http://sanctuaries.noaa.gov/library/alldocs.html.

Dated: December 27, 2017.

John Armor,

Director, Office of National Marine Sanctuaries.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0601; FRL–9974–99—Region 3]

Air Plan Approval; Virginia; Regional Haze Plan and Visibility for the 2010 SO_2 and 2012 $PM_{2.5}$ Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (the Commonwealth or Virginia) that changes reliance on the Clean Air Interstate Rule (CAIR) to reliance on the Cross-State Air Pollution Rule (CSAPR) to address certain regional haze requirements. EPA's approval of this SIP revision would convert the Agency's limited approval/limited disapproval of Virginia's regional haze SIP to a full approval. EPA is also proposing to approve the visibility element of Virginia's infrastructure SIP submittals for the 2010 sulfur dioxide (SO_2) and 2012 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). These proposed actions are supported by EPA's recent final determination that a state's participation in CSAPR continues to meet the Regional Haze Rule's (RHR) criteria to qualify as an alternative to the application of best available retrofit technology (BART). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 2, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0601 at *http://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787 or at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 16, 2015, the Virginia Department of Environmental Quality (VA DEQ) submitted a revision to its SIP to update its regional haze plan and to meet visibility requirements in section 110(a)(2)(D) of the CAA.

I. Background

A. Regional Haze and the Relationship With CAIR and CSAPR

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes ''as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I federal areas which impairment results from manmade air pollution.'' [1] On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that are reasonably attributable to a single source or small group of sources.[2] Then, in 1990 Congress added section 169B to the CAA to address regional haze issues. EPA subsequently promulgated regulations pursuant to section 169B to address regional haze.[3] The RHR focuses on visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area, requiring states to establish goals and emission reduction strategies for improving visibility in Class I areas.

The CAA requires each state to develop, and submit for approval by EPA, a SIP to meet various air quality requirements, including the protection of visibility in Class I areas.[4] Section 169A(b)(2) of the CAA requires that applicable [5] state SIPs must contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national visibility goal. Such measures include the application of BART by any BART-eligible sources [6] that emit air pollutants such as SO_2 and nitrogen oxides (NO_X) [7] that may reasonably be anticipated to cause or contribute to visibility impairment in a Class I area. The BART provisions of the RHR generally direct states to follow these steps to address the BART requirements: (1) Identify all BART-eligible sources; (2) determine which of those sources may reasonably be anticipated to cause or contribute to visibility impairment in a Class I area, and are therefore subject to BART requirements; (3) determine source-specific BART for each source that is subject to BART requirements; and (4) include the emission limitations reflecting those BART determinations in their SIPs.[8] However, the RHR also provides states with the flexibility to adopt an emissions trading program or other alternative program instead of requiring source-specific BART controls, as long as the alternative provides greater reasonable progress towards the national goal of achieving natural visibility conditions in Class I

[1] 42 U.S.C. 7491(a). Mandatory Class I federal areas are defined as national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 mandatory Class I federal areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). When we use the term Class I area in this action, we mean a mandatory Class I federal area.

[2] These regulations are the reasonably attributable visibility impairment (RAVI) provisions. 45 FR 80084 (December 2, 1980).

[3] These regulations are known as the Regional Haze Rule or RHR. 64 FR 35714, 35714 (July 1, 1999) (codified at 40 CFR part 51, subpart P).

[4] 42 U.S.C. 7410(a), 7491, and 7492(a), CAA sections 110(a), 169A, and 169B.

[5] States that have a federal Class I area, listed by the Administrator under subsection 169A(a)(2) of the CAA, and/or states from which the emissions may reasonably be anticipated to cause or contribute to any impairment of visibility in any federal Class I area.

[6] A BART-eligible source is any one of the 26 specified source categories listed in appendix Y to 40 CFR part 51, Guidelines for BART Determinations Under the Regional Haze Rule.

[7] SO_2 and NO_X are considered the most significant visibility impairing pollutants.

[8] 40 CFR 51.308(e)(1).

areas than BART. *See* 40 CFR 51.308(e)(2).

