



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2018-0217; EPA-R03-OAR-2014-0299; EPA-R03-OAR-2016-0373; FRL-9979-39-Region 3]

### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regional Haze Plan and Visibility Requirements for the 2010 Sulfur Dioxide and the 2012 Fine Particulate Matter 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 State of West Virginia (West Virginia) to change reliance on the Clean Air Interstate Rule (CAIR) to reliance on the Cross-State Air Pollution Rule (CSAPR) with the purpose of addressing certain regional haze requirements and visibility protection requirements for the 2010 sulfur dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS). Upon EPA's final approval of this SIP revision, EPA is proposing to convert the Agency's June 7, 2012 limited approval/limited disapproval of West Virginia's regional haze SIP to a full approval; and EPA is proposing to remove the federal implementation plan (FIP) for West Virginia issued to address deficiencies previously identified in the Agency's limited approval/limited disapproval of the State's regional haze SIP revision. In addition, EPA is proposing to approve the portions of two previous SIP revisions submitted by West Virginia to address visibility protection requirements for the 2010 SO<sub>2</sub> and the 2012 particulate matter (PM<sub>2.5</sub>) NAAQS. These proposed actions are supported by EPA's recent final determination that a state's participation in CSAPR continues to meet EPA's regional haze 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 **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0217; EPA-R03-OAR-2014-0299; and/or EPA-R03-OAR-2016-0373 at

<http://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.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:** Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at [velez-rosa.emlyn@epa.gov](mailto:velez-rosa.emlyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** On September 16, 2015, the State of West Virginia via the West Virginia Department of Environmental Protection (WVDEP) submitted a revision

to update its regional haze plan and to meet the visibility protection 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."<sup>1</sup> 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.<sup>2</sup> 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, known as the Regional Haze Rule.<sup>3</sup> The Regional Haze Rule 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.<sup>4</sup> Section

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<sup>1</sup> 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.

<sup>2</sup> These regulations are the reasonably attributable visibility impairment (RAVI) provisions. 45 FR 80084 (December 2, 1980).

<sup>3</sup> 64 FR 35714, 35714 (July 1, 1999) (codified at 40 CFR part 51, subpart P).

<sup>4</sup> 42 U.S.C. 7410(a), 7491, and 7492(a), CAA sections 110(a), 169A, and 169B.

169A(b)(2) of the CAA requires that applicable states<sup>5</sup> 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<sup>6</sup> that emit air pollutants such as SO<sub>2</sub> and nitrogen oxides (NO<sub>x</sub>)<sup>7</sup> that may reasonably be anticipated to cause or contribute to visibility impairment in a Class I area. The BART provisions of the Regional Haze Rule 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.<sup>8</sup> However, the Regional Haze Rule 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 areas than BART. *See* 40 CFR 51.308(e)(2).

In a 2005 revision to the Regional Haze Rule,<sup>9</sup> EPA demonstrated that CAIR<sup>10</sup> would achieve greater reasonable progress than BART. This is often referred to as the CAIR-better-than-BART determination. Based on this determination, EPA amended its regulations so that states

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> SO<sub>2</sub> and NO<sub>x</sub> are considered the most significant visibility impairing pollutants.

<sup>8</sup> 40 CFR 51.308(e)(1).

<sup>9</sup> 70 FR 39104 (July 6, 2005).

<sup>10</sup> CAIR involved the District of Columbia and 27 eastern states, including West Virginia, in several regional cap and trade programs to reduce SO<sub>2</sub> and NO<sub>x</sub> emissions that contribute to the nonattainment or interfere with the maintenance of the 1997 ozone and PM<sub>2.5</sub> NAAQS. 70 FR 25162 (May 12, 2005).

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<sub>2</sub> and NO<sub>x</sub>. *See* 40 CFR 51.308(e)(4). Several states subject to CAIR, including West 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.<sup>11</sup>

In July 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated CAIR.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> CSAPR was to become effective January 1, 2012; however, as discussed later, 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 Regional Haze Rule addressing alternatives to BART. In a June 7, 2012 action, EPA amended the Regional Haze Rule 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

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<sup>11</sup> West Virginia submitted a comprehensive regional haze SIP revision on June 18, 2008.

<sup>12</sup> *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008).

<sup>13</sup> *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008).

<sup>14</sup> CSAPR is a regional cap-and-trade program meant to replace CAIR. Similar to CAIR, it is focused on eastern states (including West Virginia) and requires participants to limit their statewide emissions of SO<sub>2</sub> and/or NO<sub>x</sub> in order to mitigate transported air pollution unlawfully impacting another state's ability to attain or maintain the following NAAQS: 1997 ozone and PM<sub>2.5</sub> NAAQS, the 2006 PM<sub>2.5</sub> NAAQS, and the 2008 ozone NAAQS.

implemented through an approved CSAPR SIP revision – qualifies as a BART alternative for those EGUs for that pollutant.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> The remanded budgets included the Phase 2 SO<sub>2</sub> emissions budgets for four states and the Phase 2 ozone-season NO<sub>x</sub> budgets for 11 states, including those for West 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.<sup>20</sup> 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

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<sup>15</sup> 77 FR 33656 (June 7, 2012).

