

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 49**

[EPA-R09-OAR-2013-0009; FRL-9901-66-Region9]

**Approval of Air Quality Implementation Plans; Navajo Nation; Regional Haze Requirements for Navajo Generating Station; Supplemental Proposal****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Supplemental proposed rule and notice of public hearings.

**SUMMARY:** On February 5, 2013, EPA published its proposed source-specific Federal Implementation Plan (FIP) requiring the Navajo Generating Station (NGS), located on the Navajo Nation, to reduce emissions of oxides of nitrogen (NO<sub>x</sub>) under the Best Available Retrofit Technology (BART) provision of the Clean Air Act (CAA or Act). EPA proposed the BART FIP to reduce visibility impairment caused by NGS at 11 National Parks and Wilderness Areas. EPA's proposed FIP included: (1) A proposed BART determination; (2) A proposed "better than BART" alternative that achieves greater reasonable progress towards the national visibility goals than BART; and (3) a framework for evaluating additional alternatives to BART. This framework for evaluating additional alternatives was included in the proposal due to the unique purpose and history of NGS and the numerous stakeholder interests in it. On March 19, 2013 and June 19, 2013, EPA provided two extensions of the public comment period based on requests of several stakeholders who were actively working to develop an alternative to BART. On July 26, 2013, a group of stakeholders, known as the Technical Work Group (TWG), submitted to EPA their suggested alternative to BART (the "TWG Alternative"). The TWG Alternative establishes a lifetime cap in NO<sub>x</sub> emissions over 2009–2044 (the 2009–2044 NO<sub>x</sub> Cap) that is equivalent to the cumulative NO<sub>x</sub> emissions over 2009–2044 that NGS would emit under EPA's proposed BART determination of 0.055 lb/MMBtu achieved within five years of the final rule. Due to on-going lease and ownership uncertainties, the operators of NGS cannot yet commit to a single course of action for maintaining emissions below the 2009–2044 NO<sub>x</sub> Cap. The TWG Alternative therefore includes several alternative operating scenarios for meeting the 2009–2044 NO<sub>x</sub> Cap. EPA did not participate in the TWG or assist in developing the TWG

Alternative, and has independently evaluated the TWG Alternative to determine if it meets the requirements of the CAA and the Regional Haze Rule (RHR). In this action, EPA is proposing to determine that the TWG Alternative is "better than BART" because maintaining emissions below the 2009–2044 NO<sub>x</sub> Cap, as provided in the TWG Alternative, achieves greater reasonable progress than EPA's proposed BART determination towards the national visibility goal. EPA is accepting comment concurrently on today's Supplemental Proposal and our proposal from February 5, 2013.

**DATES:** Comments on EPA's February 5, 2013 proposal and today's Supplemental Proposal for NGS must be postmarked no later than January 6, 2014.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2013-0009, by one of the following methods:

(1) *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

(2) *Email:* [r9ngsbart@epa.gov](mailto:r9ngsbart@epa.gov).

(3) *Mail or deliver:* Anita Lee (Air-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

For more detailed instructions concerning how to submit comments on this supplemental proposed rule, and for more information on our proposed rule, please see the notice of proposed rulemaking, published in the **Federal Register** on February 5, 2013 (78 FR 8274).

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or email. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Hearings:* EPA has scheduled five public hearings to accept oral and

written comments on the proposed rulemaking. Prior to, or concurrent with, each public hearing, EPA will be holding an informal open house to allow members of the public additional time to review information related to EPA's proposed BART determination and Supplemental Proposal, and to speak with representatives from EPA. Any comments made to EPA staff during the open houses must still be provided in writing or orally during the formal public hearing in order to be considered in the record. The open house and public hearing schedule is as follows:

1. LeChee Chapter House (Navajo Nation), located in LeChee, Arizona, three miles south of Page on Coppermine Road (Navajo Route 20), (928) 698-2805, November 12, 2013, concurrent Open House and Public Hearing from 10 a.m.–1 p.m., local time;

2. Page High School Cultural Arts Building, 434 Lake Powell Boulevard, located in Page, Arizona, (928) 608-4138, November 12, 2013, Open House from 3–5 p.m., local time and Public Hearing from 6–9 p.m., local time;

3. Hopi Day School, Quarter-Mile East Main Street, located in Kykotsmovi, Arizona, (928) 734-2467, November 13, 2013, Open House from 3–5 p.m., local time and Public Hearing from 6–9 p.m., local time;

4. Phoenix Convention Center, 100 North 3rd Street, located in Phoenix, Arizona, (602) 262-6225, November 14, 2013, Open House from 3–5 p.m., local time and Public Hearing from 6–10 p.m., local time;

5. Proscenium Theatre, Pima Community College West Campus, Center for the Arts Building located two miles west of Interstate-10 on St. Mary's Road, (520) 206-6986, in Tucson, Arizona–November 15, 2013, Open House from 3–5 p.m., local time and Public Hearing from 6–9 p.m., local time.

EPA will provide oral interpretation services between English and Diné at the open houses and public hearings in LeChee and Page. EPA may provide oral interpretation services between English and the Hopi language at the open house and public hearing in Kykotsmovi, pending availability of a Hopi interpreter. To request additional oral interpretation services or to request reasonable accommodation for a disability, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section, by October 21, 2013. Verbatim transcripts, in English, of the hearings and written statements provided at the hearings will be included in the docket for this rulemaking.

Oral testimony may be limited to five minutes or less for each commenter to address the proposal or supplemental proposed rule. We will not be providing equipment for commenters to show overhead slides or make computerized presentations. The public hearings for the four evening events are scheduled to close at 9 p.m. (in Page, Kykotsmovi, and Tucson) or 10 p.m. (in Phoenix), but may close later, if necessary, depending on the number of speakers wishing to participate.

Written statements and supporting information submitted electronically or by mail during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. If you are unable to attend the hearings but wish to submit comments on the proposed rule, you may submit comments as indicated in the **ADDRESSES** section above.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at EPA Region 9 (e.g., maps, voluminous reports, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Anita Lee, EPA Region 9, (415) 972-3958, [r9ngsbart@epa.gov](mailto:r9ngsbart@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we”, “us”, and “our” refer to EPA.

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## I. Background

### A. The Significance of the Navajo Generating Station

NGS is a coal-fired power plant located on the Navajo Nation Indian Reservation, just east of Page, Arizona, approximately 135 miles north of Flagstaff, Arizona. Emissions of NO<sub>x</sub> from NGS affect visibility at 11 National Parks and Wilderness Areas that are designated as Class I federal areas, mandated by Congress to receive heightened protection: Arches National Park (NP), Bryce Canyon NP, Canyonlands NP, Capitol Reef NP, Grand Canyon NP, Mazatzal Wilderness Area (WA), Mesa Verde NP, Petrified Forest NP, Pine Mountain WA, Sycamore Canyon WA, and Zion NP. These areas support an active tourism industry drawing over four million visitors to the Grand Canyon National Park alone in 2011.<sup>1</sup> NGS is subject to the BART requirements of the CAA and the RHR based on its age and its effects on visibility in Class I areas. For a more detailed discussion of our determination that NGS is subject to BART and the requirements of the RHR, please see our proposed FIP at 78 FR 8274 and 8277 (February 5, 2013).

NGS is co-owned by six entities: the U.S. Bureau of Reclamation (Reclamation)—24.3 percent, Salt River Project Agricultural Improvement and Power District (SRP), which also acts as the facility operator—21.7 percent, Los Angeles Department of Water and Power (LADWP)—21.2 percent, Arizona Public Service (APS)—14 percent, Nevada Energy (NV Energy, also known as Nevada Power Company)—11.3 percent, and Tucson Electric Power (TEP)—7.5 percent.

<sup>1</sup> See document titled “Grand Canyon Annual Visitation.pdf” within document number 0005 in the docket for this proposed rulemaking at EPA-R09-OAR-2013-0009.

Federal participation in NGS was authorized in the Colorado River Basin Project Act of 1968 as a preferred alternative to building hydroelectric dams in the Grand Canyon for providing power to the Central Arizona Project (CAP).<sup>2</sup> The CAP is a 336-mile water distribution system that delivers about 1.5 million acre-feet (AF) per year of Colorado River water from Lake Havasu in western Arizona to non-tribal agricultural water users in central Arizona, Indian tribes located in Arizona, and municipal water users in Maricopa, Pinal, and Pima counties.<sup>3</sup> The CAP water is used to meet the terms of a number of Indian water-rights settlements in central Arizona and to reduce groundwater usage in the region.<sup>4</sup> Electricity from NGS powers the pumps that move CAP water to its destinations along the distribution system.

Several tribes located in Arizona including the Gila River Indian Community, the Ak-Chin Indian Community, the Tohono O’odham Nation, the San Carlos Apache Tribe, the White Mountain Apache Indian Tribe, the Fort McDowell Yavapai Nation, the Salt River Pima-Maricopa Indian Community, the Navajo Nation, the Yavapai-Apache Nation, the Hopi Tribe, the Pascua Yaqui Tribe, the Yavapai-Prescott Tribe, and the Tonto Apache Nation, have CAP water allocations or contracts.<sup>5</sup> In exchange for allocations of CAP water at reduced cost and access to funds for the development of water infrastructure, the tribes with water settlement agreements have released their claims to other water in Arizona. Excess NGS power owned by Reclamation that is not used by CAP is sold and profits are deposited into a fund to support the tribal water settlement agreements.<sup>6</sup> The U.S. Department of the Interior (DOI or the Interior), through Reclamation, plays an important role in the implementation of

<sup>2</sup> See information on the Central Arizona Project at [http://www.usbr.gov/projects/Project.jsp?proj\\_Name=Central+Arizona+Project](http://www.usbr.gov/projects/Project.jsp?proj_Name=Central+Arizona+Project). See also report by the National Renewable Energy Lab (NREL), discussed in more detail in Section G.iii of this notice, titled “Navajo Generating Station and Air Visibility Regulations: Alternatives and Impacts”, revision dated March 2012 (NREL report) within document number 0005 in the docket for this proposed rulemaking at EPA-R09-OAR-2013-0009.

<sup>3</sup> See Section titled “Welcome” on CAP homepage: <http://www.cap-az.com/>.

<sup>4</sup> See, for example, Section 4 of the NREL report and Comments from the Central Arizona Water Conservation District on the NREL report to DOI and EPA dated February 23, 2012, within document number 0005 in the docket for this proposed rulemaking at EPA-R09-OAR-2013-0009.

