substantially in excess of the underlying decision in the matter and whether the Secretary's demand was or was not unreasonable. That determination shall be based upon all the facts and circumstances of the case.

(c) *Awards.* The judge presiding over an EAJA proceeding or the Commission on review may reduce the amount to be awarded, or deny any award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(1) Awards shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(2) An award for the fee of an attorney or agent under this part shall not exceed the hourly rate specified in 5 U.S.C. 504(b)(1)(A), except to account for inflation since the last update of the statute's maximum award upon the request of the applicant as documented in the application pursuant to § 2204.303. An award to compensate an expert witness shall not exceed the highest rate at which the Secretary pays expert witnesses. However, an award may include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(3) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the following shall be considered:

(i) If the attorney, agent, or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(ii) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily perform services;

(iii) The time actually spent in the representation of the applicant;

(iv) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(v) Such other factors as may bear on the value of the services provided.

(4) The reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of the party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 2204.407 Commission review.

Either the applicant or the Secretary may seek review of the judge's decision on the fee application, and the Commission may grant such a petition for review or direct review of the decision on the Commission's own initiative. Review by the Commission shall be in accordance with §§ 2200.91 and 2200.92 of this chapter.

§ 2204.408 Judicial review.

Judicial review of final decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 2204.409 Stay of decision concerning award.

Any proceedings on an application for fees under this part shall be automatically stayed until the adversary adjudication has become a final disposition.

§ 2204.410 Waiver.

After reasonable notice to the parties, the judge or the Commission may waive, for good cause shown, any provision contained in this part as long as the waiver is consistent with the terms and purpose of the EAJA.

§ 2204.411 Payment of award.

An applicant seeking payment of an award shall submit to the officer designated by the Secretary a copy of the Commission's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts.

Cynthia L. Attwood,

Chair.

[FR Doc. 2021–04140 Filed 3–5–21; 8:45 am]

BILLING CODE 7600–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0596; FRL10019–52–Region 3]

Air Plan Approval; Virginia; Revised RACT Permit for Roanoke Electric Steel/Steel Dynamics, Inc.

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 revision consists of amendments to a federally enforceable state operating permit (FESOP) which was previously incorporated into the Virginia SIP in order to implement reasonably available control technology (RACT) for nitrogen oxide (NO_X) emissions from Steel Dynamics, Inc. (hereafter ''SDI,'' formerly Roanoke Electric Steel). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 7, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0596 at *https://www.regulations.gov,* or via email to *gordon.mike@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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David Talley, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The telephone number is (215) 814–2117. Mr. Talley can also be reached via electronic mail at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 14, 2020, the Virginia Department of Environmental Quality (VADEQ), on behalf of the Commonwealth of Virginia, formally submitted the amended permit as a revision to the Virginia SIP.

I. Background

Prior to the establishment of nonattainment areas for the 1997 8-hour ozone national ambient air quality standards (NAAQS), EPA developed a

program to allow these potential nonattainment areas to voluntarily adopt local emission control programs to avoid air quality violations and mandated nonattainment area controls. Areas with air quality meeting the 1979 1-hour ozone NAAQS were eligible to participate. In order to participate, state and local governments and EPA developed and signed a memorandum of agreement that describes the local control measures the state or local community intends to adopt and implement to reduce ozone emissions in advance of air quality violations. In this agreement, also known as an Early Action Compact (EAC), the state or local communities agree to prepare emission inventories and conduct air quality modeling and monitoring to support its selection of emission controls. Areas that participated in the EAC program had the flexibility to institute their own approach in maintaining clean air and protecting public health. Several localities in the Winchester and Roanoke areas elected to participate in the EAC program. The areas that signed an EAC were the City of Winchester and Frederick County, which comprised the Northern Shenandoah Valley EAC; and the cities of Roanoke and Salem, and the counties of Roanoke and Botetourt, which comprised the Roanoke EAC. VADEQ's approach to implementing the EAC was that RACT [1] be applied to sources of NO_X and volatile organic compounds (VOCs) within those localities that were otherwise not subject to RACT. The Roanoke Electric Steel Corporation, currently SDI, was one such source.

