

August 1998. EPA draft regulatory language for public review. Intended to provide illustrative example of regulatory text based upon June 98 letter from WGA.

§51.309 Requirements Related to the Grand Canyon Visibility Transport Commission.

(a) Purpose. The purpose of this section is to establish the requirements for implementation plan revisions and periodic progress reviews to address regional haze visibility impairment in the 16 Class I areas addressed by the Grand Canyon Visibility Transport Commission Report for the years 2003 to 2018.

(b) Definitions. For the purposes of this section:

(1) “16 Class I areas” means the following mandatory Class I Federal areas on the Colorado Plateau: Grand Canyon National Park, Sycamore Canyon Wilderness, Petrified Forest National Park, Mount Baldy Wilderness, San Pedro Parks Wilderness, Mesa Verde National Park, Weminuche Wilderness, Black Canyon of the Gunnison Wilderness, West Elk Wilderness, Maroon Bells Wilderness, Flat Tops Wilderness, Arches National Park, Canyonlands National Park, Capital Reef National Park, Bryce Canyon National Park, and Zion National Park.

(2) “Transport Region State” means one of the States that is included within the Transport Region addressed by the Grand Canyon Visibility Transport Commission (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming).

(3) “Commission Report” means the report of the Grand Canyon Visibility Transport Commission entitled “Recommendations for Improving Western Vistas,” dated June 10, 1996.

(4) “Fire” means wildfire, wildland fire (including prescribed natural fire) [Note: the term “prescribed natural fire” is no longer used by the interagency National Wildfire Coordinating Committee], prescribed fire, and agricultural burning conducted and occurring on Federal, State, and private wildlands and farmlands.

(5) “Milestone” means an annual percentage reduction in emissions for a given year, compared to a 1990 baseline.

(c) Plan Revision Schedule. Each Transport Region State must submit a plan revision addressing regional haze visibility impairment in the 16 Class I areas no later than December 31, 2003. The plan revision must comply, to the satisfaction of the Administrator, with the requirements set forth in §51.309 (d) and (e).

(d) Requirements of the Initial Plan Revision for States Electing to Adopt all of the Commission Recommendations. Except as provided for in §51.309 (e), to provide for reasonable progress for the 16 Class I areas, the plan must include the following provisions.:

(1) Time period covered. The plan must be effective for the entire time period between December 31, 2003 and December 31, 2018.

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(2) Projection of visibility improvement. The plan must include a projection of the visibility conditions (expressed in deciviews) expected through the year 2018 for the most-impaired and the least-impaired days for the subset of the 16 mandatory Class I areas located within the State, calculated based on the implementation of all measures as required in the Commission report and the provisions in §51.309. The projections must be made in consultation with other Transport Region States having sources or activities reasonably anticipated to contribute to visibility impairment in these Class I areas. The States may rely on projections resulting from a regional modeling procedure deemed acceptable by all Transport Region States and the Administrator.

(3) Treatment of Clean-Air Corridors. The plan must describe and provide for implementation of comprehensive emission tracking strategies for clean-air corridors. The strategy must include:

(i) an identification of clean-air corridors based upon the report of the Commission's Meteorology Subcommittee entitled Clean Air Corridors: A Framework for Identifying Regions that Influence Clean Air on the Colorado Plateau (Approved by the Commission's Operations Committee. August 3, 1995);

(ii) Within areas that are clean-air corridors, an identification of patterns of growth or specific sites of growth that could cause, or are causing, significant emissions increases that could have, or are having, a negative impact on visibility at one or more of the 16 Class I areas.

(iii) In areas outside of clean-air corridors, an identification of significant emissions growth that could begin, or is beginning, to impair the quality of air in the corridor and thereby reduce the frequency of clean air days at one or more of the 16 Class I areas.

(iv) A determination of whether other sources of clear air exist for one or more of the 16 Class I areas. For any such sources of clear air, an identification of the necessary measures to protect against future degradation of air quality in any of the 16 Class I areas.