<sup>5</sup> See Table 7, 78 FR at 8283 (February 5, 2013).

<sup>6</sup> *Id.*

these settlement agreements and the management of the funds set aside for water infrastructure development for tribes.

The coal used by NGS is supplied by the Kayenta Mine, operated by Peabody Energy and located on reservation lands of both the Navajo Nation and the Hopi Tribe. Taxes and royalties from NGS and the Kayenta Mine paid to the Navajo Nation and Hopi Tribe contribute to the annual revenues for both governments.<sup>7</sup>

Given the extent of federal and tribal interests in NGS, on January 4, 2013, EPA, DOI, and the Department of Energy (DOE) signed a joint federal agency statement (Joint Statement) committing to collaborate on several short- and long-term goals, including analyzing and pursuing strategies for providing clean, affordable, and reliable power, affordable and sustainable water, and sustainable economic development to key stakeholders who currently depend on NGS.<sup>8</sup> The Joint Statement also recognizes the trust responsibilities of the Federal government to Indian tribes.

#### *B. EPA's February 5, 2013 Proposed BART Determination*

As previously stated, NGS is subject to the BART requirements of the CAA and the RHR based on its age and its effects on visibility in Class I areas. Because NGS is located in Indian country, and because the Navajo Nation has not developed a Tribal Implementation Plan to implement the BART requirement for NGS, on February 5, 2013, EPA proposed a BART determination to require NGS to meet a NO<sub>x</sub> emission limit of 0.055 pound per million British thermal units of heat input (lb/MMBtu) within five years of the effective date of a final rule.<sup>9</sup> For a number of reasons, including the importance of NGS to numerous Indian tribes located in Arizona and the federal government's reliance on NGS to meet the requirements of water settlements with several tribes, EPA proposed an Alternative to BART (i.e., Alternative 1) within the "better than BART" framework we outlined. EPA recognized that there may be other approaches that could result in better visibility benefits over time and that there may be changes in energy demand, supply, or other developments over the next several

decades that may change electricity generation on the Navajo Nation.

EPA's proposed "better than BART" framework established total emissions of NO<sub>x</sub> over 2009–2044 as the "BART Benchmark" against which an Alternative to BART would be compared.<sup>10</sup> EPA's "better than BART" framework included a NO<sub>x</sub> emission credit for the early and voluntary installation of LNB/SOFA over the 2009–2011 timeframe (LNB/SOFA credit).<sup>11</sup> As discussed in our proposed rulemaking, EPA was exercising its authority and discretion under section 301(d)(4) of the CAA and 40 CFR 49.11(a) to propose an extended timeframe for an alternative measure under the RHR for NGS. We proposed the LNB/SOFA credit supporting an extended timeframe based on the flexibility under section 301(d)(4) of the CAA, and 40 CFR 49.11(a).<sup>12</sup> EPA applied the LNB/SOFA credit to each Alternative to BART (adjusted emissions) and compared those values against the BART benchmark. Total adjusted emissions of an Alternative to BART over 2009–2044 that were lower than the BART Benchmark were then determined to be "better than BART" and result in greater reasonable progress towards the national visibility goal than BART. Conversely, alternatives that result in total NO<sub>x</sub> emissions exceeding the BART Benchmark would not be acceptable unless those alternatives provided additional emission reductions to bridge the deficit in NO<sub>x</sub> emission reductions.

To calculate the value of the LNB/SOFA credit, EPA first calculated the total NO<sub>x</sub> emissions over 2009–2044 that NGS would emit if NGS had waited until the proposed BART compliance date to install LNB/SOFA concurrently with SCR. EPA then calculated total NO<sub>x</sub> emissions over 2009–2044 with the actual installation date of LNB/SOFA in 2009–2011 and installation of SCR by the BART compliance date. The difference between the two values was calculated to be the LNB/SOFA credit.<sup>13</sup>

<sup>10</sup> In our proposed rulemaking, we use the term "BART threshold" to describe the total emissions of NO<sub>x</sub> over 2009–2044 against which Alternatives to BART would be compared. Although we use the term "BART benchmark" here, the two terms are intended to be identical in meaning.

<sup>11</sup> The NO<sub>x</sub> reductions achieved by installing the modern LNB/SOFA were not required under any regulatory program under the CAA and resulted in more NO<sub>x</sub> emission reductions during the period between 2009 and the BART compliance date than if LNB/SOFA were installed concurrently with SCR by the BART compliance date.

<sup>12</sup> See 78 FR 8289 (February 5, 2013).

<sup>13</sup> As discussed in greater detail in our proposed rule (78 FR at 8289, February 5, 2013), EPA notes that LNB with SOFA is a potential control option evaluated under BART and that these technologies

Under EPA's proposed framework, EPA established, as the BART benchmark, the total NO<sub>x</sub> emissions over 2009–2044 with the actual installation date of LNB/SOFA in 2009–2011 and installation of SCR by the BART compliance date. For a more detailed discussion of this approach, please see our proposed FIP at 78 FR at 8288–91.

EPA applied this framework to several alternatives we developed. In the February 2013 proposal, we proposed one Alternative to BART that would provide an additional three to five years to NGS in the schedule for the installation of new post-combustion control equipment to meet the proposed BART limit of 0.055 lb/MMBtu (i.e., Alternative 1 requiring compliance with the proposed BART limit on one unit per year in 2021, 2022, and 2023). Additional NO<sub>x</sub> emissions resulting from delayed compliance were offset by the emissions credit NGS achieved by its early and voluntary installation of LNB/SOFA. We calculated that under this proposed Alternative 1, total adjusted emissions of NO<sub>x</sub> over 2009–2044 were lower than total emissions of NO<sub>x</sub> under EPA's proposed BART determination. Therefore, EPA proposed to find that Alternative 1 achieves greater reasonable progress than BART.

In the February 2013 proposal, EPA also described, but did not propose, two additional alternatives (Alternatives 2 and 3) that would provide an additional five to eight years for NGS to meet the proposed BART limit of 0.055 lb/MMBtu (i.e., Alternatives 2 and 3 called for compliance with the BART limit on one unit per year over 2023–2025 and 2024–2026, respectively). Total NO<sub>x</sub> emissions over 2009–2044, after accounting for the LNB/SOFA early installation credit, from each of these two additional alternatives both exceeded the BART Benchmark. However, under our proposed framework, these two additional alternatives would be viable if the owners of NGS achieved sufficient additional emission reductions to bridge the NO<sub>x</sub> reduction deficit. EPA requested comment on our proposed "better than BART" framework and how NGS might achieve the emission reduction bridge necessary for the longer compliance schedules under

are typically used in conjunction with SCR or other add-on controls to first reduce NO<sub>x</sub> formation during combustion. EPA recognizes that the owners of NGS could have waited until the compliance date of the final BART determination before installing any new controls, including LNB/SOFA, and that the early and voluntary NO<sub>x</sub> reductions achieved beginning in 2009 were not required under any regulatory program under the CAA.

<sup>7</sup> *Id.*

<sup>8</sup> See document title "2013\_0104 Joint Federal Agency Statement on NGS" within document number 0005 in the docket for this proposed rulemaking at EPA–R09–OAR–2013–0009.

<sup>9</sup> Unless otherwise noted, the averaging period, for all emission limits, is based on a rolling average of 30 boiler operating days.

Alternatives 2 and 3 to qualify as “better than BART.”

In both the February 2013 proposal and in the accompanying fact sheet, EPA encouraged a robust public discussion of our proposed BART determination, our proposed Alternative 1, as well as our proposed “better than BART” framework and other possible alternatives that meet the framework. In addition, we recognized the potential need for a supplemental proposal if other approaches developed by other parties are identified as meeting the requirements of the CAA.<sup>14</sup>

After EPA published the proposed FIP on February 5, 2013, we received requests for a 90-day extension of the public comment period from the Navajo Nation, the Gila River Indian Community, SRP, and the Central Arizona Water Conservation District (CAWCD), the CAP operating entity, in order to allow stakeholders additional time to develop alternatives to BART for EPA’s consideration. Recognizing the significant time and effort necessary to develop viable alternatives and the critical importance of active participation by affected parties in the development of alternatives to BART, on March 19, 2013, EPA extended the close of the public comment period to August 5, 2013 (78 FR 16825).

On June 10, 2013, EPA signed a notice, published on June 19, 2013, of our intent to hold five public hearings throughout the state of Arizona (78 FR 36716), at one location each on reservation lands of the Navajo Nation and Hopi Tribe, and in Page, Phoenix, and Tucson, Arizona.

On June 20, 2013, SRP submitted a letter, on behalf of itself and certain other stakeholders, requesting another extension of the comment period for NGS. The SRP letter described work that had been on-going for several months with representatives from several organizations (the TWG) to develop an Alternative to BART. On July 9, 2013, EPA extended the close of the public comment period again to October 4, 2013 (78 FR 41012). On September 16, 2013, EPA signed a notice extending the close of the public comment period a third time, to January 6, 2014.<sup>15</sup>

### C. Technical Work Group Agreement

On July 26, 2013, a group of stakeholders known as the TWG and composed of the Central Arizona Water Conservation District (CAWCD), the Environmental Defense Fund (EDF), the

Gila River Indian Community (Gila River, or the Community), the Navajo Nation, SRP, on behalf of itself and the other non-federal Participants, the Department of the Interior, and Western Resource Advocates, submitted a document memorializing a multi-party agreement (the TWG Agreement) to EPA for consideration.<sup>16</sup> EPA had attended a “kick-off” meeting for the TWG on March 21, 2013, at which we described our February 5, 2013 proposal, but EPA did not have any further participation in the TWG.<sup>17</sup> As described in Section III of the TWG Agreement, “Summary of Agreement Elements; Reasonable Progress Alternative to BART, Obligations of Support, and Reservation Right”, the Agreement consists of seven elements: (1) A description of a “Reasonable Progress Alternative to BART” (the TWG Alternative);<sup>18</sup> (2) a study of options by Reclamation for replacing the federal share of energy being generated from NGS with low-emitting energy; (3) commitments by Interior to reduce or offset emissions of carbon dioxide (CO<sub>2</sub>) by three percent per year and facilitate the development of clean energy resources; (4) commitments by Interior to mitigate potential impacts from EPA’s final BART rule to Affected Tribes; (5) a commitment by Interior to carry out the Phase 2 Study by the National Renewable Energy Laboratory (NREL) for the purposes of studying options for the future of NGS; (6) a commitment by SRP to make funds available for a Local Benefit Fund for community improvement projects within 100 miles of NGS or the Kayenta Mine; and (7) a summary of obligations of the Parties to the Agreement and miscellaneous legal provisions.