<sup>16</sup> The D.C. Circuit recently upheld EPA's CSAPR-better-than-BART determination. See *Utility Air Regulatory Group v. EPA*, No. 12-1342 (D.C. Cir. March 20, 2018).

<sup>17</sup> *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012).

<sup>18</sup> *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014).

<sup>19</sup> *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015).

<sup>20</sup> 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.

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**

On March 23, 2012, EPA finalized a limited approval and a limited disapproval of a SIP revision submitted by WVDEP on June 18, 2008 addressing regional haze program requirements.<sup>21</sup> The limited disapproval of this SIP revision was based upon West Virginia's reliance on CAIR as an alternative to BART and as a measure for reasonable progress. On June 7, 2012, EPA finalized a determination that for states covered by CSAPR, including West Virginia, CSAPR achieves greater reasonable progress towards the national visibility goals in Class I areas than source-specific BART. In this same June 7, 2012 action, EPA also promulgated FIPs that replaced reliance on CAIR with reliance on CSAPR to meet BART and reasonable progress requirements, to address deficiencies in CAIR-dependent regional haze SIPs for several states, including West Virginia.<sup>22</sup> Consequently, for West Virginia and other states, this particular aspect of their regional haze requirements was satisfied by EPA's issuance of a FIP (hereafter referred to as partial RH FIP).

On September 16, 2015, the State of West Virginia submitted a revision to its Regional Haze SIP to change its present reliance from CAIR to CSAPR for the purpose of meeting BART for regional haze and addressing reasonable progress requirements, thereby eliminating West

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<sup>21</sup> 77 FR 16937 (March 23, 2012).

<sup>22</sup> 77 FR 33643 (June 7, 2012).

Virginia's need for the partial RH FIP. The SIP revision was also submitted to meet outstanding visibility protection requirements under section 110(a)(2)(D)(i)(II) of the CAA for the 2010 SO<sub>2</sub> NAAQS.

### **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.<sup>23</sup>

As part of its September 16, 2015 SIP submittal, which is the subject of this rulemaking action, West Virginia demonstrates it should receive full approval of its regional haze SIP with the

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<sup>23</sup> "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.

switch to reliance upon CSAPR and requests amending the portion of its October 16, 2014 infrastructure SIP submission for the 2010 SO<sub>2</sub> NAAQS to address the prong 4 requirement for visibility protection for this NAAQS. West Virginia's infrastructure SIP revision submittal for the 2012 PM<sub>2.5</sub> NAAQS, submitted to EPA subsequently on May 12, 2017, refers to the September 16, 2015 SIP submittal to address prong 4 for visibility protection for the 2012 PM<sub>2.5</sub> NAAQS. Because West Virginia did not have a fully approved regional haze program at the time EPA took action to approve the infrastructure SIPs for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS, EPA determined that it would take separate action on the prong 4 portions of the October 16, 2014 SIP submission for the 2010 SO<sub>2</sub> NAAQS and of the May 12, 2017 SIP submission for the 2012 PM<sub>2.5</sub> NAAQS, at a later date.<sup>24</sup>

## **II. Summary of SIP Revision and EPA Analysis**

West Virginia submitted a SIP revision on September 16, 2015 to correct its regional haze and visibility protection deficiencies. West Virginia submitted the September 16, 2015 SIP revision seeking to correct the deficiencies identified in EPA's July 13, 2011 limited disapproval action, by replacing reliance on CAIR with reliance on CSAPR in its regional haze SIP.<sup>25</sup> Specifically, the September 16, 2015 submittal changes the West Virginia regional haze program to state that West 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 West Virginia's Class I areas, Dolly Sods and Otter Creek Wilderness Areas.

Additionally, the September 16, 2015 submittal revises the prong 4 portion of the infrastructure SIP revision for the 2010 SO<sub>2</sub> NAAQS, which had been submitted on October 16, 2014, to

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<sup>24</sup> See 79 FR 62022 (October 16, 2014) and 82 FR 22076 (May 12, 2017).

<sup>25</sup> West Virginia was included in the CSAPR federal trading programs on August 8, 2011. 76 FR 48208.

address this visibility protection requirement in CAA section 110(a)(2)(D)(i)(II). At the time of this SIP submittal, West Virginia did not have a fully approved regional haze program as the Agency had issued a limited disapproval of the State's regional haze plan on July 13, 2011, due to its reliance on CAIR. Subsequently, West Virginia submitted to EPA on May 12, 2017 a SIP revision regarding the infrastructure requirements in CAA section 110(a)(2) for the 2012 PM<sub>2.5</sub> NAAQS. In order to meet prong 4 for the 2012 PM<sub>2.5</sub> NAAQS, this May 12, 2017 submittal referred to West Virginia's September 16, 2015 regional haze SIP submittal to address the prong 4 requirement in CAA section 110(a)(2)(D)(i)(II).