(v) A determination of whether any of the conditions identified above are occurring, and, if so, an analysis of the effects of increased emissions and the implementation of additional measures to protect clean air days, if necessary.

(4) Implementation of Stationary Source Reductions. The plan must include:

(i) Provisions requiring the monitoring and reporting of stationary source sulfur dioxide emissions within the State. The monitoring and reporting data will be used to assess compliance with the stationary source emission reduction milestone of 13 percent in the year 2000 (compared

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to 1990 actual emission levels), and the quantitative milestones established for the 2003-2018 planning period pursuant to §51.309(f)(1).

(ii) The criteria and procedures for activating a market trading program or other program consistent with §51.309(f)(2) if an applicable milestone is exceeded, procedures for operation of the program, and implementation plan assessments of the program in the years 2003, 2008, 2013, and 2018.

(iii) Provisions to fully activate the market trading program or other program within 12 months of the time the emissions for the region are determined to exceed the applicable emission reduction milestone, and assure that all affected sources are in compliance with allocation and other requirements within 5 years from the time the emissions for the region are determined to exceed the applicable emission reduction milestone.

(iv) Provisions requiring the State to report on actual emissions reductions and commitments and to demonstrate that the regional stationary source sulfur dioxide emissions are below the emission reduction milestone, if the stationary source sulfur dioxide emissions for the region are below the emission reduction milestone.

(v) Provisions requiring the State to report on actual emissions and to demonstrate that all sources are in compliance with applicable requirements, if the market trading program has been activated.

(vi) Provisions requiring the State to report on emissions management options for stationary source NO<sub>x</sub> and PM. In the report, the State must consider the establishment of emission targets to prevent any net increase in the pollutants from stationary sources within the region as a whole and to provide a foundation for future incorporation of the emission targets into a multipollutant and possibly multisource market-based program. The plan must provide for the incorporation of emission management strategy components into the long-term strategy, if determined by the State to be needed.

(5) Mobile Sources. The plan must provide:

(i) A statewide inventory of current and projected emissions of VOC, NO<sub>x</sub>, elemental and organic carbon, and fine particles from mobile sources for the 2003-2018 period (including a projection for the year 2005 or the year for which emissions are projected at their lowest levels); [Note: EPA is considering adding sulfur dioxide to the list of pollutants suggested by WGA].

(ii) A determination of whether mobile source emissions in any areas of the State contributes significantly to visibility impairment in the 16 Class I Areas, based on the statewide inventory of current and projected mobile source emissions.

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(iii) For States with areas of mobile source emissions that are found to contribute significantly to visibility impairment in any of the 16 Class I areas:

(A) The establishment and documentation of the State's mobile source emissions budgets for any such area.

(B) Provisions requiring the State to cap VOC, NO<sub>x</sub>, elemental and organic carbon, and/or fine particle mobile source emissions at their projected lowest levels, to implement measures to achieve the budget or cap, and to demonstrate compliance with any such budgets.

(C) An emission tracking system to evaluate and to demonstrate in the periodic implementation plan assessments required by §51.309(d)(10) that the State is meeting its contribution to the regional mobile source emissions cap.

(iv) Interim reports to EPA and the public in years 2003, 2008, 2013, and 2018 on the implementation status of the regional and local strategies recommended by the Commission to address mobile source emissions.

(6) Programs Related to Fire. The plan must provide for:

(i) Documentation that all Federal, State, and private prescribed fire programs within the State incorporate the visibility effects of smoke in planning and application.

(ii) A statewide inventory and emissions tracking system (spatial and temporal) of VOC, NO<sub>x</sub>, elemental and organic carbon, and fine particle emissions from fire, which information may be based on regional data-gathering and tracking initiatives.

(iii) Enhanced smoke management programs for fire that consider visibility effects, as well as health and other objectives, and that take into account efficiency, economics, law, emission reduction opportunities, land management objectives, and the reduction of visibility impacts.