The TWG Agreement, in its entirety, is included in the docket for this proposed rulemaking. Appendix B to the TWG Agreement is the only component of the TWG Agreement that is applicable to today’s action. EPA is not requesting comment on the provisions of the TWG Agreement unrelated to Appendix B, and will not be responding to comments on aspects of the TWG Agreement that are not

related to our authority under section 169A of the CAA to require BART or an Alternative to BART.

## II. Legal Background for Proposing the TWG Alternative to BART as Achieving Greater Progress Towards the National Visibility Goal

In our proposed BART determination for NGS on February 5, 2013 (78 FR 8274), we provided a detailed discussion of the statutory and regulatory framework for addressing visibility, addressing sources located in Indian country under the Tribal Authority Rule (TAR), and developing BART determinations pursuant to the CAA and the BART Guidelines set forth in Appendix Y to 40 CFR Part 51. Please see 77 FR 8275–8277 for our discussion on these topics. In the following paragraphs, we describe the legal background and authority for evaluating Alternatives to BART and for providing additional compliance flexibility to NGS.

Under the CAA, compliance with emission limits determined as BART must be achieved “as expeditiously as practicable but in no event later than five years” after the effective date of the final BART determination (See CAA 169A(b)(2)(A) and (g)(4)). Therefore, the BART compliance date for NGS would be no later than 2019 if the rule is finalized in 2014. As discussed in greater detail in our proposed BART determination, EPA recognizes that the circumstances related to NGS create unusual and significant challenges for a five-year compliance schedule.<sup>19</sup> Based on those challenges and our discretion under the TAR for implementing CAA requirements on tribal lands, we considered other options that are consistent with the CAA and RHR, and that provide for a more flexible, extended compliance schedule.

EPA’s BART regulations allow an Alternative to BART provided the alternative results in greater reasonable progress than would have been achieved

<sup>19</sup> SRP expressed concern that the owners of NGS may choose to retire the facility if faced with the financial risk of making a large capital investment within five years without also having certainty that the lease and contract re-negotiations would conclude in a timely and favorable manner. EPA understands that the owners of NGS face numerous uncertainties and the unusual requirement to comply with NEPA for lease and other rights-of-way approvals, which apply only to NGS and Four Corners Power Plant, the other coal-fired power plant located on the Navajo Nation. EPA also understands the importance of the continued operation of NGS and the Kayenta Mine to the Navajo Nation and Hopi Tribe as a source of direct revenues through lease payments or coal royalties, as well as the importance of Reclamation’s share of NGS to supply water to many tribes located in Arizona in accordance with several water settlement acts.

<sup>14</sup> See Fact Sheet at <http://www.epa.gov/region9/air/navajo/index.html#proposed>.

<sup>15</sup> See document number 0172 in the docket for this proposed rulemaking at EPA–R09–OAR–2013–0009.

<sup>16</sup> See “Technical Work Group Agreement Related to Navajo Generating Station (NGS)” dated July 25, 2013, and submitted to EPA on July 26, 2013, in the docket for this proposed rulemaking at EPA–R09–OAR–2013–0009–0122.

<sup>17</sup> See document number 0033 in the docket for the proposed rulemaking at EPA–R09–OAR–2013–0009.

<sup>18</sup> The “Reasonable Progress Alternative to BART” is a term from the TWG Agreement. EPA interprets this term to have the same meaning as an Alternative to BART or a “better than BART” Alternative, however, we do not otherwise use this term in today’s Supplemental Proposal.

through installation of BART. 40 CFR 51.308(e)(2). The regulations provide that an Alternative to BART must ensure that all necessary emission reductions occur within the period of the first long-term strategy for regional haze (i.e., by 2018) for States that were required to submit regional haze SIPs in December 2007. 40 CFR 51.308(e)(2)(iii). Thus, if states had submitted timely regional haze SIPs in 2007 with BART compliance deadlines in 2012, the RHR provided over five additional years for the implementation of Alternatives to BART.

In our February 5, 2013 proposal for NGS, EPA proposed an Alternative to BART (Alternative 1). In particular, EPA proposed that consideration of a compliance schedule beyond 2018 for Alternative 1 at NGS was appropriate for a number of reasons, including the importance of NGS to numerous Indian tribes located in Arizona and the federal government's reliance on NGS to meet the requirements of water settlements with several tribes. The timeframe for compliance would not, in itself, avoid or mitigate increases in water rates for tribes located in Arizona; however, it would provide time for the collaborating federal agencies to explore options to avoid or minimize potential impacts to tribes, including seeking funding to cover expenses for the federal portion of pollution control at NGS.

In developing this framework, EPA proposed to exercise its authority and discretion under section 301(d)(4) of the CAA, 42 U.S.C. 7601(d)(4), and the TAR, 40 CFR 49.11(a) and proposed an extended timeframe for an alternative measure under the RHR for NGS. EPA considered this extension of time to be consistent with the general programmatic requirements. States and regulated sources accordingly had almost 20 years under the RHR to design and implement alternative measures to BART. Because of the myriad stakeholder interests and complex governmental interests unique to NGS, we are only now addressing the BART requirements for NGS. For all the reasons explained above, we considered it appropriate to consider an extended compliance period for NGS.

Our proposal to require emission reductions beyond 2018 was supported by the Tribal Authority Rule codified at 40 CFR 49.11(a). The TAR reflects EPA's commitment to promulgate "such Federal implementation plan *provisions as are necessary or appropriate to protect air quality*" in Indian country where a tribe either does not submit a Tribal Implementation Plan (TIP) or does not receive approval of a submitted TIP. (Emphasis added.)

The use of the term "provisions as are necessary or appropriate" indicates EPA's determination that it may only be necessary or appropriate to promulgate a FIP of limited scope. The United States Court of Appeals for the Tenth Circuit has previously endorsed the application of this approach in a challenge to the FIP for the Four Corners Power Plant, stating: "[40 C.F.R. 49.11(a)] provides the EPA discretion to determine what rulemaking is necessary or appropriate to protect air quality and requires the EPA to promulgate such rulemaking." *Ariz. Public Serv. Co. v. EPA*, 562 F.3d 1116 (10th Cir. 2009). The court went on to observe: "Nothing in section 49.11(a) requires EPA . . . to submit a plan meeting the completeness criteria of [40 CFR part 51] Appendix V." *Id.* While the decision in *Arizona Public Service Company* focused on 40 CFR Part 51 Appendix V, EPA believes the same considerations apply to the promulgation of a FIP intended to address the objectives set forth in 40 CFR 51.308(e)(2). In particular, EPA has discretion to determine if and when a FIP addressing the objectives set forth in 40 CFR 51.308(e)(2) should be promulgated, which necessarily includes discretion to determine the timing for complying with the requirements of any such FIP.

### III. EPA's Technical Evaluation of Greater Reasonable Progress Towards the National Visibility Goal

#### A. Summary of TWG Alternative to BART

Appendix B of the TWG Agreement contains the TWG Alternative that was submitted to EPA for consideration as a "better than BART" Alternative.<sup>20</sup> The TWG Alternative was developed by the Technical Work Group, which did not include EPA, to satisfy the "better than BART" requirements of the RHR.<sup>21</sup> The

<sup>20</sup> The TWG Alternative is divided into distinct operating scenarios that the TWG calls Alternative A and Alternative B. The TWG Alternative further divides Alternative A into sub-scenarios. EPA refers to the sub-scenarios under Alternative A as A1, A2, and A3. EPA is reviewing all four scenarios (Alternatives A1, A2, A3, and B) together as one Alternative.

<sup>21</sup> The TWG Agreement also states that the TWG Alternative is intended to satisfy any requirements of the Reasonably Attributable Visibility Impairment (RAVI) program. On May 5, 2009, the National Parks Conservation Association (NPCA) petitioned the Department of the Interior to certify that emissions of NO<sub>x</sub> and particulate matter cause visibility impairment at the Grand Canyon National Park. This type of visibility impairment, reasonably attributable from a single stationary source, is known as Reasonably Attributable Visibility Impairment (RAVI). On January 20, 2011, NPCA filed a complaint in the United States District Court for the District of Columbia contending that the Department of the Interior was unreasonably delaying making a finding of reasonable attribution

core element of the TWG Alternative is that the TWG Alternative establishes a cap in NO<sub>x</sub> emissions over the period 2009–2044 (the 2009–2044 NO<sub>x</sub> Cap). The TWG Alternative then outlines the operating scenarios that would be required depending on the final outcome of NGS ownership after the expiration of the current lease term at the end of 2019. The owners of NGS commit to maintaining emissions from NGS below the 2009–2044 NO<sub>x</sub> Cap regardless of the post-2019 ownership of NGS and the applicable operating scenario. In general, the operating scenarios include specific actions for achieving emission reductions by 2019 and 2030 to ensure compliance with the 2009–2044 NO<sub>x</sub> Cap. The TWG Alternative also provides for an operating scenario that is less well-defined but establishes a second NO<sub>x</sub> emissions cap over the period of 2009–2029 (the 2009–2029 NO<sub>x</sub> Cap) that is equivalent to emission reductions that would be achieved by the more well-defined operating scenarios. The 2009–2029 NO<sub>x</sub> Cap would apply in addition to the 2009–2044 NO<sub>x</sub> Cap. The TWG Alternative also includes annual reporting requirements to EPA.

The 2009–2044 NO<sub>x</sub> Cap is calculated based on expected emissions that would result if NGS complied with EPA's proposed BART emission limit of 0.055 lb/MMBtu on each unit within five years of the effective date of a final rule. The TWG Alternative also incorporates EPA's proposed credit to NGS for the emission reductions achieved from the early and voluntary installation of LNB/SOFA beginning in 2009 (the LNB/SOFA credit).