In a 2005 revision to the RHR,[9] EPA demonstrated that CAIR[10] would achieve greater reasonable progress than BART. *See* 70 FR 39104. This is often referred to as the CAIR-better-than-BART determination. Based on this determination, EPA amended its regulations so that states participating in the CAIR cap-and trade programs under 40 CFR part 96 pursuant to an EPA approved CAIR SIP, or states that remain subject to a CAIR federal trading program under 40 CFR part 97, need not require affected BART-eligible electric generating units (EGUs) to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See* 40 CFR 51.308(e)(4). Several states subject to CAIR, including Virginia, relied on the CAIR cap-and-trade programs as an alternative to BART to achieve greater reasonable progress towards national visibility goals for their first SIP revision submitted to address regional haze.[11]

In July 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated CAIR.[12] In December 2008, the D.C. Circuit remanded CAIR back to EPA without vacatur while a replacement rule consistent with the Court's opinion was developed.[13] On August 8, 2011 (76 FR 48208) EPA promulgated CSAPR to replace CAIR and issued federal trading programs to implement the rule in the states subject to CSAPR.[14] CSAPR was to become effective January 1, 2012; however, the timing of CSAPR's implementation was impacted by a number of court actions.

After promulgating CSAPR, EPA conducted a technical analysis to determine whether compliance with CSAPR would satisfy the requirements of the RHR addressing alternatives to BART. In a June 7, 2012 action, EPA amended the RHR to provide that participation by a state's EGUs in a CSAPR trading program for a given pollutant—either a CSAPR federal trading program or an integrated CSAPR state trading program implemented through an approved CSAPR SIP revision—qualifies as a BART alternative for those EGUs for that pollutant.[15] *See* 40 CFR 51.308(e)(4). Since EPA promulgated this amendment, both states and EPA have relied on the CSAPR-better-than-BART determination to satisfy the BART requirements for states that participate in CSAPR.

Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on August 21, 2012, the court issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR.[16] The D.C. Circuit's vacatur of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling.[17] On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets to a number of states.[18] The remanded budgets included the Phase 2 SO_2 emissions budgets for four states and the Phase 2 ozone-season NO_X budgets for 11 states, including those for Virginia. The D.C. Circuit litigation ultimately delayed implementation of CSAPR for three years, from January 1, 2012, when CSAPR's cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015.[19] Thus, the rule's Phase 2 budgets that were originally promulgated to begin on January 1, 2014 began on January 1, 2017 instead. EPA has now taken all actions necessary to respond to the D.C. Circuit's remand of the various CSAPR budgets. On September 29, 2017, EPA finalized a determination that the changes to the scope of CSAPR coverage following the remand of certain of the budgets by the D.C. Circuit do not alter EPA's conclusion that CSAPR remains better-than-BART. In sum, EGU participation in a CSAPR trading program remains available as an alternative to BART for states participating in CSAPR.

B. Partial Regional Haze Federal Implementation Plan (FIP)

On June 7, 2012, EPA finalized a limited approval and a limited disapproval of several SIP revisions submitted by VA DEQ meant to address regional haze program requirements.[20] The limited disapproval of these SIP revisions was based upon Virginia's reliance on CAIR as an alternative to BART and as a measure for reasonable progress. In the June 7, 2012 action, EPA also finalized a determination that for states covered by CSAPR, including Virginia, CSAPR achieves greater reasonable progress towards the national visibility goals in Class I areas than source-specific BART. To address deficiencies in CAIR-dependent regional haze SIPs for several states, including Virginia, EPA promulgated FIPs that replace reliance on CAIR with reliance on CSAPR to meet BART and reasonable progress requirements in Virginia and other states in that same action. Consequently, for these states, this particular aspect of their regional haze requirements was satisfied by a FIP (hereafter referred to as partial RH FIP).

On July 16, 2015, the Commonwealth of Virginia submitted a SIP revision changing its reliance from CAIR to CSAPR in its SIP to meet BART for visibility purposes and for addressing reasonable progress requirements, thereby removing Virginia's need for the partial RH FIP.

[9] 70 FR 39104 (July 6, 2005).

[10] CAIR involved the District of Columbia and 27 eastern states, including Virginia, in several regional cap and trade programs to reduce SO_2 and NO_X emissions that contribute to the nonattainment or interfere with the maintenance of the 1997 ozone and $PM_{2.5}$ NAAQS. 70 FR 25162 (May 12, 2005).