(iv) Identification of any legal or administrative barriers to the use of alternatives to burning in Federal, State, and private prescribed fire programs, and documentation, where appropriate, that the use of alternatives to burning are considered.

(v) Establishment of annual emission goals for fire, excluding wildfire, that will minimize emission increases to the maximum extent feasible and that are established cooperatively by States, tribes, State and Federal land management agencies, and their private sector counterparts considering similar factors (efficiency, economics, law, emission reduction opportunities, land management objectives, and the reduction of visibility impacts) as the enhanced smoke management program.

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(7) Area Sources of Dust Emissions from Paved and Unpaved roads. The plan must include an assessment of the impact of dust emissions from paved and unpaved roads on visibility conditions in the 16 Class I Areas. If such dust emissions are determined to be a significant contributor, the State must implement emissions management strategies to address the impact.

(8) Pollution Prevention. The plan must provide for:

(i) An initial summary of all pollution prevention programs currently in place, an inventory of all renewable energy generation capacity and production in use, or planned as of 2002 (expressed in megawatts and megawatt-hours), the total energy generation capacity and production for the State, the percent of the State's total that is renewable energy, and the State's anticipated contribution toward the Commission's renewable energy goals of 10 percent by 2005, and 20 percent by 2015.

(ii) Programs to provide incentives that reward efforts that go beyond compliance and/or achieve early compliance with air-pollution related requirements.

(iii) Programs to preserve and expand energy conservation efforts.

(iv) The identification of specific areas where renewable energy has the potential to supply power where it is now lacking and where renewables are most cost effective.

(v) Projections of the short- and long-term emissions reductions, visibility improvements, cost savings, and secondary benefits associated with the renewable energy goals, energy efficiency and pollution prevention activities.

(vi) A planning assessment describing the programs being relied on to achieve the State's contribution toward the Commission's goal that renewable energy will comprise 10 percent of the regional power needs by 2005 and 20 percent by 2015, and a demonstration of the progress toward or achievement of the renewable energy goals in the years 2003, 2008, 2013, and 2018, including documentation describing the potential for renewable energy resources, the percentage of renewable energy associated with new power generation projects implemented or planned, and the renewable energy generation capacity and production in use and planned in the State. To the extent that it is not feasible for a State to meet its contribution to the regional renewable energy goals, the State must, in the planning assessments, identify the measures implemented to achieve its contribution and must explain why meeting the State's contribution was not feasible.

(9) Implementation of Additional Recommendations. The plan must provide for implementation of all other recommendations in the Commission report that can be practicably included as enforceable emission limits, schedules of compliance, or other enforceable measures (including economic incentives) to make reasonable progress toward remedying existing and

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preventing future regional haze in the 16 Class I areas. The State must provide a report to EPA and the public in 2003, 2008, 2013, and 2018 on the progress toward developing and implementing policy or strategy options recommended in the Commission Report.

(10) Periodic Implementation Plan Revisions. The plan must provide for interim planning assessments in years 2008, 2013 and 2018 that evaluate the State's progress in implementing the measures required in this subpart (subpart P). The interim planning assessments must be submitted to EPA in the form of implementation plan revisions that comply with procedural requirements of §51.102 and §51.103. If a State concludes, on the basis of its interim planning assessment, that no planning adjustments are necessary, the State may submit a negative declaration implementation plan revision that contains the basis for the State's determination but does not adopt additional rules. If the State concludes, on the basis of its interim planning assessment, that corrective action or other appropriate planning adjustments are necessary, the State shall have 1 year from the deadline for the interim assessment to adopt and submit an appropriate implementation plan revision to EPA.

(11) State Planning and Interstate Coordination. References in this section (§51.309) to a State's duty to address its contribution to the regional emissions control strategy do not in any manner preclude a State from relying on strategies that are implemented in coordination with other States through regional planning processes. Examples of these strategies include economic incentive programs and trans-boundary emissions trading programs. However, where strategies are based on coordinated implementation with other States, the implementation plan must include documentation of the technical and policy basis for the individual State apportionment, the contribution addressed by the State's plan, how it coordinates with other State plans, and compliance with any other appropriate implementation plan approvability criteria. States may rely on the relevant technical, policy and other analyses developed by a regional entity (such as the Western Regional Air Partnership) in providing such documentation. Conversely, States may elect to develop their own programs without relying on work products from a regional entity.

