

degradation from the visibility impairing emissions from new source growth across the region.

Subsequent to the comment period, the Western States Air Resources Council (WESTAR) Model Rule/MOU Working Group noted<sup>4</sup> that as States and Tribes follow their process for adopting SIPs and TIPs under 40 CFR 51.309, the States and Tribes will not necessarily be aware of which other States and Tribes will choose to participate in the program. Accordingly, the WESTAR Working Group believed that States and Tribes would need to include all of Table 2 and calculation procedures in their SIP/TIP submittals, such that the SIP/TIP submittal could account for all possibilities of participation by other States and Tribes. Further, the WESTAR Working Group noted that in the initial years of the program, EPA may not have approved the SIP for all participating States before the date of the annual determination of whether the milestone is exceeded. Lastly, Tribes are not required to submit a TIP by 2003 and can choose to participate in the program at anytime. Accordingly, the WESTAR Working Group recommended that EPA clarify whether the comparison of emissions to the milestones would take into account all States that have submitted SIPs, or only those with approved SIPs as of the date of the determination.

**Final Rule.** The final rule retains the opt-out tables from the proposal. The EPA continues to agree with the WRAP that the opt-out tables do not necessarily represent the amounts that would be allocated to a given State or Tribe under a trading program. The WRAP has developed a detailed methodology for determining and establishing trading program allocations for each source. This methodology is described in detail in sections II.D and III.D.7 of the Annex. It is this methodology that will result in allocations should the trading program be needed. The EPA believes that establishing the amounts in the opt-out tables as the amounts for trading program allocations would unnecessarily constrain the WRAP from implementing its methodology.

The EPA continues to believe, as discussed in the proposal, that judgments on the issue of "critical mass" are best left to the WRAP. Regarding the comment that the SO<sub>2</sub> declining cap may not effectively prevent degradation of visibility from new sources throughout the region if not enough States and Tribes participate, EPA notes that visibility progress issues

as a general matter will need to be addressed in SIPs submitted under 40 CFR 51.308. Accordingly, EPA does not believe that this comment warrants any change to the proposed rule language.

The EPA agrees with the WESTAR Working Group that States and Tribes submitting their SIPs and TIPs under 40 CFR 51.309 should include Table 2 and the calculation procedures in their SIP or TIP regulations in order to account for all possibilities of participation by other States and Tribes. The EPA also agrees with the WESTAR Working Group recommendation to add to the final rule clarification that the opt-out adjustment under 40 CFR 51.309(h)(1)(i) will include the States and Tribes for which SIPs and TIPs have not been approved by EPA as of the date of the determination.

### 3. Adjustments for Smelter Operations

**Proposed rule.** At the time the WRAP was submitted to EPA, two copper smelters in the region, the Phelps Dodge Hidalgo smelter and the BHP San Manuel smelter, had suspended operations. In the Annex, the WRAP recommended that the program specifically account for the possibility that these smelters could come back on line should economic conditions change. Accordingly, the Annex contained a specific set of complex decision criteria to adjust the milestones in the future for a number of specific scenarios related to the two smelters. The EPA in the proposal attempted to clarify the WRAP's adjustments with a series of "if-then" tables, and we requested comment on whether these tables accurately reflect the decision criteria in the Annex.

**Public comments.** Commenters agreed that the EPA's proposed table accurately reflected the Annex. Two commenters noted that subsequent to the development of the Annex, a third smelter, the Phelps Dodge Chino smelter, suspended operations. These two commenters recommended that the regional haze rule should recognize this without reopening the negotiated agreement on the milestones. Further, the commenters recommended that the regional haze rule should provide some assurance that when the Chino Smelter comes back on line again, its 16,000 allowances will be available to it without prematurely triggering the program.

**Final rule.** The final rule retains the smelter adjustment tables as proposed. The EPA considered whether the final rule should contain contingencies for the Chino Smelter similar to those for Hidalgo and San Manuel. For example, one approach would be to deduct the

amount from the Chino smelter from the milestones and to develop a series of adjustments to account for the possibility that it may come back on line, similar to the approach for the other two smelters. The EPA has not taken this approach, because of the complexity that would be added to the adjustments, and because this scenario was not specifically discussed as the WRAP was negotiating the Annex.

### 4. Adjustments for Utility Boilers Opting To Use More Refined Flow Rate Methods

**Proposed rule.** The proposed rule requested comment on the specific method and process for adjusting the milestones for sources using a refined method for measuring stack flow rates. This was seen as a significant issue, because the flow rate affects the determination of emissions rate from a continuous emissions monitoring system (CEMS).

In 1999, EPA adopted revisions to EPA's Reference Method 2, the standard method for measuring stack flow rates (64 FR 26484, May 14, 1999). The revisions provided three new procedures: Methods 2F, 2G, and 2H. The new procedures, if used for a given source, allow for a more detailed assessment of the stack flow rates to provide more accurate flow rate results. The changes addressed concerns raised by utilities that Reference Method 2 may over-estimate flow in certain cases, such as when the flow is not going straight up the stack. If the flow rate is over-estimated, this would also lead to the overestimation of SO<sub>2</sub> emissions because the facility's continuous flow rate monitor is calibrated to correspond to the flow test method. Facilities subject to the acid rain program under title IV of the CAA must perform these flow tests at least once a year to determine the accuracy of their continuous flow monitors. Facilities have an option to use either the old Method 2, or one or more of the new methods.

When the WRAP made its emission projections for purposes of developing the milestones, the new methods were not yet in place. Accordingly, if a source owner chooses to use the new flow methods, and if as expected it results in a reduced flow rate for the same level of operation, then there will be a corresponding decrease in the measured emissions. In the preamble to the proposal, EPA agreed with the WRAP that this would create the possibility of a "paper" decrease relative to the milestone if the milestone reflects the old method. As discussed in section III.A.5 of the Annex, the WRAP notes

<sup>4</sup> See memorandum from Lily Wong, EPA Region 9, to Docket OAR-2002-0076, March 2003.