federal Land Managers, who are intimately familiar with the mandatory Class I Federal areas because of their responsibility for managing the areas, will be important to the State during development of a program to meet these requirements. Since coordination among the States, the Federal Land Managers, and EPA will be necessary to develop and implement an effective visibility protection program, we expect the State and the Federal Land Manager to work closely during the entire SIP development process. While the State retains the primary responsibility for developing an effective visibility program, the Federal Land Manager has the responsibility of characterizing the visibility of the mandatory Class I Federal areas. Therefore, the State should consider carefully the Federal Land Manager's comments and recommendations. These two must work together to ensure that visibility in these areas is protected. EPA's responsibility is to (1) promulgate visibility regulations which would require States to revise their State Implementation Plans (SIPs), (2) provide guidance to States for implementing the program (3) continue research into visibility for use in future phases, and (4) promulgate regulations for States which submit inadequate regulations or fail to submit regulations in response to these requirements.

Part of the participation process may involve the identification of integral vistas by the Federal Land Manager. An integral vista is an important view from a point in the mandatory Class I Federal area of a scenic landmark outside the boundary of the area. The vista must be important to the visitor's visual experience of the area. This identification must be in accordance with criteria formally adopted by the Federal Land Manager and must occur on or before December 31, 1985. The State is not required to analyze impairment of a vista if it determines that the Federal Land Manager's identification of the vista was not in accordance with these criteria.

Under the authority of § 169A, the regulations require the States to consider the potential of new or existing sources to impair visibility of an integral vista. This consideration may include the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, the remaining useful life of the source, and the degree of improvement in visibility anticipated to result from control. A State, in its initial SIP revision, would have to consider an integral vista only if this vista was identified at least 6 months before plan submission or plan revision. With regard to permitting new sources, integral vistas identified at least 12 months before submission of a complete permit application would have to be protected unless the Federal Land Manager provided notice of and opportunity for public comment on the integral vista in which case the impact of the new source must be reviewed if the integral vista is identified at least 6 months before submission of the complete permit application. This requirement to protect integral vistas is part of the visibility protection program promulgated today and is not part of the PSD program.

EPA is currently reviewing new sources under the PSD provisions (40 CFR Part 52.21) for many States. New sources reviewed by EPA will be required under the authority of § 169A to assess their potential visibility impacts on integral vistas if identification of the integral vista meets the above criteria prior to the submission of a complete PSD permit application to EPA.

A. BART Requirements.

1. *The State or the Federal Land Manager determines whether, in any mandatory Class I Federal area, there exists any impairment of visibility.* This impairment must be identified at least 6 months prior to SIP submission (or submission of any SIP revision) in order to allow the State enough time to develop a plan to remedy the impairment. This provides the necessary "trigger" to inform the State if it needs to be concerned with any existing impairment, or if it needs to focus only on prevention of future impairment. We are defining "impairment" as any "humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions." Impairment which is identified too late to be addressed by the initial plan revision will need to be addressed during the periodic review of the long-term strategy.

2. *The State will identify the existing stationary facilities which cause the visibility impairment.* Existing stationary facilities are certain sources which emit more that 250 tons per year, and (1) were not in operation prior to August 7, 1962, or (2) were reconstructed after that date. During Phase I of the visibility program, the State is required to determine if visibility impairment in any mandatory Class I Federal area "is reasonably attributable" to an existing stationary facility through visual observation or any other technique the State deems appropriate. The Federal Land Manager may provide the State with a list of sources suspected of causing or contributing to visibility impairment in the mandatory Class I Federal area.

3. *The State will perform a BART analysis on existing stationary facilities identified as impairing visibility.* In the BART analysis, the State identifies the pollutant of concern and what additional air pollution control technologies are to be required in order to reduce existing visibility impairment. We believe that while pollutants may

[2] We did not identify, nor did any commenters identify any State that did not contain a mandatory Class I Federal area, but which could contain a source the emissions from which could reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area.

cause or contribute to visibility impairment, the pollutants of primary concern under this Phase I program are particulate matter and NO_x. Emissions of SO_2 primarily contribute to regional haze which is beyond the scope of this Phase I program. Therefore, we expect very few, if any, BART analyses for SO_2 in this phase of the program. It should, however, be noted that we expect that the Phase II program will result in control of pollutants associated with regional haze and urban plumes which affect mandatory Class I Federal areas. We therefore expect that sources would be analyzed, at that time, for all pollutants causing or contributing to these types of visibility impairment.

After the State identifies the source of the pollutant causing the visibility impairment, the State then identifies those control techniques that could improve visibility. If a control technique exists that would improve visibility in the mandatory Class I Federal area, then the State proceeds with the BART analysis, but if the most stringent control available would not result in any improvement in visibility, then the State may stop the analysis at this point. For example, while control techniques exist for NO_x, the reductions achievable by the best available technology, generally defined by current new source performance standards, may not be sufficient to achieve any perceptible improvement in visibility. In such cases the State is not obligated to require controls at this time.

If control techniques do exist that would improve visibility, the State begins studying alternative control strategies. The State should consider, on a case-by-case basis, how much various alternative control techniques would cost, the energy and environmental impact of the controls, what air pollution technologies the source already has in place, the remaining useful life of the source, and to what degree the control alternatives would improve visibility. In order to assist States in the analysis of BART, the Agency has developed "Guidelines for the Determination of Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities." For large power plants, BART must be determined pursuant to this guideline.

The last stage of the BART analysis is for the State to specify an emission limitation that reflects BART. The source must then install, operate, and maintain the control technology to meet the emission limitation.

4. *The State must reanalyze ceretain existing stationary facilities that emit pollutants which were not controlled in a prior BART review.* This reanalysis would occur when the Administrator determines new technology is available which would more effectively control a pollutant which interferes with visibility. This reanalysis is only required where the imposition of controls representing BART have not been previously required for the specific pollutant. In this case, based upon the BART criteria, the State must require sources to install those controls called for by the analysis.