The TWG Alternative puts forth two main operating scenarios, with additional sub-options, for limiting NO<sub>x</sub> emissions below the 2009–2044 NO<sub>x</sub> Cap. These scenarios are called TWG

from NGS. In a letter dated March 8, 2011 to NPCA, the National Park Service (NPS) declined to make such a finding based on EPA's on-going work related to a BART determination for NGS. On June 30, 2011, the Court dismissed the complaint holding the NPS letter refusing to make the finding of reasonable attribution constituted denying the Petitioner's request for a RAVI finding. If NPS were to certify RAVI at Grand Canyon from NGS, EPA must determine whether visibility impairment at Grand Canyon is indeed reasonably attributable to NGS. If EPA were to make a positive attribution determination, then EPA would be required to conduct a BART determination for NGS. We note, however, that while the process for determining whether a given stationary source causes or contributes to RAVI or regional haze are different, the process for determining BART under both programs is essentially the same. In other words, a BART determination for RAVI would likely be the same as a BART determination for regional haze. The 2009 NPCA petition, the 2011 NPCA complaint, the 2011 letter from NPS, and the 2011 Court decision are all included in the docket for this proposed rulemaking.

Alternatives A and B. The TWG Alternative provides different operating scenarios because of current uncertainty over the ownership interests in NGS following the expiration of the initial NGS lease term at the end of 2019. Specifically, two owners, LADWP and NV Energy, have announced plans to divest from any continuing ownership interest in NGS after 2019. These owners may retire or sell their interest in NGS. In addition, the recent Lease Amendment with the Navajo Nation that extends the NGS lease to 2044 includes an option for the Navajo Nation to purchase up to a 170 MW ownership share in NGS.<sup>22</sup>

Each of the three scenarios under TWG Alternative A (i.e., A1, A2, or A3) requires two significant emission reductions, one to occur by December 31, 2019 and the other by December 31, 2030. The emission reductions in the first step, by December 31, 2019, under TWG Alternative A1 would be achieved through closure of one unit. Alternative A2 would entail closure of one unit with an increase in capacity, not to exceed 189 MW, at the remaining two units; Alternative A3 would entail the curtailment of energy production across all three units such that the emission reductions are equivalent to the closure of approximately one unit. The emission reductions to occur in the second step, under Alternatives A1–3, would occur by December 31, 2030, and would be achieved by compliance of two units at NGS with an emission limit of 0.07 lb/MMBtu, achievable with the installation of SCR. Under the TWG Alternative, although the 2009–2044 NO<sub>x</sub> Cap is calculated based on EPA's proposed BART emission limit of 0.055 lb/MMBtu, the owners of NGS commit to meeting a limit of 0.07 lb/MMBtu from the installation of SCR. The operator states that a limit of 0.055 lb/MMBtu is not achievable for a retrofit application when startup, shutdown, and load following emissions are included.<sup>23</sup>

<sup>22</sup> See Section XI of the "Amendment No. 1 to Indenture of Lease Navajo Units 1, 2, and 3 Between the Navajo Nation and Arizona Public Service Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company dba NV Energy, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Company", within document number 0150 in the docket for this proposed rulemaking at EPA–R09–OAR–2013–0009.

<sup>23</sup> See Appendix B.1.A.3 of the Technical Work Group Agreement on NGS, document number 0122 in the docket for this proposed rulemaking. EPA does not consider the limit of 0.07 lb/MMBtu to be a BART emission limit, rather, a component of the TWG Alternative. Under the TWG Alternative, this higher emission rate is offset by the closure of one unit, or the curtailment of generation. In other words, despite the higher emission rate under the TWG Alternative compared to EPA's proposed

Alternative A1 would be triggered if LADWP and NV Energy retire their ownership shares of NGS without selling, or if LADWP and NV Energy sell their ownership shares to an existing NGS participant and the Navajo Nation does not elect to purchase an interest in NGS. Alternative A2 is triggered if LADWP or NV Energy sell their ownership shares to an existing NGS participant, the Navajo Nation elects to purchase an interest in NGS, and the NGS participants can increase the capacity of NGS by no more than 189 MW<sup>24</sup> without triggering major source pre-construction permitting requirements.<sup>25</sup> Alternative A3 is triggered if LADWP or NV Energy sell their ownership shares to an existing NGS Participant, the Navajo Nation elects to purchase an interest in NGS, and the NGS Participants cannot increase the capacity of NGS without triggering major source pre-construction permitting requirements.

TWG Alternative B would be triggered if LADWP and/or NV Energy sell their ownership interest to a third party (i.e., a party that is not an existing NGS participant). TWG Alternative B establishes similar emission reductions to Alternative A by setting a second NO<sub>x</sub> emission cap over the 2009–2029 period, i.e., the 2009–2029 NO<sub>x</sub> Cap (calculated to be equivalent to the closure of one unit in 2020), in addition to the 2009–2044 NO<sub>x</sub> Cap. Alternative B specifies that NO<sub>x</sub> emissions must be maintained below the cap during each applicable period (2009–2029 and 2009–2044), but does not specify how the NGS owners must operate NGS to meet each cap. The TWG Alternative outlines annual emissions reporting and planning requirements both to the public and to EPA to ensure progress towards emissions goals and

BART emission limit, NGS would comply with the 2009–2044 NO<sub>x</sub> Cap because additional emission reductions are achieved from closure or curtailment.

<sup>24</sup> LADWP owns approximately 477 MW of NGS, while NV Energy owns approximately 254 MW. The sum of their shares is 731 MW, which is 19 MW short of one 750 MW unit at NGS. The Navajo Nation has the option to purchase up to a 170 MW interest in NGS. A 189 MW limit in the capacity increase is based on making up the 19 MW shortfall and the maximum amount the Navajo Nation can purchase (i.e., the sum of 19 MW and 170 MW).

<sup>25</sup> The Prevention of Significant Deterioration (PSD) Program generally requires pre-construction permitting for major sources if the intended modification increases emissions of certain air pollutants above the PSD significance thresholds. The TWG Alternative also cites the Nonattainment New Source Review Program, a pre-construction permitting program for areas that are not in attainment with the National Ambient Air Quality Standards (NAAQS). Currently, this program does not apply to NGS as it is not located in an area that is out of attainment with any of the NAAQS.

maintenance of emissions below the 2009–2044 NO<sub>x</sub> Cap.

#### *B. EPA's Technical Evaluation of TWG Alternative to BART*

EPA is proposing to include the TWG Alternative as a second "better than BART" Alternative to achieve compliance with the RHR.<sup>26</sup> We are proposing to determine that the TWG Alternative satisfies the requirements of the RHR as discussed below.

As stated previously, the TWG Alternative establishes a 2009–2044 NO<sub>x</sub> Cap based on expected emissions that would result if NGS complied with EPA's proposed BART determination. The TWG Alternative also incorporates EPA's proposed LNB/SOFA credit into the 2009–2044 NO<sub>x</sub> Cap. In our February 5, 2013 proposed rule, EPA established our proposed BART determination as a BART Benchmark based on actual emissions and applied the LNB/SOFA credit to each Alternative to BART (to calculate "adjusted" emissions). Adjusted emissions, from each Alternative, were then compared against the BART Benchmark. As discussed in the following paragraphs, these two methods of applying credit for the early and voluntary installation of LNB/SOFA beginning in 2009 are equivalent.<sup>27</sup>

As shown in our proposed rulemaking, EPA's proposed BART Benchmark was 358,974 tons of NO<sub>x</sub> over 2009–2044.<sup>28</sup> This value was calculated assuming compliance with EPA's proposed BART emission limit of 0.055 lb/MMBtu on January 1, 2018, based on a final rule effective date of January 1, 2013. A final rule effective date of January 1, 2013 is no longer appropriate for NGS because EPA will

<sup>26</sup> In our proposed action on February 5, 2013, EPA proposed a BART determination for NGS and Alternative 1 as a "better than BART" Alternative. In today's action, we are proposing that the TWG Alternative also meets our "better than BART" framework. Taken together, EPA has proposed a BART determination for NGS, Alternative 1, and the TWG Alternative.

<sup>27</sup> See also Spreadsheet titled "Supplemental Better than BART Alternatives.xlsx" in the docket for this proposed rulemaking.

<sup>28</sup> See Table 12 at 78 FR at 8290 and document titled "BART Alternatives.xlsx" in document number 0005 in the docket for this proposed rulemaking at EPA–R09–OAR–2013–0009. In our BART proposal, and in calculating the 2009–2044 NO<sub>x</sub> Cap in this Supplemental Proposal, EPA used the average annual NO<sub>x</sub> emissions from NGS over 2001–2008 (34,152 tons) to estimate future annual emissions before compliance with the 0.055 lb/MMBtu NO<sub>x</sub> limit. The TWG Alternative also used this value in estimating its cap. Estimates for annual emissions in 2020 and thereafter were based on the 0.055 lb/MMBtu NO<sub>x</sub> limit for BART and the average heat input over 2001–2008. This method was similarly used by EPA in our BART proposal and this Supplemental Proposal, as well as the TWG Alternative.

not issue a final BART rule by that date. The TWG Alternative provided an example calculation for the 2009–2044 NO<sub>x</sub> Cap assuming a final rule effective date of December 31, 2013, an emission limit of 0.055 lb/MMBtu, and the application of the LNB/SOFA credit to the cap.<sup>29</sup> The LNB/SOFA credit, as applied to the cap, assumes that LNB/SOFA are installed at NGS concurrently with SCR, rather than using the actual

early installation dates on one unit per year over 2009–2011. The example in the TWG Alternative calculates a 2009–2044 NO<sub>x</sub> Cap of 480,490 tons and acknowledges that the cap would change depending on the actual effective date of the final rule. The difference between the BART Benchmark from EPA’s proposed rulemaking (of 358,974 tons) and the example calculated in the TWG

Alternative (of 480,490 tons) is based on the application of the LNB/SOFA credit to the 2009–2044 NO<sub>x</sub> Cap and the use of a different final rule effective date, i.e., 2014 instead of 2013. Additionally, in our proposed rulemaking, EPA included a transcription error in our calculation of the BART Benchmark, which contributes nominally to the difference.<sup>30</sup>

TABLE 1—DIFFERENCES BETWEEN BART BENCHMARK AND EXAMPLE CALCULATION OF NO<sub>x</sub> CAP FROM TWG ALTERNATIVE

	BART Benchmark for NO <sub>x</sub>	Assumptions
As reported in 2/5/13 Proposed Rulemaking .....	358,974	BART compliance by January 1, 2018 (final rule effective January 1, 2013).
Step 1: Correction for Transcription Error .....	359,028	Transcription Error of 2 tpy for 27 years = addition of 54 tons.
Step 2: Plus Correction for Revised BART Compliance Date.	377,015	Change BART Compliance date from January 1, 2018 to January 1, 2019 = Difference between LNB/SOFA and SCR+LNB/SOFA for one year = 23,325 tons minus 5,345 tons = 17,980 tons.
Step 3: Plus Application of LNB/SOFA Credit .....	480,489	Early emission reductions over 2009–2018 achieved from LNB/SOFA installation = (34,152 tpy * 10 years)—(30,500 + 24,427 + 19,837 + (23,325 * 7 years) = 103,481 tons.

