changes in the dates and times of enforcement, as well as reductions in size or scope of the safety zone, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Safety Marine Information Broadcast (SMIB) as appropriate.

Dated: April 14, 2023.

A.R. Bender,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2023–08283 Filed 4–19–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0104; FRL–10907–01–R3]

Air Plan Approval; Virginia; Startup, Shutdown, and Malfunction Amendments to Facility and Control Equipment Maintenance or Malfunction Regulations

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. This revision pertains to several state regulatory changes affecting startup, shutdown and malfunction. This SIP revision was submitted in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, for provisions in the Virginia SIP. EPA is proposing to approve the provisions of the submitted SIP revision and proposing to determine that the SIP revision corrects the deficiencies in Virginia's SIP identified in the June 12, 2015 SIP call. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before May 22, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2023–0104 at *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 *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sean Silverman, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5511. Mr. Silverman can also be reached via electronic mail at *silverman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. EPA's 2015 SSM SIP Action

On February 22, 2013, the EPA issued a **Federal Register** notice of proposed rulemaking (the February 2013 Proposal) outlining EPA's policy at the time with respect to SIP provisions related to periods of Startup, Shutdown, and Malfunction (SSM). EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the CAA with regard to excess emission events.[1] For each SIP provision that the EPA determined to be inconsistent with the CAA, the EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, the EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013 (the supplemental notice of proposed rulemaking (SNPR)), in light of a D.C. Circuit decision that determined the CAA precludes authority of the EPA to create affirmative defense provisions. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate (79 FR 55920, September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), the EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' (80 FR 33839, June 12, 2015), hereafter referred to as the ''2015 SSM SIP Action.'' The 2015 SSM SIP Action clarified, restated, and updated the EPA's interpretation that SSM exemptions (whether automatic or discretionary) and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016. One regulation in Virginia's SIP was included in the 2015 SSM SIP Action. 80 FR 33840 at 33961 (June 12, 2015).

EPA issued a Memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[2] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Virginia in the 2015 SSM SIP Action. The 2020 Memorandum did, however, indicate the EPA's intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether the EPA should

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (February 22, 2013).

[2] October 9, 2020, Memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.

maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA's Deputy Administrator withdrew the 2020 Memorandum and announced EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[3] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including overburdened communities, receive the full health and environmental protections provided by the CAA.[4] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects the EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the agency takes action on SIP submissions, including Virginia's SIP submittal provided in response to the 2015 SIP call.

B. Virginia's Provision Related to Emissions Limitations

With respect to the Virginia SIP, in the 2015 SSM SIP Action, EPA determined that one provision, 9 Virginia Administrative Code 5–20–180(G), was substantially inadequate to meet CAA requirements.[5] The 2015 SSM SIP Action raised three separate concerns regarding 9 Va. Admin. Code 5–20–180(G),[6] but it was not clear whether the provision operated as an automatic exemption from otherwise applicable SIP emissions limitations, a director's discretion provision allowing an exemption for excess emissions during malfunctions because the provision gives the state the authority to determine whether a violation ''shall be judged to have taken place,'' or an affirmative defense by which the state must make a judgment that the event is not a violation. EPA found in the 2015 SSM SIP Action that any of the three would render the provision substantially inadequate to comply with the requirements of the CAA. This rationale underlying EPA's determination that 9VAC5–20–180(G) was substantially inadequate to meet CAA requirements, and therefore to issue a SIP call to Virginia to remedy the provisions, is detailed in the 2015 SSM SIP Action and its accompanying proposals.[7]

In response to the 2015 SSM SIP Action, Virginia submitted a SIP revision on August 1, 2016. The submission requests the approval of a revision to 9VAC5–20–180 (Pertaining to Facility Control Equipment and Malfunction) as well as several administrative updates to other portions of the Virginia Code to add a reference to 9VAC5–20–180. The revisions in the August 1, 2016 submission are discussed more extensively in section II of this document, but summarized here. Revision B16, adopted by the Commonwealth on March 11, 2016 (effective June 1, 2016), contains the revised portions of 9VAC5–20–180(G) developed by Virginia to address the deficiencies cited as substantially inadequate in the 2015 SSM SIP Action.[8] The second provision, called Revision D97, originally amended 9VAC5–20–180 on May 21, 2002 (effective August 1, 2002), but this change to the regulation was not submitted as a SIP revision until it was included with Virginia's 2016 SIP revision.[9] The changes made in the 2002 amendments changed portions of 9VAC5–20–180 that were not subject to the 2015 SIP call, mainly 9VAC5–20–180(A) through (C), and 9VAC5–20–180(H) through (J). Revisions labeled as C09, D09 and E09 ask EPA to update the SIP to capture amendments to five regulations in the Virginia Administrative Code that are already in the Virginia SIP. These regulations were each amended to add a reference to the provisions in 9VAC5–20–180.[10]

II. Summary of SIP Revision and EPA Analysis

A. Revision D97

As discussed in the previous section, portions of Revision D97 are being submitted as a SIP revision. See attachment ''B16–SIP–2b'' on the 3rd page of the PDF for the addition/strikeout copies of the regulation, and attachment ''B16-sip-signed'' for the cover letter accompanying Virginia's August 1, 2016, SIP submission, found in the docket for this action, for additional clarification. In attachment ''B16–SIP–2b,'' portions of the regulation not intended for inclusion in the SIP are redacted from Virginia's notice as indicated by the blue boxes covering the text. The revisions to 9VAC5–20–180 begin on page 10 of the PDF.[11] As noted in the previous section, the changes in D97 only impact the ''non-SIP called'' portions of 9VAC5–20–180 (*i.e.,* 9VAC5–20–180(A) through (C) and 9VAC5–20–180(H) through (J)). These changes were adopted by Virginia on May 21, 2002 but were not submitted as a SIP revision at that time. It appears that Virginia is now submitting the 2002 changes embodied in D97 to demonstrate that these changes went through the appropriate state notice and comment procedures required by CAA section 110. Revision B16 is the most material to the discussion in this section, as it is what is currently adopted and effective in the Virginia Administrative Code. Revision B16 captures all of the changes made in revision D97 to 9VAC5–20–180(A) through (C) and 9VAC5–20–180(H) through (J).

