

still participate in the distribution of the tribal set-aside.” The WRAP also suggested that EPA make assistance in developing a TIP a high priority, and that EPA should develop a model implementation plan which could be appropriately modified and used by any Tribe choosing to participate in the market trading program.

One commenter representing industrial sources located in Indian country expressed the concern that participation by Tribes with large stationary sources was important for the program to reach “critical mass.” Additionally, this commenter believed that EPA should work to serve the interests of sources located in Indian country by assisting the Tribes in developing a program under 40 CFR 51.309.

The WRAP’s comments agreed with EPA’s assessment that allocation of the 20,000 ton tribal set-aside does not need to be completed in the near-term, and strongly agreed that the distribution of the set-aside should be determined by the Tribes and not EPA or the WRAP. However, the WRAP recommended that the final rule contain a provision that will require the determination of a method to allocate or manage the set-aside by no later than 1 year after the market trading program is triggered.

**Final Rule.** The EPA agrees with commenters regarding participation of Indian Tribes in the regional SO<sub>2</sub> emissions reductions program. The EPA agrees that Tribes should be allowed to participate in the program and their participation is not dependent on the participation of the States that surround them. As stated in the Tribal Authority Rule (63 FR 7271)

[t]ribes \* \* \* shall be treated in the same manner as states with respect to all provisions of the Clean Air Act and implementing regulations, except for those provisions identified in section 49.4 and the regulations that implement those provisions. (63 FR 7271).

Because the CAA provisions for the regional haze rule are not listed in section 49.4, Tribes should have the opportunity to be treated in the same manner as States for purposes of implementing 40 CFR 51.309. Accordingly, eligible Tribes may submit a plan regardless of the participation of neighboring States.

The EPA concurs with the comments regarding the importance of assisting Tribes in developing TIPs. As stated in the proposal, “For Tribes which choose to implement 40 CFR 51.309, EPA believes there are a number of ways that EPA can provide assistance.” The EPA will help those Tribes with major SO<sub>2</sub> sources to comply with the pre-trigger

emissions tracking requirements, and to assist Tribes interested in participating in the backstop trading program. To this end, EPA has met, or plans to meet, with all Tribes that have major SO<sub>2</sub> sources. In these meetings, EPA is explaining the regional haze rules and options for participating in the SO<sub>2</sub> reduction program.

The EPA agrees with the WRAP’s comments that a model TIP could serve to facilitate implementation of the program in Indian country. The EPA will work with Tribes to further assess the needs for such a model TIP. The EPA also agrees with the WRAP’s recommendation to establish a 1-year deadline for allocation of the 20,000 ton set-aside, and we have added this language to the final rule.

EPA is committed to protecting tribal air resources, building tribal air program capacity, and working with Tribes on a government-to-government basis.

#### IV. Statutory and Executive Order Reviews

In preparing any final rule, EPA must meet the administrative requirements contained in a number of statutes and executive orders. In this section of the preamble, we discuss how the final rule addresses these administrative requirements. Except where EPA committed in the proposal to further efforts, these discussions reflect EPA’s assessments for the proposed rule. No public comments were received regarding EPA’s proposed treatment of these administrative requirements.

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is “significant” and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the

President’s priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a “significant regulatory action.” As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

Today’s final rulemaking amends the regional haze rule by incorporating a specific set of SO<sub>2</sub> emission targets for regionwide stationary sources of SO<sub>2</sub> emissions for a nine-State region in the Western United States. The emission targets would affect and have potential economic impacts only for States choosing to participate in the optional program provided by 40 CFR 51.309 of the regional haze rule. The emissions reductions resulting from the program vary over the 2003 to 2018 time period. If all nine States participate in the program, the WRAP estimates that for the year 2018, SO<sub>2</sub> emissions would be reduced from a projected baseline of 612,000–642,200 tons to an enforceable milestone of 480,000–510,000 tons. If the milestones are not achieved through voluntary emissions reductions by the affected sources, then they will be achieved through an enforceable backstop market trading program.

In order to understand the possible regulatory impacts of this rule, it is necessary to review the previous analysis that EPA completed for the entire regional haze program. In 1999, EPA prepared a Regulatory Impact Analysis (RIA) for the regional haze rule (see regional haze rule docket (A-95-38)). In that RIA, EPA assessed the costs, economic impacts, and benefits for four illustrative progress goals, two sets of control strategies, two sets of assumptions for estimating benefits, and systems of nationally uniform progress goals versus regional varying progress goals (64 FR 35760, July 1, 1999). Because we had no way of predicting the visibility goals each State would pick under the regional haze rule requirements, we conducted an extensive analysis of eight “what if” scenarios. For each scenario, the RIA determined the control measures needed to achieve the given degree of visibility improvement and the associated costs. The RIA also presented results for six specific sub-regions, such as “Rocky Mountain,” “West,” and others. These emission reduction scenarios are provided in the RIA in Tables 6–7 and 6–8.

The EPA believes that some of the emissions reductions from the Annex provisions for stationary source SO<sub>2</sub>, assuming States choose this optional 40