Table 1 shows that the correction for EPA’s transcription error, a revised BART compliance date, and the application of the LNB/SOFA credit to the BART Benchmark instead of alternatives, account for the full difference between EPA’s BART Benchmark, as reported in our proposed rulemaking, and the example calculation from the TWG Alternative.<sup>31</sup>

Using the value from Table 1 of 480,489 tons, representing total NO<sub>x</sub> emissions over 2009–2044 if LNB/SOFA were installed concurrently with SCR by 2019, and the value of 377,015 tons, representing total NO<sub>x</sub> emissions over

2009–2044 with actual installation years for LNB/SOFA, the LNB/SOFA credit is 103,481 tons. As discussed previously, in our proposed rulemaking, EPA set, as the BART Benchmark, the value of total NO<sub>x</sub> emissions over 2009–2044 based on the actual early installation years for LNB/SOFA (i.e., 377,015 tons), and applied the LNB/SOFA credit to BART Alternatives to calculate a value for “adjusted emissions”. If the “adjusted emissions” were lower than the BART Benchmark, the BART Alternative was determined to be “better than BART”. The TWG Alternative, instead, applied the LNB/SOFA credit to the 2009–2044

NO<sub>x</sub> Cap (i.e., resulting in 480,489 tons, very close to the value reported by TWG of 480,490 tons), and calculated total emissions from Alternatives based on the actual early installation years for LNB/SOFA. If emissions from the BART Alternative are lower than the 2009–2044 NO<sub>x</sub> Cap, the Alternative is “better than BART”. Using Alternative 1 from our February 5, 2013 proposed rulemaking, i.e., compliance with the proposed BART emission limit in 2021, 2022, and 2023, as an example, Table 2 shows that these two methods of comparing Alternatives against BART are equivalent.<sup>32</sup>

TABLE 2—EPA AND TWG METHODS OF COMPARING ALTERNATIVES AGAINST BART

	BART	Alternative 1
<b>EPA Method</b>		
Compliance Years .....	By 2019 .....	2021, 2022, 2023.
Total Emissions (tons) .....	377,008 tons .....	430,948 tons.
LNB/SOFA Credit .....	n/a .....	103,481 tons.
Adjusted Emissions .....	n/a .....	327,467 tons.
Better than BART? .....	n/a .....	Yes, by 49,541 tons (377,008–327,467 tons).
<b>TWG Method</b>		
Compliance Years .....	By 2019 .....	2021, 2022, 2023.
Total Emissions (tons) .....	377,008 tons .....	430,948 tons.
LNB/SOFA Credit .....	103,481 tons .....	n/a.
Adjusted Emissions .....	480,489 tons .....	n/a.
Better than BART? .....	n/a .....	Yes, by 49,541 tons (480,489–430,948 tons).

<sup>29</sup> Regarding the final rule effective date, see *Infra.* at footnote 33.

<sup>30</sup> EPA erroneously used the value 5,343 tons per year to represent NO<sub>x</sub> emissions from NGS after installation of SCR. The correct value was 5,345

tons per year. See, for example, comparison of cells B23 and C23 in “emissions” tab of the spreadsheet entitled “BART Alternatives.xlsx” in document number 0005 in the docket for this proposed rulemaking at EPA–R09–OAR–2013–0009.

<sup>31</sup> *Id.*

<sup>32</sup> See also Spreadsheet titled “Supplemental Better than BART Alternatives.xlsx” in the docket for this proposed rulemaking.

As discussed previously, EPA anticipates that the compliance date for BART would be based on the effective date of the final rule, which is typically 60 days following publication of the final rule in the **Federal Register**. Therefore, in calculating the 2009–2044 NO<sub>x</sub> Cap, EPA assumes that an effective date of July 1, 2014 is reasonable and justified.<sup>33</sup> Based on a July 1, 2014 effective date, compliance with the BART emission limit must occur by July 1, 2019. Using this compliance date, as well as correcting for the transcription error in our proposed rulemaking and applying the LNB/SOFA credit to the BART Benchmark instead of BART Alternatives, EPA calculates the 2009–2044 NO<sub>x</sub> Cap to be 494,899 tons.<sup>34</sup>

In our proposed BART determination on February 5, 2013, we established a framework for evaluating other Alternatives to BART, centered on our proposed BART determination that calculated a BART benchmark for total NO<sub>x</sub> emissions over 2009–2044. We compared total emissions from our proposed alternative, Alternative 1 (adjusted for the emission reductions associated with the early installation of LNB/SOFA) against the BART benchmark to determine that

Alternative 1 was “better than BART”. The TWG Alternative to BART uses EPA’s BART benchmark to establish an emission cap and commits to operate NGS in a manner such that total NO<sub>x</sub> emissions over 2009–2044 remain below the 2009–2044 NO<sub>x</sub> Cap, which we calculate to be 494,899 tons. In ensuring that total NO<sub>x</sub> emissions over 2009–2044 from NGS remain below the 2009–2044 NO<sub>x</sub> Cap, the TWG Alternative meets the criteria of our proposed “better than BART” framework.

EPA’s technical evaluation has also focused on whether the four potential operating scenarios in the TWG Alternative (Alternatives A1–A3 and B) provide a reasonable basis to ensure the NO<sub>x</sub> emissions will remain below the 2009–2044 NO<sub>x</sub> Cap of 494,899 tons.

The four possible operating scenarios under the TWG Alternative (Alternatives A1, A2, A3, and B) are summarized in section III.A of this Supplemental Proposal. These four scenarios are also shown in Table 3 and compared against the 2009–2044 NO<sub>x</sub> Cap. The 2009–2044 NO<sub>x</sub> Cap reflects the final rule effective date that EPA estimates is reasonable and justified for this rulemaking (July 1, 2014), resulting in a BART compliance date of July 1,

2019. As discussed above, the 2009–2044 NO<sub>x</sub> Cap incorporates the LNB/SOFA early installation credit. EPA calculates the 2009–2044 NO<sub>x</sub> Cap to be 494,899 tons.

The three operating scenarios under Alternative A represent emission reductions that occur during three distinct periods of time: over 2009–2011 (through the early installation of LNB/SOFA), by 2020 (from closure or curtailment of one unit, and by 2031 (through compliance with a NO<sub>x</sub> limit of 0.07 lb/MMBtu on two units). Similarly, Alternative B represents emission reduction that would occur during three distinct periods of time: over 2009–2011 (through the early installation of LNB/SOFA), any time prior to 2029 (to maintain compliance with the 2009–2029 NO<sub>x</sub> Cap), and any time between 2029 and 2044 (to maintain compliance with the 2009–2044 NO<sub>x</sub> Cap).

EPA notes that the closure or curtailment of one unit at NGS in 2020 would result not only in NO<sub>x</sub> reductions, but also in reductions of other criteria and hazardous air pollutants, such as sulfur dioxide (SO<sub>2</sub>), particulate matter, and mercury.

TABLE 3—SUMMARY OF EPA ANALYSIS OF TWG ALTERNATIVE<sup>35</sup>

		TWG Alternative: Maintain Emissions below 2009–2044 NO <sub>x</sub> Cap using one of the following operating scenarios:			
		A1	A2	A3	B
Ownership Possibilities If:		LADWP and NV Energy exit without selling ownership interest or by selling to an existing NGS Participant.			LADWP or NV Energy exits by selling to a 3rd party, or LADWP or NV Energy do not exit NGS.
And:		Navajo Nation does not purchase ownership interest.	Navajo Nation purchases interest (up to 170 MW).	Navajo Nation purchases interest (up to 170 MW).	
And:			Owners increase capacity (does not trigger permit).	Owners do not increase capacity (triggers permit).	
Summary of Cap or Operating Scenarios.	2009–2044 NO <sub>x</sub> Cap = 494,899 tons: By 7/1/2019, meet limit of 0.055 lb/MMBtu through installation of LNB/SOFA concurrently with SCR.	By 12/31/2019, close one unit. By 12/31/2030, meet NO <sub>x</sub> limit of 0.07 lb/MMBtu on two units.	By 12/31/2019, close one unit. By 12/31/2019, increase net capacity by no more than 189 MW. By 12/31/2030, meet NO <sub>x</sub> limit of 0.07 lb/MMBtu on two units.	Three units could remain open. By 12/31/2019, curtail generation by at least 561 MW. By 12/31/2030, meet NO <sub>x</sub> limit of 0.07 lb/MMBtu on two units.	Maintain total NO <sub>x</sub> emissions below a 2009–2029 NO <sub>x</sub> Cap (416,865 tons). Cap is equivalent to closure of one unit by 12/31/2019.

<sup>33</sup> The comment period for EPA’s proposed BART determination and Supplemental Proposal will close in January 2013. EPA anticipates that a final rule that considers and responds to all comments cannot be completed until Spring 2014. Because a final rule is typically effective 60 days following

publication in the **Federal Register**, EPA anticipates the effective date of the final rule will occur no earlier than mid-summer 2014.

<sup>34</sup> See also Spreadsheet titled “Supplemental Better than BART Alternatives.xlsx” in the docket for this proposed rulemaking.

<sup>35</sup> Graphical representation of these Alternatives against the 2009–2044 NO<sub>x</sub> Cap are shown in Spreadsheet titled “Supplemental Better than BART Alternatives.xlsx” in the docket for this proposed rulemaking.

TABLE 3—SUMMARY OF EPA ANALYSIS OF TWG ALTERNATIVE <sup>35</sup>—Continued

Estimate of Total NO <sub>x</sub> over 2009–2044 .....	435,819 tons .....	461,816 tons	NGS must ensure total emissions remain below both Caps.
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In order to better understand whether the three potential operating scenarios under Alternative A provide reasonable assurance that emissions from NGS will remain below the 2009–2044 NO<sub>x</sub> Cap, EPA estimated annual NO<sub>x</sub> emissions for each potential operating scenario.<sup>36</sup> These estimates were based on the specific requirements for each scenario and the average heat input and average emission rates for each unit operating with LNB/SOFA.<sup>37</sup> EPA used actual emission data, as reported to the EPA Clean Air Markets Program, for 2001–2012.<sup>38</sup> To estimate tons of NO<sub>x</sub> emitted in the future, EPA calculated the product of annual heat input (in MMBtu/year) and the annual average NO<sub>x</sub> emission rate (in lb/MMBtu). In Table 3, estimates for total NO<sub>x</sub> emissions over 2009–2044 were calculated based on the average annual heat input over 2001–2012, and the average annual NO<sub>x</sub> emission rate achieved over 2011–2012 (when all three units were operating with LNB/SOFA) for the 2013–2018 period, and 0.07 lb/MMBtu for the 2020–2044 period.