[11] Virginia submitted its comprehensive regional haze SIP revision on October 4, 2010. Virginia also submitted some additional SIP submittals addressing specific BART and reasonable progress requirements.

[12] *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[13] *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008).

[14] CSAPR is a regional cap-and-trade program meant to replace CAIR. Similar to CAIR, it is focused on eastern states (including Virginia) and requires participants to limit their statewide emissions of SO_2 and/or NO_X in order to mitigate transported air pollution unlawfully impacting another state's ability to attain or maintain the following NAAQS: 1997 ozone and $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 2008 ozone NAAQS.

[15] Legal challenges to the CSAPR-better-than-BART determination are pending. *Utility Air Regulatory Group* v. *EPA,* No. 12–1342 (D.C. Cir. filed August 6, 2012).

[16] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).

[17] *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014).

[18] *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015).

[19] Following the April 2014 Supreme Court decision, EPA filed a motion asking the D.C. Circuit to delay, by three years, all CSAPR compliance deadlines that had not passed as of the approval date of the stay on CSAPR. On October 23, 2014, the D.C. Circuit granted EPA's request, and on December 3, 2014 (79 FR 71663), in an interim final rule, EPA set the updated effective date of CSAPR as January 1, 2015 and delayed the implementation of CSAPR Phase 1 to 2015 and CSAPR Phase 2 to 2017. In accordance with the interim final rule, the sunset date for CAIR was December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.

[20] 77 FR 33643. Virginia's SIP revisions are dated July 17, 2008, March 6, 2009, January 14, 2010, October 4, 2010, November 19, 2010, and May 6, 2011. The Commonwealth submitted Virginia's regional haze SIP revisions on July 17, 2008 for Georgia Pacific Corporation BART determination and permit; March 6, 2009 for MeadWestvaco Corporation BART determination and permit; January 14, 2010 for O–N Minerals Facility BART determination and permit; October 4, 2010 for the comprehensive regional haze SIP; November 19, 2010 for the revision to the O–N Minerals Facility BART determination and permit; and May 6, 2011 for the MeadWestvaco Corporation reasonable progress permit, to address the requirements of the RHR.

C. Section 110(a)(2)(D)(i)(II) Prong 4 Requirement

The CAA requires states to submit, within three years after promulgation of a new or revised NAAQS, SIP revisions meeting the applicable elements of sections 110(a)(1) and (2). SIP revisions that are intended to meet the requirements of section 110(a) of the CAA are often referred to as infrastructure SIPs and the elements under 110(a) are referred to as infrastructure requirements. Several of these applicable elements are delineated within section 110(a)(2)(D)(i) of the CAA. Section 110(a)(2)(D)(i) requires SIPs to contain adequate provisions to prohibit emissions in that state from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution. There are four prongs within section 110(a)(2)(D)(i) of the CAA; section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This rulemaking action addresses prong 4 which is related to interference with measures by another state to protect visibility. Prong 4 requires that a state's SIP include adequate provisions prohibiting any source or other type of emissions activity in one state from interfering with measures to protect visibility required to be included in another state's SIP. One way in which prong 4 can be satisfied is if a state has a fully approved regional haze program within its SIP.[21] At the time Virginia submitted its infrastructure SIP revisions for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, which included provisions addressing the prong 4 portions, Virginia did not have a fully approved regional haze program.[22] EPA acted on the majority of the infrastructure elements within Virginia's infrastructure SIP submittals for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, but concluded that it would take separate action on the prong 4 portions of the submittals at a later date.[23] [24]

Relying on its July 16, 2015 SIP submittal for demonstrating it should receive full approval of its regional haze program, Virginia requested that EPA take action to approve the prong 4 visibility requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

II. Summary of SIP Revision and EPA Analysis

Virginia submitted a SIP revision on July 16, 2015, seeking to correct the deficiencies identified in EPA's June 7, 2012 limited disapproval action, by replacing reliance on CAIR with reliance on CSAPR in its regional haze SIP.[25] Specifically, the July 16, 2015 submittal changes the Virginia regional haze program to state that Virginia is relying on CSAPR in its regional haze SIP to meet the BART and reasonable progress requirements to support visibility improvement progress goals for the Commonwealth's Class I areas, the Shenandoah National Park and the James River Wilderness Area.