The State's September 16, 2015 regional haze SIP revision replaces reliance upon CAIR for reliance upon CSAPR to address the deficiencies identified in EPA's limited disapproval of West Virginia's regional haze SIP.<sup>26</sup> EPA is proposing to find that this revision would satisfy the NO<sub>x</sub> and SO<sub>2</sub> BART and reasonable progress requirements for EGUs in West Virginia and therefore make West Virginia's regional haze program fully approvable. Upon EPA's final approval of this SIP, West Virginia will have a SIP in place to address all of its regional haze requirements. Therefore, EPA is proposing to find that West Virginia's reliance in its SIP upon CSAPR for certain BART and reasonable progress requirements is in accordance with the CAA and Regional Haze Rule requirements (including 40 CFR 51.308(e)(2)) as EPA has recently affirmed that CSAPR remains better-than-BART for regional haze requirements.<sup>27</sup> Because West Virginia's approved regional haze SIP will address EGU BART and reasonable progress requirements upon final approval of the September 16, 2015 SIP submission, EPA is proposing to convert the Agency's prior limited disapproval/limited approval of West Virginia's regional

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<sup>26</sup> In this respect, the September 16, 2015 SIP submission therefore mirrors the requirements from EPA's partial RH FIP for West Virginia,

<sup>27</sup> See 82 FR 45481 (September 29, 2017) (reaffirming CSAPR better-than-BART). See *Utility Air Regulatory Group v. EPA*, No. 12-1342 (D.C. Cir. March 20, 2018) (upholding CSAPR as better-than-BART).

haze SIP to a full approval. EPA is also proposing to remove EPA's June 7, 2012 partial RH FIP for West Virginia, which replaced reliance on CAIR with reliance on CSAPR to address the previously deficient regional haze requirements. Additionally, EPA is proposing to approve the prong 4 portion of West Virginia's October 16, 2014 SIP submission, as revised by the September 16, 2015 regional haze submittal, for the 2010 SO<sub>2</sub> NAAQS and to approve the prong 4 portion of the May 12, 2017 SIP submission for the 2012 PM<sub>2.5</sub> NAAQS, which refers to the September 16, 2015 regional haze submittal, as the West Virginia SIP will now meet prong 4 visibility requirements of the CAA with a fully approved regional haze SIP.<sup>28</sup>

### **III. Proposed Action**

EPA is proposing to take the following actions: (1) Approve West Virginia's September 16, 2015 SIP submission to change reliance on CAIR to reliance on CSAPR for certain elements of West Virginia's regional haze program; (2) convert EPA's limited approval/limited disapproval of West Virginia's regional haze program to a full approval; (3) approve West Virginia's October 16, 2014 SIP submission, as revised September 16, 2015, as satisfying prong 4 regarding visibility protection for the 2010 SO<sub>2</sub> NAAQS; (4) approve West Virginia's May 12, 2017 infrastructure SIP submission, referring to the September 16, 2015 regional haze SIP submission, as satisfying prong 4 regarding visibility protection for the 2012 PM<sub>2.5</sub> NAAQS; and (5) remove West Virginia's partial regional haze FIP which replaced certain regional haze requirements as these requirements will now be contained within the West Virginia regional haze SIP upon final approval of the September 16, 2015 SIP submittal. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before

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<sup>28</sup> All other applicable infrastructure requirements under section 110(a)(2) for the West Virginia's infrastructure SIP submissions for the 2010 SO<sub>2</sub> NAAQS and the 2012 PM<sub>2.5</sub> NAAQS have been or will be addressed in separate rulemakings.

taking final action.

#### **IV. 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 SIP approvals are exempted 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 (Public Law 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 West Virginia's regional haze requirements and visibility protection for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS and the withdrawal of the West Virginia regional haze regional FIP, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. In addition, pursuant to CAA section 307(d)(1)(B), EPA proposes to determine that this action is subject to the provisions of section 307(d). Section 307(d) establishes procedural requirements specific to certain rulemaking actions under the CAA. Furthermore, section 307(d)(1)(V) of the CAA provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine." EPA proposes that the provisions of 307(d) apply to EPA's action on the West Virginia SIP revision. The withdrawal of the provisions of the West Virginia regional haze regional FIP is subject to the requirements of CAA section 307(d), as it constitutes a revision to a FIP under section 110(c) of the CAA.

**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: May 30, 2018.

Cosmo Servidio,  
Regional Administrator,  
Region III.

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