As shown in Table 3, estimates for total NO<sub>x</sub> emissions over 2009–2044 for Alternatives A1, A2, and A3 are all below the 2009–2044 NO<sub>x</sub> Cap. This indicates that under TWG Alternative A, NGS can be reasonably expected to remain below the 2009–2044 NO<sub>x</sub> Cap. The TWG Alternative requires the operator of NGS to submit an annual report to EPA, which it must also make publicly available, that includes annual emissions of SO<sub>2</sub> and CO<sub>2</sub>, and annual and cumulative emissions of NO<sub>x</sub>. In addition, EPA is including a provision to require reporting of annual heat input at NGS to assess operation and utilization of capacity at NGS.

Consistent with 40 CFR 51.308(e), the enforceable 2009–2044 NO<sub>x</sub> Cap will ensure that total emissions of NO<sub>x</sub> are less than those that would be emitted under our proposed BART determination. The weight of evidence, including the operating scenarios and

annual reporting requirements as discussed above, suggest that NGS can be reasonably expected to remain below the 2009–2044 NO<sub>x</sub> Cap.

As indicated in Table 3, and as discussed previously, the operating scenario under TWG Alternative B does not specify the exact process that would be used to comply with the 2009–2044 NO<sub>x</sub> Cap. To ensure that NO<sub>x</sub> emission reductions are achieved under TWG Alternative B in a manner similar to TWG Alternative A1–A3, the TWG Alternative imposes a nested NO<sub>x</sub> emission cap for the 2009–2029 period (the 2009–2029 NO<sub>x</sub> Cap) that would apply in addition to the 2009–2044 NO<sub>x</sub> Cap. Under TWG Alternative B, the 2009–2029 NO<sub>x</sub> Cap would be equivalent to total NO<sub>x</sub> emissions over 2009–2029 that would be achieved under TWG Alternative A1, i.e., closure of one unit by December 31, 2019. Thus, under TWG Alternative B, NGS must still reduce NO<sub>x</sub> emissions over 2009–2029 and 2030–2044 in order to comply with the 2009–2029 and 2009–2044 NO<sub>x</sub> Caps, but the operator would have flexibility to determine the timing and method of reducing emissions.

To evaluate TWG Alternative B, EPA estimated potential emission reduction timeframes that would be needed to comply with the 2009–2029 and 2009–2044 NO<sub>x</sub> Caps assuming the owners of NGS elect to install SCR on all three units at NGS.<sup>39</sup> Using the average annual heat input over 2001–2012, and the average annual NO<sub>x</sub> emission rate achieved over 2011–2012 (when all three units were operating with LNB/SOFA), if NGS achieves emission rates of 0.07 lb/MMBtu or below after installation of SCR, the owners of NGS would need to install SCR on one unit each in 2026, 2027, and 2028 in order to comply with the 2009–2029 and 2009–2044 NO<sub>x</sub> Caps. If NGS achieves emission rates of 0.055 lb/MMBtu or below, the owners of NGS would need to install SCR on one unit each in 2028, 2029, and 2030 in order to comply with the 2009–2029 and 2009–2044 NO<sub>x</sub>

Caps. In addition to the option of installing SCR on each unit, under TWG Alternative B, the owners of NGS could elect to implement any operating scenario (including curtailment, installation of other technologies to reduce emissions of NO<sub>x</sub>, or a combination of options or technologies) as long as the operational changes result in reduced emissions of NO<sub>x</sub> sufficient to maintain emissions below the applicable NO<sub>x</sub> Cap.

To ensure compliance, the annual reporting requirements that apply to TWG Alternative A would also apply under TWG Alternative B. In addition, if TWG Alternative B is triggered, the operator of NGS would be required to submit annual Emission Reduction Plans to EPA that would identify the potential emission reductions measures and operating scenarios to comply with the 2009–2029 or 2009–2044 NO<sub>x</sub> Caps. Each potential operating scenario in each annual Emission Reduction Plan must show compliance with the applicable NO<sub>x</sub> Cap.

Consistent with 40 CFR 51.308(e), the enforceable 2009–2029 and 2009–2044 NO<sub>x</sub> Caps will ensure that total emission reductions of NO<sub>x</sub> are greater than those that would be achieved under our proposed BART determination. The weight of evidence, including possible operating scenarios and the reporting requirements as discussed above, indicate that NGS can be reasonably expected to remain below the 2009–2029 and 2009–2044 NO<sub>x</sub> Caps.

Based on our analysis of the operating scenarios under TWG Alternatives A1–A3 and B, EPA is proposing to determine that the TWG Alternative meets EPA’s “better than BART” framework outlined in our February 5, 2013 proposed BART determination for NGS.

#### IV. EPA’s Supplemental Proposal

In addition to our proposed BART determination and Alternative 1 for NGS dated February 5, 2013, in today’s action, EPA is supplementing our proposal with the TWG Alternative submitted to EPA on July 26, 2013 as an additional “better than BART” Alternative. Because we are supplementing our February 5, 2013 proposed rulemaking with today’s

<sup>36</sup> *Id.*

<sup>37</sup> Under EPA PSD permit AZ 08–01, November 20, 2008, Units 1–3 at NGS operate with modern LNB/SOFA with an emission limit of 0.24 lb/MMBtu. See documents within EPA–R09–OAR–2013–0009–0005.

<sup>38</sup> *Id.* See also <http://ampd.epa.gov/ampd/>.

<sup>39</sup> Although Alternative B does not specify how the caps will be maintained, installation of SCR on all units at NGS is a reasonable compliance option, and therefore, EPA is using this as an example for further examination of Alternative B. See spreadsheet, titled “Supplemental Better than BART Alternatives.xlsx”.

proposal, after considering public comments, EPA may finalize provisions from either or both proposals, i.e., our proposed BART determination, proposed Alternative 1, or the TWG Alternative.

EPA is proposing to determine that the TWG Alternative ensures that total emissions of NO<sub>x</sub> from NGS over 2009–2044 will remain below the total emissions from NGS over 2009–2044 that would have occurred under BART. In today's action, EPA is proposing to establish enforceable requirements to comply with the proposed 2009–2044 NO<sub>x</sub> Cap, and if applicable, a 2009–2029 NO<sub>x</sub> Cap, including annual reporting requirements related to heat input, emissions of SO<sub>2</sub> and CO<sub>2</sub>, and annual and cumulative emissions of NO<sub>x</sub>. In addition, if the final ownership outcome triggers the operating scenarios under Alternatives A1–A3, EPA is proposing to establish the emission reduction milestones under A1–A3 (closure of one unit or curtailment of electricity generation by December 31, 2019, and installation of SCR on two units by December 31, 2030) as enforceable requirements. If the final ownership outcome triggers Alternative B, EPA is proposing to require the owners of NGS to submit annual Emission Reduction Plans to EPA to achieve the NO<sub>x</sub> emission reductions necessary to assure compliance with the 2009–2029 and 2009–2044 NO<sub>x</sub> Caps. EPA is also proposing to require the owners of NGS to notify EPA no later than December 1, 2019, of the final ownership outcome and the resulting applicable operating scenario that it will implement. For the reasons outlined above, EPA is supplementing our February 5, 2013 proposed rulemaking to also propose the TWG Alternative as a “better than BART” Alternative that ensures greater reasonable progress towards the national visibility goal than BART.

EPA is accepting public comment concurrently on our February 5, 2013 proposed BART determination and proposed Alternative 1 and the TWG Alternative put forth in today's Supplemental Proposal. From November 12–15, 2013, EPA will be holding five open house and public hearing events throughout Arizona to accept written and oral comment on our proposed rulemaking and Supplemental Proposal. The comment period for our February 5, 2013 proposed rulemaking and today's Supplemental Proposal closes on January 6, 2014.

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action supplements our proposed source-specific Federal Implementation Plan for the Navajo Generating Station to propose and take comment on an additional Alternative to BART that was developed by and agreed upon by a group of seven stakeholders. Under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and EO 13563 (76 FR 3821, January 21, 2011), because this proposed rule applies to only one facility, it is not a rule of general applicability. This proposed rule, therefore, is exempt from review under EO 12866 and EO 13563.

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). Under the Paperwork Reduction Act, a “collection of information” is defined as a requirement for “answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*.” 44 U.S.C. 3502(3)(A). Because the Supplemental Proposal applies to a single facility, Navajo Generating Station, the Paperwork Reduction Act does not apply.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The Navajo Generating Station is not a small entity and the FIP for Navajo Generating Station being proposed today does not impose any compliance requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985). We continue to be interested in the potential impacts of the proposed rule and this Supplemental Proposal on small entities and welcome comments on issues related to such impacts.

### D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA anticipates the annual cost to the private sector of this Supplemental Proposal, which involves compliance with BART emission limits by two units, rather than three units, to be lower than the anticipated cost of EPA's proposed BART determination of \$64 million per year (see Table 2 of EPA's proposed BART determination at 78 FR 8274, February 5, 2013). Thus, this Supplemental Proposal is not subject to the requirements of sections 202 or 205 of UMRA. This proposed rule will not impose direct compliance costs on state, local or tribal governments. This proposed action will, if finalized, reduce the emissions of NO<sub>x</sub> from a single source, the Navajo Generating Station.

