

strategies to meet those goals should be left to the States and Tribes.

The WRAP's comments recommended deletion of item (E) from the rule. The WRAP indicated that while States and Tribes may choose to perform an analysis of the cost effectiveness of the program, this should not be mandated by EPA. The WRAP also recommended deletion of items (F) and (G) from the rule. In its comments, the WRAP explained its view that it could be very difficult to determine what changes in emissions in the region are due to the milestones because so many different factors will come into play in a backstop trading program. Moreover, the WRAP comments noted that the regional haze rule already includes provisions for a 5-year SIP review of the entire program under 40 CFR 51.309, and that new SIPs will be developed every 10 years. The WRAP stated that it believes that existing requirements in the rule are adequate to ensure that there are not any unintended consequences due to implementation of the backstop trading program, and that the additional audit requirements in (F) and (G) could prove to be difficult and expensive to analyze.

Final rule. The final rule incorporates the WRAP's recommended changes to items (B) and (D), and accepts the WRAP's recommendation to delete item (E). The EPA has, however, retained items (F) and (G). The EPA believes that it is important that a program evaluation of the trading program determine whether the trading program resulted in any unexpected beneficial effects, or any unintended detrimental effects and whether the actions taken to reduce SO₂ have led to any unintended increases in other pollutants. While the WRAP correctly notes that there are SIP reviews every 5 years, and new SIPs every 10 years, EPA believes that the program evaluations should be designed to provide information that indicate whether these SIP reviews should contain any mid-course corrections. The EPA does not believe that it will require a burdensome or exhaustive analysis to determine whether, qualitatively, such effects have occurred. If it is known that these detrimental effects have occurred, EPA believes that WRAP States should take this into account in the SIP revisions.

E. Provisions Related to Time Period After 2018

Proposed rule. In the proposal, EPA noted that the Annex did not attempt to address the fate of this program beyond calendar year 2018. In the proposal, EPA believed that it is reasonable for WRAP States and Tribes to defer until a later date any judgment on the specific

levels of SO₂ that can be achieved. Finally, in the proposal, EPA noted its belief that any actions that occur after 2018 should not be allowed to increase SO₂ emissions beyond the 2018 milestone. Accordingly, EPA proposed to indicate in the language in Table 1 of the proposed rule that any milestone developed for years after 2018 must not allow increases over and above those for the year 2018.

Public comments. One commenter, supported by two other commenters, believed that, because the WRAP Annex covers the period from 2003 to 2018, EPA's approval of the Annex should not be dependent on what occurs after 2018. The EPA interprets this comment as requesting that the final rule be silent on the time period after 2018. The WRAP's comments recommended that the language in Table 1 of the proposed rule be modified to read "no more than 510,000 tons (480,000 tons if suspended smelters do not resume operation) unless the milestones are replaced with a different program that meets any BART and 'reasonable progress' requirements established in this rule."

Final rule. The EPA has incorporated language similar to that requested by the WRAP into Table 1. This ensures that the progress made by participating States and Tribes in addressing the visibility impairment will not be eroded in the event that the SIP revisions due in 2018 are not in place at the beginning of 2019. At the same time, this provision clearly indicates that this SIP revision is the expected means of addressing visibility after that date.

F. Provisions Related to Indian Tribes

Proposed Rule. Western Indian Tribes have been directly involved during the development of the GCVTC report and the subsequent development of the WRAP Annex report. Through this involvement, they have been able to ensure that unique issues of importance to Tribes have been carefully considered by all stakeholders. The Annex addresses issues of tribal interest, including a specific provision of the program for Tribes in the market trading program. The EPA believes that tribal participation is important for the success of the visibility protection program in the Western United States and reflected this in the proposed rule.

When developing the backstop trading program, the WRAP established a 20,000 ton allowance amount (called the "set-aside") to be allocated to Tribes. In the event that the backstop market trading program is triggered, the set-aside would be available to Tribes to either (1) allow for new source growth over and above the amounts allocated

for new sources by the Annex; (2) sell for revenue; or (3) retire. Note that this set-aside amount is in addition to any allocations to individual sources within Indian Country. For example, if the Navajo Nation participates in the program, there would be an allocation for the Four Corners Power Plant and for the Navajo Power Plant, which are located on the Navajo Reservation. The WRAP's backstop trading program includes within the overall milestones an amount for each such existing source in addition to the tribal set-aside. For more discussion of this issue, see 67 FR 30438, May 6, 2002.

In the proposal, EPA included the 20,000 ton tribal set-aside as a requirement of the backstop trading program. In addition, EPA discussed in the preamble its views of EPA's role with respect to allocation of the 20,000 ton set-aside. In this discussion, EPA stated its view that allocation of the 20,000 ton amount was not a critical short-term need, because the backstop trading program would be triggered, at the earliest, in the year 2009. The EPA indicated its expectation that Tribes will develop the method for allocating the 20,000 tons, but that EPA will seek to provide assistance as necessary to facilitate the process.

In the proposed rule, EPA reiterated its position that it will "pursue the principle of tribal 'self government' and will work with tribal governments on a 'government-to-government' basis." The CAA Amendments of 1990 added section 301(d) which authorizes EPA to "treat Tribes as States" for the purposes of administering CAA programs. The EPA promulgated regulations implementing section 301(d) in the Tribal Authority Rule, which elaborates on EPA's tribal policies, on February 12, 1998, (63 FR 7254). For a more detailed discussion of EPA's tribal policies, see the Tribal Authority Rule (63 FR 7254) and the proposed rule (67 FR 30418).

Public Comments. The EPA received several comments relating to tribal issues, including the set-aside for Tribes in the market trading program and the need for providing assistance (such as developing a model TIP) to Indian Tribes.

The WRAP's comments agreed with the proposed language in § 51.309(h)(4)(i) regarding the set-aside and added that the final rule should say that tribal participation in the market trading program would not be affected by States that do not choose to participate in the market trading program. The WRAP comments included an example: "if California opts out of the backstop trading program, all Tribes that are located in California may