Additionally, the July 16, 2015 submittal addressed prong 4 for the previously submitted infrastructure SIP revision regarding the 2010 SO_2 NAAQS. Virginia's June 18, 2014 2010 SO_2 NAAQS infrastructure SIP submission relied on the Commonwealth having a fully approved regional haze program to satisfy its prong 4 requirements. However, at the time of the June 18, 2014 submittal, Virginia did not have a fully approved regional haze program as the Agency had issued a limited disapproval of the Commonwealth's regional haze plan on June 7, 2012, due to its reliance on CAIR. To correct the deficiencies and obtain approval of the aforementioned infrastructure SIP that relied on a fully approved regional haze program, the Commonwealth submitted the July 16, 2015 SIP revision to replace reliance on CAIR with reliance on CSAPR.

As did EPA's partial RH FIP for Virginia, the Commonwealth's July 16, 2015 regional haze SIP revision relies on CSAPR to address the deficiencies identified in EPA's limited disapproval of Virginia's regional haze SIP. EPA is proposing to find that this revision would satisfy the NO_X and SO_2 BART and reasonable progress requirements for EGUs in Virginia and therefore make Virginia's regional haze program fully approvable. Upon EPA's final approval of this SIP, Virginia will have a SIP in place to address all of its regional haze requirements. EPA is proposing to find that Virginia's reliance in its SIP upon CSAPR for certain BART and reasonable progress requirements is in accordance with the CAA and RHR requirements (including 40 CFR 51.308(e)(2)) as EPA has recently affirmed that CSAPR remains better-than-BART for regional haze requirements.[26] Because the BART and reasonable progress requirements associated with EPA's prior limited disapproval would be addressed through the Commonwealth's revised SIP, if EPA takes final action to approve the July 16, 2015 SIP submission, the Agency's prior limited disapproval/limited approval of Virginia's regional haze SIP would convert to a full approval. Additionally, EPA is proposing to find that if revisions to the Commonwealth's regional haze SIP are fully approved, then the prong 4 portions of Virginia's infrastructure SIP submittal for the 2010 SO_2 NAAQS meet applicable requirements of the CAA.

In addition to the regional haze SIP submittal which Virginia submitted to EPA on July 16, 2015, the Commonwealth also submitted to EPA on the same date a SIP revision regarding the infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS. In order to meet prong 4 requirements for the 2012 $PM_{2.5}$ NAAQS, this submittal referred to Virginia's regional haze July 16, 2015 SIP submission. Therefore, to approve the prong 4 requirements of the July 16, 2015 infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS, EPA must first fully approve Virginia's regional haze program request within the Commonwealth's July 16, 2015 regional haze SIP submittal.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. All other applicable infrastructure requirements for the Commonwealth's infrastructure SIP submissions for the 2010 SO_2 NAAQS and the 2012 $PM_{2.5}$ NAAQS have been or will be addressed in separate rulemakings.

III. Proposed Action

EPA is proposing to take the following actions: (1) Approve Virginia's July 16, 2015 SIP submission that changes reliance on CAIR to reliance on CSAPR for certain elements of Virginia's regional haze program; (2) convert EPA's limited approval/limited disapproval of Virginia's regional haze program to a full approval; and (3) approve the prong 4 portions of Virginia's June 18, 2014 infrastructure

[21] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[22] Virginia submitted its infrastructure SIPs for the 2010 SO_2 NAAQS on June 18, 2014 and for the 2012 $PM_{2.5}$ NAAQS on July 16, 2015.

[23] On March 4, 2015 (80 FR 11557), EPA approved portions of Virginia's June 18, 2014 submittal for the 2010 SO_2 NAAQS addressing the following: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) for prevention of significant deterioration, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[24] On June 16, 2016 (81 FR 39208), EPA approved portions of Virginia's July 16, 2015 submittal for the 2012 $PM_{2.5}$ NAAQS addressing the following: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) for prevention of significant deterioration, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[25] Virginia was included in the CSAPR federal trading programs on August 8, 2011. 76 FR 48208.

[26] *See* 82 FR 45481 (reaffirming CSAPR better-than-BART).

SIP submission for the 2010 SO_2 NAAQS and its July 16, 2015 infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its regional haze program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule addressing regional haze requirements and prong 4 requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS is not proposed to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: February 15, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

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