In developing this rule, EPA consulted with small governments pursuant to a plan established under section 203 of UMRA to address impacts

of regulatory requirements in the rule that might significantly or uniquely affect small governments. EPA put forth an Advanced Notice of Proposed Rulemaking on August 28, 2009 regarding our intention to propose a BART determination for NGS and the Four Corners Power Plant. We received comments from numerous small governments, including tribal governments, and governments of several towns in Arizona. This proposed rule will not impose direct compliance costs on any small governments. However, increased electricity and water costs associated with this proposed rule may indirectly affect small governments.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action proposes emission reductions of NO<sub>x</sub> at a specific stationary source located in Indian country. Thus, Executive Order 13132 does not apply to this action.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this proposed action will have tribal implications, and consequently EPA has consulted with tribal officials during the process of developing the proposed regulation and will continue to consult with tribal officials during the process to take final action. EPA notes that the TWG Alternative, on which this Supplemental Proposal is based, was developed by a group of seven stakeholders that included the Navajo Nation and the Gila River Indian Community. However, we also note that not all tribes that may be affected by this proposed alternative were among the stakeholders. Other tribes may have views on this alternative and EPA welcomes their comments. The

proposed regulation will not pre-empt tribal law. The proposed regulation will also not impose *direct compliance* costs on a tribal government, because the direct compliance costs of this proposed rule, if finalized, will be borne by the owners of NGS. However, because several tribes located in Arizona rely directly or indirectly on NGS, there may be indirect impacts of this proposed rule on these tribes. The Navajo Nation and Hopi Tribe receive coal-related royalties, taxes and employment at NGS and the Kayenta Mine that contribute to their economies. Several tribes in Arizona have allocations of CAP water under existing water settlement agreements. Because of the inter-relationship of CAP and NGS, impacts to NGS may also impact CAP and the tribes that use CAP water or otherwise benefit from CAP according to Congressionally-approved water settlement agreements. The importance to tribes of continued operation of NGS and affordable water costs cannot be overemphasized. In Section II.B.ii of EPA's proposed BART determination dated February 5, 2013 (78 FR8274), EPA explains in detail the tribal information that we received and considered in this proposed rulemaking.

In addition to our consultation with tribes discussed in our February 5, 2013 proposed rulemaking, EPA has had additional meetings and conference calls with tribes at their request since the time we received the TWG Alternative, and during our process of evaluating the TWG Alternative. On August 22, 2013, we met with Governor Gregory Mendoza and other representatives from the Gila River Indian Community.<sup>40</sup> On August 28, 2013, EPA met with President Ben Shelly and other representatives from the Navajo Nation.<sup>41</sup> We held a conference call on September 13, 2013 with Chairman LeRoy Shingoitewa and another representative from the Hopi Tribe.<sup>42</sup> Chairman Shingoitewa also submitted a letter to EPA, dated August 19, 2013, expressing several concerns related to the TWG Alternative.<sup>43</sup> An updated timeline of all correspondence and consultation with tribes on NGS is

<sup>40</sup> See document number 0152 in the docket for the proposed rulemaking at EPA-R09-OAR-2013-0009.

<sup>41</sup> See document number 0150 in the docket for the proposed rulemaking at EPA-R09-OAR-2013-0009.

<sup>42</sup> See document number 0166 in the docket for the proposed rulemaking at EPA-R09-OAR-2013-0009.

<sup>43</sup> See document number 0134 in the docket for the proposed rulemaking at EPA-R09-OAR-2013-0009.

included in the docket for this proposed rulemaking.<sup>44</sup>

EPA recognizes that the Navajo Nation and the Gila River Indian Community participated in the development of the TWG Agreement on NGS and were signatories on the Agreement. However, EPA also understands from discussions with President Shelly and Governor Mendoza that concerns, related to potential impacts to their respective tribes from BART and the TWG Alternative, still exist. EPA understands that Chairman Shingoitewa has numerous concerns related to the TWG Agreement and Alternative, including the exclusion of the Hopi Tribe from the TWG and the development of the TWG Agreement, and the extended timeframe for the installation of new air pollution controls at NGS under the TWG Alternative. EPA will continue to consult with Tribal officials during and following the public comment period on the proposed FIP.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it requires emissions reductions of NO<sub>x</sub> from a single stationary source. Because this proposed action only applies to a single source and is not a proposed rule of general applicability, it is not economically significant as defined under Executive Order 12866, and does not have a disproportionate effect on children. However, to the extent that the rule will reduce emissions of NO<sub>x</sub>, which contribute to ozone and fine particulate matter formation as well as visibility impairment, the rule will have a beneficial effect on children's health by reducing air pollution that causes or

<sup>44</sup> See document titled "Timeline of All Tribal Consultations on Navajo BART FIPs as of September 17 2013" in the docket for this proposed rulemaking.

exacerbates childhood asthma and other respiratory issues.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is exempt under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

Consistent with the NTTAA, the Agency conducted a search to identify potentially applicable VCS. For the measurements listed below, there are a number of VCS that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR Part 60, Appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current proposed rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR Part 60, Appendices A and B. Any VCS so incorporated in a specified test method or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs

federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule requires emissions reductions of NO<sub>x</sub> from a single stationary source, Navajo Generating Station.

**List of Subjects in 40 CFR Part 49**

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Nitrogen Dioxide.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 25, 2013.

**Jared Blumenfeld,**

*Regional Administrator, Region 9.*

Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

**PART 49—[AMENDED]**

■ 1. The authority citation for part 49 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

■ 2. Section 49.5513 is amended by adding paragraph (j) to read as follows:

**§ 49.5513 Federal Implementation Plan Provisions for Navajo Generating Station, Navajo Nation.**

\* \* \* \* \*

(j) (1) *Applicability.* Regional Haze Best Available Retrofit Technology limits for this plant are in addition to the requirements of paragraphs (a) through (i) of this section. The provisions of this paragraph (j) are severable, and if any provision of this paragraph (j), or the application of any provision of this paragraph (j) to any owner/operator or circumstance, is held invalid, the application of such provision to other owner/operators and other circumstances, and the remainder of this paragraph (j), shall not be affected thereby. Nothing in this paragraph (j) allows or authorizes any

Unit to emit NO<sub>x</sub> at a rate that exceeds its existing emission limit of 0.24 lb/ MMBtu as established by EPA permit AZ 08-01 issued on November 20, 2008.

(2) *Definitions.* Terms not defined below shall have the meaning given to them in the Clean Air Act or EPA's regulations implementing the Clean Air Act and in paragraph (c) of this section. For purposes of this paragraph (j):

(i) *2009-2029 NO<sub>x</sub> Cap* is no more than 416,865 tons of NO<sub>x</sub>. This value is calculated based on the sum of annual emissions over January 1, 2009 to December 31, 2029, and closure of one unit by December 31, 2019.

(ii) *2009-2044 NO<sub>x</sub> Cap* is no more than 494,899 tons of NO<sub>x</sub>. This value is calculated based on the sum of annual emissions over January 1, 2009 to December 31, 2044, and compliance with a BART emission limit of 0.055 lb/ MMBtu on each Unit by July 1, 2019.

(iii) *Boiler Operating Day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

(iv) *Coal-Fired Unit* means any of Units 1, 2, or 3 at Navajo Generating Station.

(v) *Continuous Emission Monitoring System or CEMS* means the equipment required by 40 CFR Part 75 and this paragraph (j).

(vi) *Departing Participant* means either Los Angeles Department of Water and Power or Nevada Energy, also known as NV Energy or Nevada Power Company.

(vi) *Emission limitation or emission limit* means the federal emissions limitation required by this paragraph.

(vii) *Existing Participant* means the existing owners of NGS: Los Angeles Department of Water and Power; Nevada Energy, also known as NV Energy or Nevada Power Company; Salt River Project Agricultural Improvement and Power District; Arizona Public Service Company; and Tucson Electric Company, together with the United States, acting through the Bureau of Reclamation.

(ix) *lb* means pound(s).

(x) *Low-NO<sub>x</sub> Burners and Separated Over-Fire Air or LNB/SOFA* means combustion controls installed on one Unit each over 2009-2011.

(xi) *Navajo Nation* means the Navajo Nation, a federally recognized Indian Tribe.

(xii) *NGS or Navajo Generating Station* means the steam electric generating station located on the Navajo Reservation near Page, Arizona, consisting of Units 1, 2, and 3, each 750

MW (nameplate rating), the switchyard facilities, and all facilities and structures used or related thereto.

(xiii) *NO<sub>x</sub>* means nitrogen oxides expressed as nitrogen dioxide (NO<sub>2</sub>).

(xiv) *Owner(s)/operator(s)* means any person(s) who own(s) or who operate(s), control(s), or supervise(s) one more of the units of the Navajo Generating Station.

(xv) *MMBtu* means million British thermal unit(s).

(xvi) *Operating hour* means any hour that fossil fuel is fired in the unit.

(xvii) *Unit* means any of Units 1, 2, or 3 at Navajo Generating Station.

(xviii) *Valid Data* means CEMs data that is not out of control as defined in 40 CFR Part 75.

(3) *BART Determination*. BART for NGS is a NO<sub>x</sub> emission limit of 0.055 lb/MMBtu on each Unit with a compliance date of July 1, 2019, and is used to establish a cap in NO<sub>x</sub> emissions, known as the 2009–2044 NO<sub>x</sub> Cap. The owner/operator shall demonstrate BART compliance by ensuring that total NO<sub>x</sub> emissions from NGS, over January 1, 2009 to December 31, 2044, do not exceed the 2009–2044 NO<sub>x</sub> Cap. The owner/operator shall implement the applicable operating scenario, under paragraph (j)(3)(i), to ensure NO<sub>x</sub> emission reductions sufficient to maintain total NO<sub>x</sub> emissions below the 2009–2044 NO<sub>x</sub> Cap.

(i) *Operating Scenarios to Comply with 2009–2044 NO<sub>x</sub> Cap*.

(A) *Alternative A1*.

(1) By December 31, 2019, the owner/operator shall permanently cease operation of one coal-fired Unit.

(2) By December 31, 2030, the owner/operator shall comply with a NO<sub>x</sub> emission limit of 0.07 lb/MMBtu on each of the two remaining coal-fired Units.

(B) *Alternative A2*.

(1) By December 31, 2019, the owner/operator shall permanently cease operation of one coal-fired Unit.

(2) By December 31, 2019, the owner/operator may elect to increase net generating capacity of the remaining two coal-fired Units by a combined total of no more than 189 MW. The actual increase in net generating capacity shall be limited by the sum of 19 MW and the ownership interest, in net MW capacity, purchased by the Navajo Nation by December 31, 2019. The owner/operator shall ensure that any increase in the net generating capacity is in compliance with all pre-construction permitting requirements, as applicable.

(3) By December 31, 2030, the owner/operator shall comply with a NO<sub>x</sub> emission limit of 0.07 lb/MMBtu on

each of the two remaining coal-fired Units.

(C) *Alternative A3*.

(1) By December 31, 2019, the owner/operator shall reduce the net generating capacity of NGS by no less than 561 MW. The actual reduction in net generating capacity of NGS shall be determined by the difference between 731 MW and the ownership interest, in net MW capacity, purchased by the Navajo Nation by December 31, 2019.