5. *The source may apply to the Administrator for an exemption from BART on the basis that the source does not cause or contribute to significant impairment of visibility.* The source must notify the Federal Land Manager of its application and must recieve written concurrence from the State on the application. To receive an exemption, the source must demonstrate to the Administrator that it does not cause or contribute to significant impairment of visibility.

By significant impairment we mean a level of impairment that interferes with the visitor's visual experience of the area. When applying for an exemption, a source should address the frequency, extent, time, intensity and duration of the impairment. If the Administrator grants an exemption, the Federal Land Manager must concur before the exemption will become effective.

B. Monitoring of Visibility Impacts

1. *The State will develop a monitoring strategy.* The State in developing this strategy would assess the need for visibility monitoring in the development and implementation of the State's visibility protection program taking into consideration available and forthcoming monitoring techniques, current research, and guidelines.

2. *The State will provide for consideration of monitoring requirements for new sources.* The State should assess on a case-by-case basis the need for monitoring by a source, as part of the new source review process, to provide information on any potential impacts on visibility in the Federal Class I area review process. This assessment will be based upon available data and the adequacy of available monitoring techniques.

3. *The State will evaluate any available monitoring data.* Any existing monitoring data available to the State should be incorporated into the State's decision-making process for BART determinations and new source review decisions.

C. Development of the Long-Term Strategy.

The regulations require each plan to include a long-term (10–15 year) strategy for making reasonable progress toward remedying existing and preventing future visibility impairment. The requirements are summarized below.

Remedying Existing Impairment

Some of the measures the State is to consider for remedying existing impairment are:

1. *Existing land management plans to protect or enhance visibility in the mandatory Class I Federal area and other plans relating to local use around the area that may affect visibility in these areas.* This will also be useful in developing the part of the long-term strategy relating to prevention of future impairment.

2. *The effectiveness of existing air pollution control programs in reducing visibility impairment.* For example, the attainment and maintenance of National Ambient Air Quality Standards may reduce or eliminate visibility impairmen in mandatory Class I Federal areas. If this is the case, the State should explain how this would contribute to reasonable progress.

3. *Additional emission limitations and schedules for compliance for uncontrolled or poorly controlled sources not covered by BART.* This recognizes that States may have to control sources not covered by BART to make reasonable progress toward the national goal.

4. *Retirement of existing sources and replacement with new, well controlled facilities.* The construction of new sources which will ensure the early or scheduled retirement of older, less well controlled sources can greatly aid progress toward the national visibility goal over the long term.

Preventing Future Impairment

The States must review all major stationary sources and major modifications as defined in EPA's Prevention of Significant Deterioration (PSD) regulations for their anticipated impacts on visibility in mandatory Class I Federal areas.

Under section 307, discussed below, and §§ 51.24 and 51.18 of EPA's existing PSD and new source regulations, a new major stationary sources must be reviewed for, among other things, its effect on visibility in Federal Class I areas. Thus, implementation of the PSD program will go a long way toward preventing future visibility impairment in mandatory Class I Federal areas.

There are, however, source which are not subject to the PSD rules because the PSD rules do not call for the review of a major stationary source locating in a "nonattainment" area, even if that source would impair visibility in a mandatory Class I Federal area. Today's action requires an analysis of visibility impacts by all new sources which might impair visibility in a mandatory Class I Federal area irrespective of their proposed location. However, unlike review under the PSD provisions, the State may, for these sources, consider cost, energy, and other relevant factors in determining whether to permit construction of the new source.

The State will review its strategy in consultation with the Federal Land Manager and report its findings to the public and the Administrator at least every three years. We believe that the periodic review of the long-term strategy is an important part of assuring reasonable progress toward the national visibility goal. Since the visibility program is new and evolving, a periodic review is necessary to 1) take into account advances in technology, 2) evaluate progress toward the goal, 3) evaluate specific program effectiveness, 4) consider any recently identified integral vista, and 5) provide a reassessment of the reasonableness of measures incorporated into the long-term strategy. In this review of the long-term strategy, the regulations would require certain analyses, including: (1) an assessment of the progress achieved in remedying existing impairment, (2) an assessment of the strategy's long-term ability to prevent future impairment, and (3) identification of advances in technology and consideration of additional measures that may be necessary to make reasonable progress toward the national goal. This periodic review will require an evaluation of available human observations, photo-documentation and monitoring data.

III. New Source Review Requirements for Visibility Impacts

EPA's PSD regulations require that a proposed major stationary source or major modification evaluate its potential impact on visibility and, if the source would cause an adverse impact on visibility in a Federal Class I area, that the State deny the permit. In this action we are promulgating a definition of "adverse impact" and clarifying certain procedural relationships between the Federal Land Manager and the State in the review of new source impacts on visibility in Federal Class I areas and integral vistas.

As the first step in the review process, the State notifies the Federal Land Manager of any potential new source that may impact visibility in a Federal Class I area. The State and Federal Land Manager then initiate consultation which will continue throughout the permitting process. Early consultation in the permitting process will be valuable and the State should notify the Federal Land Manager of the source that may potentially affect the Federal Class I area. This notification should take place at the time the State reasonably believes that a source intends to make an application for a permit that would affect the area. Under EPA's PSD regulations and § 165 of the Act, the Federal Land Manager may demonstrate to the State that the source will have an adverse impact on visibility in the Federal Class I area even where the PSD Class I air quality increments are not violated. If the State agrees with the Federal Land Manager's assessment that the source will "adversely impact" visibility in the Federal Class I area, then the State will deny the permit. If the State disagrees with the Federal Land Manager's demonstration, then it will provide a written explanation of its findings to be made available to the public prior to public hearings on the permit. Where disagreements on the permitting of a source exist between the State and the Federal Land Manager, the State may desire third-party input into the decision process. In such cases, the Administrator or appropriate Regional Administrator will be available to assist the State.

