

provisions would also be addressed in the 2003 SIPs by the 9 Western States.

D. What Are the Next Steps in Implementing This Program?

Today's rule modifies the requirements in 40 CFR 51.309 of the regional haze rule. As a result, 40 CFR 51.309 provides a complete regulatory framework to be used by Western States and Tribes in developing regional haze implementation plans. The EPA will continue to work closely with the States and Tribes to support their efforts to develop plans that meet the applicable requirements of the regional haze rule. Once State and tribal plans that meet the applicable requirements of the regional haze rule are reviewed and approved by EPA, they will be federally enforceable.

E. What Topics Were Covered in EPA's May 6, 2002 Proposal?

The May 6, 2002 proposal addressed the following topics:

- The proposed regional SO₂ milestones and WRAP's determination that the milestones meet the criteria for approval in the regional haze rule. The EPA reviewed the WRAP's methodology for developing specific milestones for SO₂ for the years between 2003 and 2018. The EPA proposed to approve the milestones as satisfying the requirements of the regional haze rule. The EPA noted its conclusion that the milestones provide for "steady and continuing emissions reductions." The EPA also proposed to conclude that the milestones provide for "greater reasonable progress" than the BART emission limits that would otherwise be required by the regional haze rule.

- Ways in which the milestones may be adjusted in the future. The proposal discusses the limited circumstances under which the milestones may be adjusted in the future and the proposed administrative process for making those changes.

- The stationary sources of SO₂ that are included in the program. The proposal discussed the stationary sources of SO₂ that would be required to participate in the program, and whose cumulative emissions would be compared to the milestones.

- The annual process for determining whether a milestone is exceeded, thereby triggering the trading program. The proposal described the steps to be followed in evaluating emissions data at the State, tribal and regional levels. It also described a mechanism by which States and Tribes can activate the trading program in 2013 if evidence indicates that the 2018 milestone will not be reached without such action.

- Key trading program elements that are required in SIPs and tribal implementation plans (TIPs). The preamble discussed proposed requirements regarding the backstop trading program, and discussed trading program elements such as: Issuance of and compliance with allowances; emissions quantification protocols and tracking system; the annual reconciliation process; and penalty provisions.

- Status of the program after 2018. The proposal discussed EPA's understanding of what happens to the milestones and backstop trading program at the completion of the first implementation period, in 2018. The preamble to the May 6, 2002 proposal described each of these programmatic areas in detail, including EPA's review of the relevant portion of the WRAP submittal.

F. What Public Comments Were Received on the Proposal?

On May 6, 2002 (67 FR 30418), the proposed rule was published in the **Federal Register**. The EPA requested written comments on the proposal and held a public hearing. The public hearing was held in Phoenix, Arizona on June 4, 2002. A transcript for this public hearing is available in the public docket for the regulation (Docket OAR-2002-0076). The EPA received eleven written comments on the package, primarily from Western stakeholder groups.

G. What Topics Are Covered in This Preamble?

The EPA has made a number of changes to the proposed rule in response to the comments we received. The comments on the proposal were limited to a relatively small subset of the broad range of topics discussed in detail in the proposal. Accordingly, EPA believes that it is not necessary to repeat the comprehensive discussion contained in the preamble to the proposal. Instead, EPA has limited the discussion in this preamble to issues raised by commenters, and changes made to the final rule based on those issues.

III. Discussion of Issues Raised in Comments on the May 6, 2002 Proposal

A. General and Overarching Issues

1. Impact of May 24, 2002 American Corn Growers Decision

On May 24, 2002, the U.S. Court of Appeals for the D.C. Circuit issued a decision in *American Corn Growers et al. v. EPA*, 291 F.3d 1 (D.C. Cir., 2002) that invalidated part of EPA's regional

haze rule. Because the WRAP Annex would be incorporated into the regional haze rule, a number of commenters asked whether the court's decision would have an impact on this rulemaking regarding the Annex. Some commenters recommended that EPA not proceed with the final rule until EPA has addressed the issues raised by the court regarding the regional haze rule in general. In contrast, a number of commenters agreed with the position that EPA took in a June 7 letter³ that the Annex is fully consistent with the court's ruling. A number of commenters requested that EPA clarify its position and rationale on this issue. The EPA continues to believe that the decision in *American Corn Growers* does not in any way affect the WRAP Annex or EPA's ability to incorporate the Annex into its regional haze rule.

In order to better understand EPA's conclusion regarding the Annex, EPA believes it is helpful to review the history of the GCVTC and the WRAP. In its 1996 report to EPA, the GCVTC recommended a wide range of control strategies to address regional haze, including strategies to reduce emissions of SO₂ from large stationary sources. Thus, the GCVTC specifically recognized that stationary sources would need to be an important part of an overall visibility strategy and, in particular, that controlling sulfates from these sources was a key strategy for addressing haze. As part of this overall strategy, the GCVTC also concluded that interim targets that provided for "steady and continuing emission reductions" over the entirety of the planning period might also be needed.

In 1997, EPA proposed the regional haze rule, and in 1998, the WGA submitted comments to EPA requesting the addition of specific language to the rule to address the recommendations of the GCVTC. In these comments, the WGA reemphasized the commitment of the Western governors to the GCVTC recommendations. Following public notice and an opportunity to comment on the WGA's proposal, EPA issued the final regional haze rule (64 FR 35714, July 1, 1999). In 40 CFR 51.309 of the rule, EPA established a specific set of SIP requirements for the States and Tribes that participated in the GCVTC. As EPA noted in the preamble to the rule, these requirements acknowledged and gave effect to the substantial body of work already completed by the GCVTC and the WRAP.

³ June 7, 2002 letter from Lydia Wegman, EPA, to Rick Sprott and Julie Simpson, co-chairs, WRAP Initiatives Oversight Committee.