(2) By December 31, 2030, the owner/operator shall comply with a NO<sub>x</sub> emission limit of 0.07 lb/MMBtu on two Units.

(D) *Alternative B*. In addition to the 2009–2044 NO<sub>x</sub> Cap that applies between January 1, 2009 to December 31, 2044, during the January 1, 2009 to December 31, 2029 period, the owner/operator shall ensure compliance with the 2009–2029 NO<sub>x</sub> Cap.

(ii) *Applicability of Alternatives*.

(A) *Alternative A1* shall apply if both of the Departing Participants retire their ownership interests in NGS by December 31, 2019, and the Navajo Nation does not purchase an ownership share of NGS by December 31, 2019; or if both of the Departing Participants sell their ownership interests to Existing Participants, and the Navajo Nation does not purchase an ownership share of NGS by December 31, 2019; or if one of the Departing Participants retires its ownership interest and the other Departing Participant sells its ownership interest to an Existing Participant, and the Navajo Nation does not purchase an ownership share of NGS by December 31, 2019.

(B) *Alternative A2* shall apply if both of the Departing Participants sell their ownership interests to Existing Participants, the Navajo Nation elects to purchase an ownership share of NGS by December 31, 2019, and the owner/operator elects to increase net generating capacity of the two remaining Units; or if one of the Departing Participants retires its ownership interest and the other Departing Participant sells its ownership interest to an Existing Participant, the Navajo Nation elects to purchase an ownership share of NGS by December 31, 2019, and the owner/operator elects to increase net generating capacity of the two remaining Units.

(C) *Alternative A3* shall apply if both of the Departing Participants sell their ownership interests to Existing Participants, the Navajo Nation elects to purchase an ownership share of NGS by December 31, 2019, and the owner/operator does not elect to increase net generating capacity; or if one of the

Departing Participants retires its ownership interest and the other Departing Participant sells its ownership interest to an Existing Participant, the Navajo Nation elects to purchase an ownership share of NGS by December 31, 2019, and the owner/operator does not elect to increase net generating capacity.

(D) *Alternative B* shall apply if, by December 31, 2019, any of the Departing Participants sell their ownership interests to a Party that is not an Existing Participant.

(4) *Reporting and Implementation Requirements for BART*.

(i) No later than December 1, 2019, the owner/operator must notify EPA of the applicable Alternative for ensuring compliance with the 2009–2044 NO<sub>x</sub> Cap.

(ii) Beginning January 31, 2015, and annually thereafter until the earlier of December 22, 2044 or the date on which the owner/operator ceases conventional coal-fired generation at NGS, the owner/operator shall submit to the Regional Administrator, a report summarizing the annual heat input, the annual emissions of sulfur dioxide, carbon dioxide, and annual and cumulative emissions of NO<sub>x</sub> from NGS for the previous full calendar year. The owner/operator shall make this report available to the public, either through a link on its Web site or directly on its Web site.

(iii) No later than December 31, 2020, the owner/operator shall submit an application to revise its existing Part 71 Operating Permit to incorporate the requirements and emission limits of the applicable Alternative to BART under paragraph (j)(3).

(iv) In addition to the requirements of paragraphs (j)(4)(i), (ii) and (iii), if Alternative B applies, the owner/operator shall submit annual Emission Reduction Plans to the Regional Administrator.

(A) No later than December 31, 2019 and annually thereafter through December 31, 2028, the owner/operator shall submit an Emission Reduction Plan containing anticipated year-by-year emissions covering the period from 2020 to 2029 that will assure that the operation of NGS will result in emissions of NO<sub>x</sub> that do not exceed the 2009–2029 NO<sub>x</sub> Cap. The Emission Reduction Plan may contain several potential operating scenarios and must set forth the past annual actual emissions and the projected emissions for each potential operating scenario. Each potential operating scenario must demonstrate compliance with the 2009–2029 NO<sub>x</sub> Cap. The Emission Reduction Plan shall identify emission reduction measures that may include, but are not

limited to, the installation of advanced emission controls, a reduction in generation output, or other operating strategies determined by the owner/operator. The owner/operator may revise the potential operating scenarios set forth in the Emission Reduction Plan, provided the revised plan ensure that NO<sub>x</sub> emissions remain below the 2009–2029 NO<sub>x</sub> Cap.

(B) No later than December 31, 2029 and annually thereafter, the owner/operator shall submit an Emission Reduction Plan containing year-by-year emissions covering the period from January 1, 2030 to December 31, 2044 that will assure that the operation of NGS will result in emissions of NO<sub>x</sub> that do not exceed the 2009–2044 NO<sub>x</sub> Cap. The Emission Reduction Plan shall identify emission reduction measures that may include, but are not limited to, the installation of advanced emission controls, a reduction in generation output, or other operating strategies determined by the owner/operator. The owner/operator may revise the potential operating scenarios set forth in the Emission Reduction Plan, provided the revised plan ensure that NO<sub>x</sub> emissions remain below the 2009–2044 NO<sub>x</sub> Cap.

(5) *Continuous emission monitoring system (CEMS).*

(i) At all times, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR Part 75, to accurately measure NO<sub>x</sub>, diluent, and stack gas volumetric flow rate from each unit. Valid data means data recorded when the CEMS is not out-of-control as defined by Part 75, as defined in paragraph (j)(2) of this section. All valid CEMS hourly data shall be used to determine compliance with the emission limitations for NO<sub>x</sub> in paragraph (j)(3) of this section for each unit. If the CEMS data is not valid, that CEMS data shall be treated as missing data and not used to calculate the emission average. CEMS data does not need to be bias adjusted as defined in 40 CFR Part 75. Each required CEMS must obtain valid data for at least 90 percent of the unit operating hours, on an annual basis.

(ii) The owner/operator of each unit shall comply with the quality assurance procedures for CEMS found in 40 CFR Part 75. In addition to these Part 75 requirements, relative accuracy test audits shall be calculated for both the NO<sub>x</sub> pounds per hour measurement and the heat input measurement. The calculation of NO<sub>x</sub> pounds per hour and heat input relative accuracy shall be evaluated each time the CEMS undergo relative accuracy testing.

(6) *Compliance Determination for NO<sub>x</sub> Emission Limits.*

(i) Compliance with the NO<sub>x</sub> emission limits under paragraphs (j)(3)(i) shall be determined on a rolling average basis of thirty (30) Boiler Operating Days on a unit by unit basis. Compliance shall be calculated in accordance with the following procedure: (1) Sum the total pounds of NO<sub>x</sub> emitted from the Unit during the current Boiler Operating Day and the previous twenty-nine (29) Boiler Operating Days; (2) sum the total heat input to the Unit in MMBtu during the current Boiler Operating Day and the previous twenty-nine (29) Boiler Operating Days; and (3) divide the total number of pounds of NO<sub>x</sub> by the total heat input in MMBtu during the thirty (30) Boiler Operating Days. A new 30 Boiler Operating Day rolling average shall be calculated for each new Boiler Operating Day. Each 30 Boiler Operating Day rolling average shall include all emissions that occur during periods within any Boiler Operating Day, including emissions from startup, shutdown, and malfunction.

(ii) If a valid NO<sub>x</sub> pounds per hour or heat input is not available for any hour for a unit, that heat input and NO<sub>x</sub> pounds per hour shall not be used in the calculation for that 30 boiler operating day period.

(7) *Recordkeeping.* The owner or operator of each unit shall maintain the following records for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results as required by Part 75 and as necessary to calculate each unit's pounds of NO<sub>x</sub> and heat input for each hour.

(ii) Each calendar day rolling average group emission rates for NO<sub>x</sub> calculated in accordance with paragraph (j)(6)(i) of this section.

(iii) Each unit's 30 Boiler Operating Day pounds of NO<sub>x</sub> and heat input.

(iv) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR Part 75.

(v) Records of the relative accuracy calculation of the NO<sub>x</sub> lb/hr measurement and hourly heat input.

(vi) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(vii) Any other records required by 40 CFR Part 75.

(8) *Reporting.* All reports and notifications under this paragraph (j) shall be submitted to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock,

Arizona 86515, and to the Director of Enforcement Division, U.S. EPA Region IX, at 75 Hawthorne Street, San Francisco, CA 94105.

(i) The owner/operator shall notify EPA within two weeks after completion of installation of NO<sub>x</sub> control technology on any of the units subject to this section.

(ii) Within 30 days after the first applicable compliance date in paragraph (j)(3) of this section and within 30 days of every second calendar quarter thereafter (i.e., semi-annually), the owner/operator shall submit a report that lists for each calendar day, calculated in accordance with paragraph (j)(6) of this section, total lb of NO<sub>x</sub> and heat input (as used to calculate compliance per paragraph (j)(6), for each unit's last 30 boiler operating days. Included in this report shall be the results of the last relative accuracy test audit and the calculated relative accuracy for lb/hr NO<sub>x</sub> and heat input performed 45 days prior to the end of that reporting period. The end of the year report shall also include the percent valid data for each NO<sub>x</sub>, diluent, and flow monitor used in the calculations of compliance with paragraph (j)(6).

(9) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(10) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator, or their designee, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(11) *Affirmative Defense.* The affirmative defense provisions of paragraphs (c)(1) and (g)(3) of this

section, related only to malfunctions, apply to this paragraph (j).

[FR Doc. 2013-24281 Filed 10-21-13; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2013-0499; FRL- 9901-36-Region3]

#### Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards and State Board Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia (hereafter “the District”) pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the NAAQS. These elements are referred to as infrastructure requirements. The District has made a submittal addressing the infrastructure requirements for the 2008 lead (Pb) NAAQS (“the infrastructure submittal”) and a separate submittal addressing requirements in relation to State Boards. This action is being taken under the CAA. In the Final Rules section of this **Federal Register**, EPA is approving the District’s SIP submittals as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A more detailed description of the District’s submittals and EPA’s evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all

public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by November 21, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2013-0499 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov*.

C. *Mail:* EPA-R03-OAR-2013-0499, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2013-0499. EPA’s policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form

of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Emlyn Vélez-Rosa, (215) 814-2038, or by email at *velez-rosa.emlyn@epa.gov*.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the “Rules and Regulations” section of this **Federal Register** publication.

Dated: September 13, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2013-24124 Filed 10-21-13; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-ES-R8-2012-0075; 4500030113]

#### Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Ashy Storm-Petrel as an Endangered or Threatened Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list the ashy storm-petrel (*Oceanodroma homochroa*) as an endangered or threatened species and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of the best