In addition, under authority of § 169A of the Act, Section 307 requires an analysis of the potential visibility impacts of new sources on integral vistas identified at least 12 months before submission of a complete permit application. However, if the Federal Land Manager provides an opportunity for public comment on the potential integral vista the analysis must include the impacts of any integral vista so identified at least 6 months prior to the submission of a complete permit application. This protection for integral vistas is governed not by the "adverse impact" test of § 165 and the PSD program, but rather by consideration of the long-term strategy of § 169A including cost, energy, and other relevant factors.

Finally, Section 307 allows the State to require the source to monitor visibility at the proposed site or potentially affected area as part of the PSD permit application.

IV. Regulatory Impact

The immediate, principal benefit of these regulations will be (1) the reduction or elimination of impacts reasonably attributable to specific existing sources, and (2) further definition of procedures for the review of new sources. The focus of these regulations will be principally in the West since western areas have generally good visibility now and are extremely sensitive to degradation. Also, the majority of the mandatory Class I Federal areas are located in the western United States. We recognize that States may permit construction of new sources which may result in visibility impairment of integral vistas if, in the State's judgment, such impairment is justified by the cost of additional controls, the time necessary to install controls, the energy and non-air quality environmental impacts of additional controls, and the useful life of the source.

The phased approach of these regulations will limit the amount of resources the States will have to expend on revising their SIPs. Preliminary indications are that few, if any, existing stationary facilities will have to retrofit controls. The one major requirement applicable to all 36 States is the development of a long-term strategy for making reasonable progress toward the national visibility goal. EPA believes, however, that many of the basic elements of an acceptable strategy already exist within the framework of other air pollution programs. Therefore, the State will need to examine the feasibility and efficacy of only a few other measures to determine if they should or need to be included in the long-term strategy.

The new source review program required by these regulations takes into account the new source review programs which the States are now called on to implement under the PSD and nonattainment provisions of the Clean Air Act.

As commenters, including major industry representatives, noted, it is impossible to prepare a precise regulatory analysis since the State has substantial discretion in developing a visibility protection program. However, since there will be individual cost considerations for any source which may be covered by the BART or reasonable progress requirements, no source is prejudiced by a less than perfect regulatory analysis now.

A. Existing Source Impacts

The Agency released for comment along with the proposed visibility regulations a draft analysis of the impact of these regulations on existing

sources. This analysis used visibility screening curves generated by a theoretical predictive model to identify existing stationary facilities which impair visibility in mandatory Class I Federal areas. The analysis identified a number of large power plants as potential BART candidates. In order to more realistically assess the impact of these regulations, EPA discussed with the Federal Land Managers the facilities identified in the initial screening process. We found that this initial screening overstated the potential impact of these regulations. Most of the sources which were initially identified as potential BART candidates are not now anticipated to be affected because the visibility impairment cannot be reasonably attributed to these facilities. Other sources identified in this analysis are not now believed to be affected by these regulations because either existing problems are currently being dealt with by other air quality programs or because currently available control techniques will not perceptibly improve visibility. The analysis also examined the possible economic impact on other existing stationary facilities and did not find any mandatory Class I Federal area in which visibility impairment might be reasonably attributable to any such source.

Since it is virtually impossible to perform an exhaustive analysis, there may yet be impairment of visibility in a mandatory Class I Federal area which we can reasonably attribute to an existing stationary facility.

As noted above, the State will need to examine the existing impairment in the mandatory Class I Federal areas and determine if BART is necessary for existing stationary facilities. There may also be sources which do not qualify as existing stationary facilities, but for which an impact on visibility is reasonably attributable. The need to make reasonable progress will require that the State examine these sources and determine what action, if any, is necessary to ensure progress toward the national visibility goal.

B. New Source Impacts

Most new sources that may impair visibility in the mandatory Class I Federal areas are currently subject to review under the PSD regulations. These visibility regulations would impose only a few additional procedural requirements and should therefore have little additional impact on these sources. The regulatory impact of the PSD program was addressed in that rulemaking.

These regulations do, however, ensure that certain sources exempt from the PSD regulations because of geographic criteria will be adequately reviewed for their potential impact on visibility in the mandatory Class I Federal area. Where a source could reduce visibility, several options are available to the State and the source. The State could (1) require the source to analyze alternative sites, (2) impose additional control requirements, (3) limit the source's capability to emit the pollutant which is expected to cause the impairment by limiting the source's operating conditions, or (4) deny the source permission to construct. Among the options available to the source are modifying its proposed operating conditions to reduce its potential impact and locating at other sites where the potential impact on the area is expected to be less.

While it is difficult to predict the overall marginal impact of these regulations on new sources, we can state those geographic areas where we would expect the major impact to occur. Large sources desiring to locate close to Federal Class I areas in the western U.S., particularly if they emit NO_x, may encounter difficulty due to the relative inability to control NO_x and because the visibility impact is frequently a coherent plume. In addition, dispersion conditions around many of these areas, primarily caused by their topography, will generally not enable emissions to disperse rapidly enough to prevent a coherent plume.

V. Judicial Review

Under Section 307(b)(1) of the Clean Air Act, judicial review of these regulations for the protection of visibility is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia within 60 days of today. Under Section 307(b)(2) of the Clean Air Act the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

These rules are issued under the authority granted in Sections 110, 114, 121, 160–169, 169A, and 301 of the Clean Air Act, 42 USC 7410, 7414, 7421, 7470–7479, 7491, and 7601.

Dated: November 21, 1980.

Douglas M. Costle,

Administrator.