(12) Tribal Implementation. Tribes within the Transport Region may implement the required visibility programs for the 16 Class I areas, or reasonably severable elements of the Commission report, in the same manner as States, regardless of whether such tribes have participated as members of a visibility transport commission.

(e) Additional Requirements for States Electing not to Implement any Component of the Commission Recommendations. Any State electing may elect not to implement fully the Commission recommendations set forth in paragraph (d) of this section. States electing to substitute components other than those established in paragraph (d) of this section, or relying on a different approach, must provide, by December 31, 2003, a demonstration of reasonable progress toward the national goal for the 16 Class I areas consistent with the requirements of section 51.3xx of this subpart.

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[Note: This sentence means that such States would have to comply with the requirements for control strategies in the final national rule. As proposed by EPA in July 1997, this would mean identification and support of reasonable progress targets in light of the statutory factors, identification of control measures and demonstration that those measures meet reasonable progress, and measures to meet the BART requirements of the Act].

(f) Annex to the Commission Report.

(1) The provisions of §51.309(d) ensure reasonable progress for Transport Region States only if the Grand Canyon Visibility Transport Commission submits a satisfactory annex to the Commission Report no later than October 1, 2000. To be satisfactory, the Annex must contain the following elements:

(i) The annex must contain quantitative emission reduction milestones for stationary source sulfur dioxide emissions for the 2003-2018 time period. In setting these milestones, the Grand Canyon Visibility Transport Commission must consider its definition of reasonable progress, the 50-70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the Clean Air Act, and the timing of implementation plan assessments of progress and identification of deficiencies which will be due in the years 2008, 2013, and 2018.

(ii) The annex must contain final documentation of the market trading program or other programs to be implemented if current programs and voluntary measures are not sufficient to meet the required emission reduction milestones. This documentation must include model rules, memoranda of understanding, or other documentation describing in detail how emission reduction progress will be monitored, what conditions will require the market trading program to be activated, how allocations will be performed, and how the program will operate

(2) The Commission may elect, at the same time it submits the annex, to make recommendations intended to demonstrate reasonable progress for other mandatory Class I areas (beyond the original 16) within the Transport Region States, including the technical and policy justification for these additional mandatory Class I Federal areas in accordance with the provisions of §51.3xx.

(3) The EPA will publish the annex upon receipt. If EPA finds that the annex meets the requirements of §51.309(f)(1) and assures reasonable progress, then EPA, after public notice and comment, will amend the requirements of §51.309(d)(4) to incorporate the provisions of the annex within one year after EPA receives the annex. If EPA finds that the annex does not meet the requirements of §51.309(f)(1), or does not assure reasonable progress, or if the annex is not received, then EPA will amend §51.309(d)(4) to incorporate stationary source sulfur dioxide provisions to assure reasonable progress.

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(g) Additional Class I Areas. Plans submitted in 2003 by Transport Region States, which implement the provisions of this section related to the Commission's agreements and recommendations in their long-term strategy, may be the basis for demonstrating reasonable progress for additional Class I areas in their jurisdiction, if the plans submitted by December 31, 2003:

(1) Include a modeling demonstration of expected visibility conditions for the most-impaired and least-impaired days at the Class I areas in their jurisdiction, which may be based on refined technical studies conducted by the States and/or regional entity.

(2) Identify those Class I areas where reasonable progress may not be achieved and establish a schedule and process for more detailed review and development of additional measures which may be needed to demonstrate reasonable progress, as required in §51.3xx.

(3) Provide for updates in 2008 to the 2003 plans to implement any additional measures necessary to demonstrate reasonable progress.