II. Summary of SIP Revision and EPA Analysis

On April 27, 2005, EPA approved a SIP revision for the Commonwealth of Virginia which incorporated provisions from a federally enforceable state operating permit into the Virginia SIP in order to apply RACT to several units at SDI (Virginia permit registration No. 20131, issued December 22, 2004; hereafter, ''2004 Permit''). See 70 FR 21621. Virginia's April 14, 2020 submittal includes a revised operating permit for SDI which amends the 2004 permit to account for changes in operation at the facility, including the shut-down of a number of units. The 2004 permit included operational requirements and NO_X emissions limits for the equipment listed in Table 1:

TABLE 1—EQUIPMENT LIST AND NO_X LIMITS FROM 2004 PERMIT

Unit	NO_X emission limit
Tundish Preheaters (2) ...	0.25 pounds (lb) NO_X/million British thermal unit (BTU).
Ladle Preheaters (2)	0.25 lb NO_X/million BTU.
Electric Arc Furnace #4 ..	Operational Limits Only.
Electric Arc Furnace #5 ..	37.8 lb NO_X/hour.
Ladle Metallurgical Station #5.	6.0 lb NO_X/hour.
Billet Reheat Furnace #1	53.1 lb NO_X/hour.
Billet Reheat Furnace #2	39.9 lb NO_X/hour.

Since the issuance of the 2004 permit (and EPA's subsequent SIP approval), operations at the facility have changed, requiring a revision of both the operating permit and the operating permit provisions incorporated into the SIP. At the time the 2004 permit was issued, SDI had received a preconstruction permit for the construction of billet reheat furnace (BRF) #2 to replace BRF #1. The conditions of that preconstruction permit were incorporated into the 2004 permit, and ultimately into the Virginia SIP. However, BRF #2 was never constructed, so the associated NO_X limits have been removed from the operating permit. Electric arc furnace (EAF) #4 was removed, as was BRF #1. The only remaining units at the facility that are subject to the source specific NO_X RACT limits of the 2004 permit are EAF #5 and the Ladle Metallurgical Station (LMS) #5. The other units have been removed, replaced with equipment that was not subject to RACT, or as was the case with BRF #2, never constructed. EAF #5 and LMS #5 remain subject to the same limits as were in the original permit. The RACT limits for those remaining units have not changed, and there are no emissions increases associated with either the revised permit, or Virginia's proposed SIP revision. The permit, and ultimately the SIP, are simply being revised to account for the removal of provisions related to emissions units that no longer exist.

III. Proposed Action

EPA's review of this material indicates that it is consistent with all CAA requirements. Additionally, because the SIP revision does not allow for any increase in emissions, it will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement, in accordance with CAA section 110(l). EPA is proposing to approve Virginia's April 14, 2020 submittal as a revision to the Virginia SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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

[1] EPA defines RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

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 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. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the unredacted portions of Virginia stationary source permit to operate, registration number 20132, issued to Roanoke Electric Steel (D/B/A Steel Dynamics, Inc.) on December 22, 2004, and revised on March 25, 2020. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. 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 an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action 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).

The SIP is not approved 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, this rule pertaining to source specific NO_X limits at SDI 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, Volatile organic compounds.

Dated: February 18, 2021.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2021–04705 Filed 3–5–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2020–0732, FRL–10020–07–Region 10]

Air Plan Approval; WA; Regional Haze Best Available Retrofit Technology Revision for TransAlta Centralia Generation Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a source-specific State Implementation Plan (SIP) revision submitted by the Washington State Department of Ecology (Ecology) on December 18, 2020. The SIP revision makes changes to nitrogen oxide control requirements for the TransAlta Centralia Generation Plant (TransAlta). These requirements were established in an order issued to TransAlta by the state to satisfy the Clean Air Act Best Available Retrofit Technology Requirements (BART) put in place by Congress to reduce regional haze and restore visibility in national parks and wilderness areas. The changes submitted by the state are intended to improve the operation of pollution control equipment at TransAlta while continuing to meet BART requirements.

DATES: Comments must be received on or before April 7, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2020–0732 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The 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