The Administrator establishes a new Subpart P of Part 51, Title 40 of the Code of Federal Regulations to read as follows:

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

Subpart P—Protection of Visibility

Sec.

Authority: Secs. 110, 114, 121, 160–169, 169A, and 301 of the Clean Air Act, [42 U.S.C. 7410, 7414, 7421, 7470–7479, and 7601]

§ 51.300 Purpose and applicability.

(a) *Purpose.* The primary purposes of this Subpart are (1) to require States to develop programs to assure reasonable progress toward meeting the national goal of preventing any future, and remedying and existing, impairment of visibility in mandatory Class I Federal areas which impairment results from man-made air pollution, and (2) to establish necessary additional procedures for new source permit applicants, States, and Federal Land Managers to use in conducting the visibility impact analysis required for new sources under § 51.24.

(b) *Applicability.* (1) The provisions of this Subpart are applicable to: (i) each State which has a mandatory Class I Federal area identified in Part 81, Subpart D, of this title, and (ii) each State in which there is any source the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area. (2) The provisions of this Subpart are applicable to the following States:

(i) Alabama
(ii) Alaska
(iii) Arizona
(iv) Arkansas
(v) California
(vi) Colorado
(vii) Florida
(viii) Georgia
(ix) Hawaii
(x) Idaho
(xi) Kentucky
(xii) Louisiana
(xiii) Maine
(xiv) Michigan
(xv) Minnesota
(xvi) Missouri
(xvii) Montana
(xviii) Nevada
(xix) New Hampshire
(xx) New Jersey
(xxi) New Mexico
(xxii) North Carolina
(xxiii) North Dakota
(xxiv) Oklahoma

(xxv) Oregon
(xxvi) South Carolina
(xxvii) South Dakota
(xxviii) Tennessee
(xxix) Texas
(xxx) Utah
(xxxi) Vermont
(xxxii) Virginia
(xxxiii) Virgin Islands
(xxxiv) Washington
(xxxv) West Virginia
(xxxvi) Wyoming.

§ 51.301 Definitions.

For purposes of this Subpart:

(a) "Adverse impact on visibility" means, for purposes of § 307, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

(b) "Agency" means the U.S. Environmental Protection Agency.

(c) "Best Available Retrofit Technology (BART)" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(d) "Building, structure, or facility" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities must be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4401-0066 and 003-005-00176-0 respectively).

(e) "Existing Stationary Facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

(1) Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input,

(2) Coal cleaning plants (thermal dryers),

(3) Kraft pulp mills,

(4) Portland cement plants,

(5) Primary zinc smelters,

(6) Iron and steel mill plants,

(7) Primary aluminum ore reduction plants,

(8) Primary copper smelters,

(9) Municipal incinerators capable of charging more than 250 tons of refuse per day,

(10) Hydrofluoric, sulfuric, and nitric acid plants,

(11) Petroleum refineries,

(12) Lime plants,

(13) Phosphate rock processing plants,

(14) Coke oven batteries,

(15) Sulfur recovery plants,

(16) Carbon black plants (furnace process),

(17) Primary lead smelters,

(18) Fuel conversion plants,

(19) Sintering plants,

(20) Secondary metal production facilities,

(21) Chemical process plants,

(22) Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,

(23) Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,

(24) Taconite ore processing facilities,

(25) Glass fiber processing plants, and

(26) Charcoal production facilities.

(f) "Federal Class I area" means any Federal land that is classified or reclassified "Class I."

(g) "Federal Land Manager" means the Secretary of the department with authority over the Federal Class I area or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission.

(h) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator under the Clean Air Act including those requirements developed pursuant to Parts 60 and 61 of this title, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to § 52.21 of this Chapter or under regulations approved pursuant to § 51, § 52, or § 60 of this title.

(i) "Fixed capital cost" means the capital needed to provide all of the depreciable components.

(j) "Fugitive Emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(k) "In existence" means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (1) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed in a reasonable time.

(l) "Installation" means an identifiable piece of process equipment.

(m) "In operation" means engaged in activity related to the primary design function of the source.

(n) "Integral vista" means a view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.

(o) "Mandatory Class I Federal Area" means any area identified in Part 81, Subpart D of this title.

(p) "Major Stationary Source" and "major modification" mean "major stationary source" and "major modification," respectively, as defined in § 51.24.

(q) "Natural Conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(r) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(s) "Reasonably attributable" means attributable by visual observation or

any other technique the State deems appropriate.

(t) "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new component exceeds 50 percent of the fixed capital cost of a comparable entirely new source. Any final decision as to whether reconstruction has occurred must be made in accordance with the provisions of § 60.15 (f) (1)–(3) of this title.

(u) "Secondary emissions" means emissions which occur as a result of the construction or operation of an existing stationary facility but do not come from the existing stationary facility. Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the existing stationary facility.

(v) "Significant impairment" means, for purposes of § 303, visibility impairment which, in the judgment of the Administrator, interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory Class I Federal area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of the visibility impairment, and how these factors correlate with (1) times of visitor use of the mandatory Class I Federal area, and (2) the frequency and timing of natural conditions that reduce visibility.

(w) "Stationary Source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

(x) "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

(y) "Visibility in any mandatory Class I Federal area" includes any integral vista associated with that area.

§ 51.302 Implementation control strategies.

(a) *Plan Revision Procedures.*

(1) Each State identified in § 300(b)(2) must submit, no later than nine months from the date of promulgation of this regulation, an implementation plan revision meeting the requirements of this Subpart.

(2)(i) The State, prior to adoption of any implementation plan required by this Subpart, must conduct one or more public hearings on such plan in accordance with § 51.4.

(ii) In addition to the requirements in § 51.4, the State must provide written notification of such hearings to each affected Federal Land Manager, and other affected States, and must state where the public can inspect a summary prepared by the Federal Land Managers of their conclusions and recommendations, if any, on the proposed plan.

(3) Submission of plans as required by this Subpart must be conducted in accordance with the procedures in § 51.5.

(b) *State and Federal Land Manager Coordination.*

(1) The State must identify to the Federal Land Managers, in writing and within 30 days of the date of promulgation of these regulations, the title of the official to which the Federal Land Manager of any mandatory Class I Federal area can submit a recommendation on the implementation of this Subpart including, but not limited to:

(i) A list of integral vistas that are to be listed by the State for the purpose of implementing § 304,

(ii) Identification of impairment of visibility in any mandatory Class I Federal area(s), and

(iii) Identification of elements for inclusion in the visibility monitoring strategy required by § 305.

(2) The State must provide opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the plan, with the Federal Land Manager on the proposed SIP revision required by this Subpart. This consultation must include the opportunity for the affected Federal Land Managers to discuss their:

(i) Assessment of impairment of visibility in any mandatory Class I Federal area, and

(ii) Recommendations on the development of the long-term strategy.

(3) The plan must provide procedures for continuing consultation between the State and Federal Land Manager on the implementation of the visibility protection program required by this Subpart.

(c) *General Plan Requirements.*

(1) The affected Federal Land Manager may certify to the State, at any time, that there exists impairment of visibility in any mandatory Class I Federal area.

(2) The plan must contain:

(i) A long-term (10–15 years) strategy, as specified in § 305 and § 306, including such emission limitations, schedules of compliance, and such other measures including schedules for the implementation of the elements of the long-term strategy as may be necessary to make reasonable progress toward the national goal specified in § 300(a).

(ii) An assessment of visibility impairment and a discussion of how each element of the plan relates to the preventing of future or remedying of existing impairment of visibility in any mandatory Class I Federal area within the State.

(iii) Emission limitations representing BART and schedules for compliance with BART for each existing stationary facility identified according to paragraph (c)(4) of this section.

(3) The plan must require each source to maintain control equipment required by this Subpart and establish procedures to ensure such control equipment is properly operated and maintained.

(4) For any existing visibility impairment the Federal Land Manager certifies to the State under paragraph (c)(1) at least 6 months prior to plan submission:

(i) The State must identify and analyze for BART each existing stationary facility which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I Federal area where the impairment in the mandatory Class I Federal area is reasonably attributable to that existing stationary facility. The State need not consider any integral vista the Federal Land Manager did not identify pursuant to § 304(b) at least 6 months before plan submission.

(ii) If the State determines that technological or economic limitations on the applicability of measurement methodology to a particular existing stationary facility would make the imposition of an emission standard infeasible it may instead prescribe a design, equipment, work practice, or other operational standard, or combination thereof, to require the application of BART. Such standard, to the degree possible, is to set forth the emission reduction to be achieved by implementation of such design, equipment, work practice or operation, and must provide for compliance by means which achieve equivalent results.

(iii) BART must be determined for fossil-fuel fired generating plants having a total generating capacity in excess of 750 megawatts pursuant to "Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities" (1980), which is incorporated by reference, exclusive of Appendix E, which was published in the Federal Register on February 6, 1980 (45 FR 8210). It is EPA publication No. 450/3–80–009b and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. It is also available for inspection at the office of the Federal Register

Information Center, Room 8301, 1100 I Street, NW, Washington, D.C. 20408.

This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change will be published in the Federal Register.

(iv) The plan must require that each existing stationary facility required to install and operate BART do so as expeditiously as practicable but in no case later than five years after plan approval.

(v) The plan must provide for a BART analysis of any existing stationary facility that might cause or contribute to impairment of visibility in any mandatory Class I Federal area identified under this paragraph (4) at such times, as determined by the Administrator, as new technology for control of the pollutant becomes reasonably available if:

(A) The pollutant is emitted by that existing stationary facility,

(B) Controls representing BART for the pollutant have not previously been required under this Subpart, and

(C) The impairment of visibility in any mandatory Class I Federal area is reasonably attributable to the emissions of that pollutant.

§ 51.303 Exemptions from control.

(a)(1) Any existing stationary facility subject to the requirement under § 302 to install, operate, and maintain BART may apply to the Administrator for an exemption from that requirement.

(2) An application under this section must include all available documentation relevant to the impact of the source's emissions on visibility in any mandatory Class I Federal area and a demonstration by the existing stationary facility that it does not or will not, by itself or in combination with other sources, emit any air pollutant which may be reasonably anticipated to cause or contribute to a significant impairment of visibility in any mandatory Class I Federal area.

(b) Any fossil-fuel fired power plant with a total generating capacity of 750 megawatts or more may receive an exemption from BART only if the owner or operator of such power plant demonstrates to the satisfaction of the Administrator that such power plant is located at such a distance from all mandatory Class I Federal areas that such power plant does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such mandatory Class I Federal area.

(c) Application under this § 303 must be accompanied by a written concurrence from the State with regulatory authority over the source.

(d) The existing stationary facility must give prior written notice to all affected Federal Land Managers of any application for exemption under this § 303.

(e) The Federal Land Manager may provide an initial recommendation or comment on the disposition of such application. Such recommendation, where provided, must be part of the exemption application. This recommendation is not to be construed as the concurrence required under Paragraph (h) below.

(f) The Administrator, within 90 days of receipt of an application for exemption from control, will provide notice of receipt of an exemption application and notice of opportunity for public hearing on the application.

(g) After notice and opportunity for public hearing, the Administrator may grant or deny the exemption. For purposes of judicial review, final EPA action on an application for an exemption under this § 303 will not occur until EPA approves or disapproves the State Implementation Plan revision.

(h) An exemption granted by the Administrator under this § 303 will be effective only upon concurrence by all affected Federal Land Managers with the Administrator's determination.

§ 51.304 Identification of Integral Vistas.

(a) On or before December 31, 1985 the Federal Land Manager may identify any integral vista. The integral vista must be identified according to criteria the Federal Land Manager develops. These criteria must include, but are not limited to, whether the integral vista is important to the visitor's visual experience of the mandatory Class I Federal area. Adoption of criteria must be preceded by reasonable notice and opportunity for public comment on the proposed criteria.

(b) The Federal Land Manager must notify the State of any integral vistas identified under Paragraph (a) and the reasons therefor.

(c) The State must list in its implementation plan any integral vista the Federal Land Manager identifies at least six months prior to plan submission, and must list in its implementation plan at its earliest opportunity, and in no case later than at the time of the periodic review of the SIP required by § 306(c), any integral vista the Federal Land Manager identifies after that time.

(d) The State need not in its implementation plan list any integral vista the indentification of which was not made in accordance with the criteria in Paragraph (a). In making this finding, the State must carefully consider the expertise of the Federal Land Manager in making the judgments called for by the criteria for identification. Where the State and the Federal Land Manager disagree on the identification of any integral vista, the State must give the Federal Land Manager an opportunity to consult with the Governor of the State.

§ 51.305 Monitoring.

(a) The State must include in the plan a strategy for evaluating visibility in any mandatory Class I Federal area by visual observation or other appropriate monitoring techniques. Such strategy must take into account current and anticipated visibility monitoring research, the availability of appropriate monitoring techniques, and such guidance as is provided by the Agency.

(b) The plan must provide for the consideration of available visibility data and must provide a mechanism for its use in decisions required by this Subpart.

§ 51.306 Long-term strategy.

(a)(1) Each plan must include a long-term (10–15 years) strategy for making reasonable progress toward the national goal specified in § 300(a). This strategy must cover any existing impairment the Federal Land Manager certifies to the State at least 6 months prior to plan submission, and any integral vista of which the Federal Land Manager notifies the State at least 6 months prior to plan submission.

(2) A long-term strategy must be developed for each mandatory Class I Federal area located within the State and each mandatory Class I Federal area located outside the State which may be affected by sources within the State. This does not preclude the development of a single comprehensive plan for all such areas.

(3) The plan must set forth with reasonable specificity why the long-term strategy is adequate for making reasonable progress toward the national visibility goal, including remedying existing and preventing future impairment.

(b) The State must coordinate its long-term strategy for an area with existing plans and goals, including those provided by the affected Federal Land Managers, that may affect impairment of visibility in any mandatory Class I Federal area.

(c) The plan must provide for periodic review and revision, as appropriate, of the long-term strategy not less frequent than every three years. This review

process must include consultation with the appropriate Federal Land Managers, and the State must provide a report to the public and the Administrator on progress toward the national goal. This report must include an assessment of:

(1) The progress achieved in remedying existing impairment of visibility in any mandatory Class I Federal area;

(2) The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I Federal area;

(3) Any change in visibility since the last such report, or, in the case of the first report, since plan approval;

(4) Additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal;

(5) The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy;

(6) The impact of any exemption granted under § 303;

(7) The need for BART to remedy existing visibility impairment of any integral vista listed in the plan since the last such report, or, in the case of the first report, since plan approval.

(d) The long-term strategy must provide for review of the impacts from any new major stationary source or major modifications on visibility in any mandatory Class I Federal area. This review of major stationary sources or major modifications must be in accordance with § 307, § 51.24, § 51.18 and any other binding guidance provided by the Agency insofar as these provisions pertain to protection of visibility in any mandatory Class I Federal areas.

(e) The State must consider, at a minimum, the following factors during the development of its long-term strategy:

(1) Emission reductions due to ongoing air pollution control programs,

(2) Additional emission limitations and schedules for compliance,

(3) Measures to mitigate the impacts of construction activities,

(4) Source retirement and replacement schedules,

(5) Smoke management techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes, and

(6) Enforceability of emission limitations and control measures.

(f) The plan must discuss the reasons why the above and other reasonable measures considered in the development of the long-term strategy were or were not adopted as part of the long-term strategy.

(g) The State, in developing the long-term strategy, must take into account the effect of new sources, and the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any affected existing source and equipment therein.

§ 51.307 New source review.

(a) For purposes of new source review of any new major stationary source or major modification that would be constructed in an area that is designated attainment or unclassified under Section 107(d)(1)(D) or (E) of the Clean Air Act, the State plan must, in any review under § 51.24 with respect to visibility protection and analyses, provide for:

(1) Written notification of all affected Federal Land Managers of any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area. Such notification must be made in writing and include a copy of all information relevant to the permit application within 30 days of receipt of and at least 60 days prior to public hearing by the State on the application for permit to construct. Such notification must include an analysis of the anticipated impacts on visibility in any Federal Class I area,

(2) Where the State requires or receives advance notification (e.g. early consultation with the source prior to submission of the application or notification of intent to monitor under § 51.24) of a permit application of a source that may affect visibility the State must notify all affected Federal Land Managers within 30 days of such advance notification, and

(3) Consideration of any analysis performed by the Federal Land Manager, provided within 30 days of the notification and analysis required by Paragraph (a)(1) above, that such proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the State finds that such an analysis does not demonstrate to the satisfaction of the State that an adverse impact will result in the Federal Class I area, the State must, in the notice of public hearing, either explain its decision or give notice as to where the explanation can be obtained.

(b) The plan shall also provide for the review of any new major stationary source or major modification:

(1) That may have an impact on any integral vista of a mandatory Class I Federal area, if it is identified in accordance with § 304 by the Federal Land Manager at least 12 months before submission of a complete permit application, except where the Federal Land Manager has provided notice and opportunity for public comment on the integral vista in which case the review must include impacts on any integral vista identified at least 6 months prior to submission of a complete permit application, unless the State determines under § 304(d) that the identification was not in accordance with the identification criteria, or

(2) That proposes to locate in an area classified as nonattainment under section 107(d)(1)(A), (B), or (C) of the Clean Air Act that may have an impact on visibility in any mandatory Class I Federal area.

(c) Review of any major stationary source or major modification under Paragraph (b) shall be conducted in accordance with Paragraph (a) above, and § 51.24(o), (p) (1)–(2), and (q). In conducting such reviews the State must ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal referred to in § 300(a). The State may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(d) The State may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the State deems necessary and appropriate.

Supplemental Statement of Basis and Purpose [1]

This statement sets out briefly the changes in the final rules from the proposal, the reasons for those changes, and significant comments related to these changes. A complete response to all comments received can be found in "Summary of Comments and Responses on the May 22, 1980 Proposed Regulations on Visibility Protection for Federal Class I Areas" available in Docket A–79–40.

Comments were received from private industry, private individuals, environmental organizations, local government, State and local air pollution control agencies, and other Federal agencies, and addressed nearly every aspect of the proposal. In developing these final rules, the Administrator considered all public comments received, and believes that the final

[1] This statement will not appear in the Code of Federal Regulations.

rules represent, as a consequence, an improvement upon the proposal. Today's promulgation is the best program that can be established considering the scientific and technical limitations that exist in measuring and predicting visibility impairment.

This supplemental statement notes the regulatory changes in each Section so the reader can determine them easily.

§ 300 Purpose and Applicability

This Section remains essentially as proposed. The major changes were: (1) Paragraph (a)(1)(iii) was made Paragraph (b)(3) for clarity; and (2) the portion of Paragraph (b)(2) which described procedures for changing the list of affected States was deleted because the Administrator has determined it would be appropriate to propose and solicit comment before promulgating any change in the States affected by these rules.

§ 301 Definitions

This Section now lists the definitions alphabetically for ease of reader reference. The following definitions were changed:

(1) Adverse impact—The phrase "of the visitor's visual experience" was added to the first sentence of the definition to clarify that, for purposes of this definition, "management, protection, and preservation" concerns are important only as they relate to the visitor's visual experience of the Federal Class I area. Additionally, a statement was added to indicate that the "adverse impact" test for a new source under the PSD program does not apply to integral vistas.

(2) Best available retrofit technology—The phrase "or in existence" was added to the requirement that the State consider "pollution control equipment in use" in determining BART. This change was made because the Administrator believes that where a source is installing controls as a result of other air pollution control programs that are not yet "in use," these controls and anticipated effects should be taken into account in the BART determinations.

(3) Building, structure, facility—This definition was changed to be consistent with the PSD regulations (45 FR 52676, August 7, 1980) ("new PSD regulations").

(4) Existing stationary facility—This term was changed from "existing major stationary source" to reduce any confusion with other definitions of "source" in 40 CFR Part 51. Additionally, as many commenters urged, EPA has harmonized with Section 169A(g)(7) of the Act the proposed provision restricting pollutants to be considered to those regulated under the Act.

(5) Federal Class I area and mandatory Class I Federal area—These definitions were added to clarify the difference between them.

(6) Federally enforceable—This definition was added to be consistent with the new PSD regulations.

(7) Fugitive emissions—This definition was changed consistent with the new PSD regulations.

(8) Installation—This definition was separated from "building, structure, or facility" to accommodate the reconstruction provisions of BART applicability, and to be consistent with the nonattainment regulations (45 FR 52676, August 7, 1980 ("new nonattainment regulations").

(9) Integral vista—This definition was changed to be consistent with changes in § 304. (See discussion on § 304, and on definition of "visibility in any mandatory Class I Federal area.")

(10) Major stationary source—The term "major emitting facility" was replaced by major stationary source to be consistent with other provisions of 40 CFR Part 51.

(11) Natural conditions—This definition was changed in response to public comments stating that the proposed definition was vague and unworkable. The definition now states that natural conditions are naturally occurring phenomena and defines the terms in which it is to be measured.

(12) Potential to emit—This definition was changed to be consistent with the new PSD regulations. The fugitive emissions inclusion statement was moved to the definition of "existing stationary facility."

(13) Reasonably attributable—This definition was changed for clarity and in response to comments that EPA should not require a State to attribute impairment solely on the basis of a monitoring technique other than visual observation. The definition now states that impairment is attributable by visual observation, and that the State in its discretion may use any other appropriate technique to attribute impairment.

(14) Reconstruction—The reference to "reconstruction" in the definition of "existing stationary facility" was changed slightly for clarification.

(15) Secondary emissions—This definition was changed to be consistent with the new PSD regulations.

(16) Significant impairment—This definition was changed in the same manner as the definition of adverse impact. The exemption procedures for sources not causing or contributing to significant impairment applies to impairment of an integral vista (see § 303).

(17) Stationary source—This definition was changed in response to comments that Section 169A(a)(7) applies to "any" pollutant, not just those "regulated under the Act."

(18) Visibility in any mandatory Class I Federal area—This definition was added because integral vistas are part of the mandatory Class I Federal area.

§ 302 Implementation Control Strategies

(1) While the basic structure of this Section remains the same, due to the various changes in this Section, paragraphs have been renumbered.

(2) Paragraph (b) was rewritten to clarify the role of the Federal Land Manager in the SIP development process.

(3) Paragraph (c)(2) was deleted because the integral vista identification procedures are all included in § 304 for clarity.

(4) Paragraph (c)(4) was rewritten to clarify the BART determination process, including the Federal Land Manager's role in the process, and to ensure exisiting stationary facilities are analyzed for their effect on integral vistas. Also, the BART reanalysis procedures have been moved to this paragraph from the section on long-term strategy.

Specifically, the State must determine whether any impairment the Federal Land Manager identifies at least 6 months before plan submission is reasonably attributable to any specific existing stationary facility. The State will subsequently establish the BART emission limitation for such sources based upon the BART guidelines. This BART emission limitation will, of course, be reviewable by the Administrator during the SIP review process.

When the Administrator determines that new technology is available for the control of a pollutant *not* previously controlled under BART requirements, he will so advise the States, provide guidance on the application of the new control technique for sources emitting that pollutant and call on the States to revise the SIPs accordingly. This is narrower than the reanalysis requirement proposed, as explained in the Response to Comment document.

§ 303 Exemptions from Control

Paragraph (c) has been rewritten to indicate that concurrence on the exemption application is needed only from the State with regulatory authority over the source. Several commenters were confused by this provision because they believed any concurrence would be an admission by the State that it had

performed the BART analysis improperly. To the contrary, the exemption process is not related to the establishment of the BART emission limitation. BART emission limitations are to be set for sources which cause or contribute to *any* visibility impairment, which is reasonably attributable to the source, whereas the source may apply for an exemption on the basis that it does not cause or contribute to *significant* impairment of visibility. The State's concurrence is required on any such application for an exemption because, under Section 116 of the Act, the State may establish emission limitations more stringent than required by the Administrator. The Administrator does not intend that this exemption procedure usurp any right by the State to establish emission limitations and therefore will not grant any exemption in which the State does not concur.

§ 304 Identification of Integral Vistas

This Section has been entirely revised in response to public comments. Under these final rules, if the Federal Land Manager desires to identify integral vistas (the Federal Land Manager is not required to do so), the Federal Land Manager must first adopt specific identification criteria preceded by notice and a reasonable opportunity for public comment. If the Federal Land Manager desires visibility protection for an integral vista, the vista must be identified to the State, which will then list the integral vista in the SIP. The Federal Land Managers may, at their discretion, subject the integral vistas to public comment prior to identification to the State. The State need not list any integral vista that it determines was not identified in accordance with the criteria. Where the State disagrees with the Federal Land Manager over an integral vista, the State must provide opportunity for the Federal Land Manager to discuss the identification with the Governor of the State. It is important to note that a State may, under its own authority, identify additional integral vistas to be afforded visibility protection.

§ 305 Monitoring

The requirement for consultation with the Federal Land Manager has been deleted as duplicative of § 302(b)(1)(iii).

§ 306 Long-term Strategy

(1) Paragraph (a)(1) has been revised to indicate that the long-term strategy must cover any existing impairment, including impairment of integral vistas, identified by the Federal Land Manager at least 6 months prior to plan submission.

(2) Paragraph (a)(2) has been revised to clarify that only mandatory Class I Federal areas that may be impacted by sources in the State need be addressed. Additionally, a statement was added to permit the State to develop a single comprehensive plan for visibility protection instead of developing fragmented plans for each area.

(3) Paragraph (b) has been rewritten to ensure consideration of all plans that might affect visibility in the mandatory Class I Federal area, so that the State can coordinate its long-term strategy with them.

(4) Paragraph (d)(2) is revised to refer to the new source programs of § 307, § 51.24(PSD), and § 51.18 (nonattainment new source review). The purpose of this reference is not to add new requirements, but simply to make note of these existing requirements. It is anticipated that States will have already adopted programs consistent with § 51.18 and § 51.24.

(5) Paragraph (e) of the proposed rule requiring BART reanalysis was moved to the paragraph on BART procedures.

(6) Paragraph (f)(5) [proposed paragraph (e)(5)] has been revised to ensure adequate consideration of existing plans for the use and control of prescribed forest and agricultural burning.

(7) Proposed Paragraph (h) is deleted as the requirement is included in § 302(c)(2)(i).

§ 307 New Source Review

(1) This section has been substantially changed to make it clearer and simpler. Paragraph (a) has been changed to ensure notification of all affected Federal Land Managers at least 60 days (instead of the proposed 30 days) before the public hearing on the construction permit of any source subject to the PSD provisions that may affect visibility. This ensures that the Federal Land Manager will have adequate time before the public hearing to assess the source's potential impact. In addition, Paragraph (a) ensures that the public has access before the hearing to the State's reasons for not being satisfied with any demonstration by the Federal Land Manager that an adverse impact on visibility would result. This will aid the public's ability to comment meaningfully at the hearing.

(2) Paragraph (b) requires that the review of any new major stationary source or major modifications must cover any integral vista identified at least 12 months before submission of a complete permit application unless the Federal Land Manager identifies the vista after notice and opportunity for public comment on the integral vista in which case the review must include any integral vista identified at least 6 months prior to submission of the complete permit application. Review of such vistas is governed by the requirement for making reasonable progress towards the national visibility goal. The Agency recognizes that there may be situations where, in considering the factors of reasonable progress as set out in § 169A(g)(1), some additional visibility impairment should be tolerated or accepted. The State may allow the visibility impairment recognizing it to be interim in nature such as natural resource extraction, or the State may permit a source which will impair visibility now while acknowledging there may be the opportunity in the future to remedy that impairment (as with emissions of NO_x). Provisions for future considerations of improved controls may be incorporated as a condition of a new source permit. This may be consistent with the intent of reasonable progress. The national goal was not to be achieved immediately: energy, economic, and other factors should be considered; therefore, some visibility impairment in these situations could be tolerated.

(3) The requirement in Paragraph (d) is unchanged.

(4) All other provisions of proposed Section 307 have been deleted because they merely repeat requirements of §51.24.

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CERTIFICATE OF SERVICE

I hearby certify that on December 6, 2012, I served the foregoing REVISED STAFF REQUEST TO THE ADMINISTRATIVE LAW JUDGE TO TAKE OFFICIAL NOTICE upon the persons named on the service list below who have waived such service by mail, by serving a full, true and correct copy thereof at their e-mail address as follows:

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