B. Revision B16

In the 2015 SSM SIP Action, EPA found that 9VAC5–20–180(G) created an automatic exemption, an impermissible director's discretion exemption, and/or a director's discretion determination that could also be construed as an impermissible affirmative defense for violations of emission limits. Revision B16 removed the discretionary exemption language from 9VAC5–20–180(G) and modified several other sections in 9VAC5–20–180 which referenced the discretionary exemption. Prior to Revision B16, 9VAC5–20–180(G) stated:

> No violation of applicable emission standards or monitoring requirements shall be judged to have taken place if the excess emissions or cessation of monitoring activities is due to a malfunction, provided that:
>
> (1) The procedural requirements of this section were met or the owner has submitted an acceptable application for a variance, which is subsequently granted;
>
> (2) The owner has taken expeditious and reasonable measures to minimize emissions during the breakdown period;
>
> (3) The owner has taken expeditious and reasonable measures to correct the malfunction and return the facility to a normal operation; and
>
> (4) The source is in compliance at least 90% of the operating time over the most recent 12-month period.

[3] September 30, 2021, Memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[4] *See* 80 FR 33840, 33985, June 12, 2015.

[5] Id. at 33961.

[6] This document will hereafter use the abbreviated form of 9 Virginia Administrative Code § 5–20–180(G), which is 9VAC5–20–180(G) or 9 Va. Admin Code. 5–20–180(G).

[7] See 78 FR 12460 at 12498 (February 22, 2013), 79 FR 55920 at 55937 (September 17, 2014).

[8] 32:18 VA.R. 2422–2423, May 2, 2016.

[9] 18:21 VA.R. 2793–2818, July 1, 2002.

[10] 32:7 VA.R. 1153–1191, November 30, 2015.

[11] 18:21 VA.R. 2793 at 2800, July 1, 2002.

Virginia's 2016 change to 9VAC5–20–180(G), embodied in Revision B16, modified 9VAC5–20–180(G) by removing any reference to violations. The updated language in B16 states:

> In accordance with subsection C of this section, if the excess emissions or cessation of monitoring activities is due to a malfunction, the owner may demonstrate the following:
> (1) the cause of the excess emissions or cessation of monitoring activities meets the definition of malfunction provided in 9VAC5–10–20;
> (2) the procedural requirements of this section were met or the owner has submitted an acceptable application for a variance, which is subsequently granted;
> (3) the owner has taken expeditious and reasonable measures to minimize emissions during the breakdown period;
> (4) the owner has taken expeditious and reasonable measures to correct the malfunction and return the facility to a normal operation; and
> (5) the source is in compliance with related applicable emission standards or monitoring requirements at least 90% of the operating time over the most recent 12-month period.

The provision which previously potentially allowed for no violation to be found was removed, but the criteria which previously would be used to judge that no violation occurred remain. Virginia has not explained the purpose for the submission of this information, but EPA interprets the revised 9VAC5–20–180(G) as a reporting provision only. EPA finds that this new reporting provision no longer has the potential to bar Virginia, the EPA, or citizens from taking an enforcement action if excess emissions result from a malfunction of emission control or monitoring equipment. The facility may explain the circumstances surrounding the excess emission, but the excess emission would still be a violation of applicable SIP limitations. In addition to the change to 9VAC5–20–180(G), Revision B16 also includes 2016 amendments to 9VAC5–20–180(C) to allow 9VAC5–20–180(G) to operate properly,[12] and to make several minor administrative changes. Revision B16 also includes an amendment to 9VAC5–20–180(F) to add language stating that if there are differences in provisions governing malfunction for sources subject to the New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) under 40 CFR parts 60, 61 and 63, the more restrictive standard shall apply.

C. Revisions C09, D09 and E09

Revisions C09, D09 and E09 contain updates to five regulations in the Virginia Administrative Code addressing control techniques guidelines (CTGs) for the Northern Virginia Area which were incorporated into the Virginia SIP by EPA in 2016.[13] These updates add a reference to the provisions in 9VAC5–20–180. The C09, D09 and E09 additions each state ''The provisions of 9VAC5–20–180 (Facility and control equipment maintenance or malfunction) apply.'' See Table 1 in this document, for a list with the name of each regulation for which a reference to 9VAC5–20–180 was added. At the time these regulations were promulgated by Virginia, there was uncertainty as to the status of Virginia's malfunction regulations so Virginia did not submit them as a SIP revision. When Virginia submitted revision B16, it included Revisions C09, D09 and E09 as part of the SIP package.

TABLE 1—UPDATED REFERENCES IN REVISIONS C09, D09 AND E09

Revision	Title of regulation updated to reference 9 Va. admin. code § 5–20–180	Regulatory citation and updated text
C09	Article 56. Emission Standards for Letterpress Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-Hour Ozone Standard (Rule 4–56).	*9VAC5–40–8416. Facility and control equipment maintenance or malfunction.* The provisions of 9VAC5–20–180 (Facility and control equipment maintenance or malfunction) apply.
C09	Article 56.1. Emission Standards for Offset Lithographic Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4–56.1).	*9VAC5–40–8470. Facility and control equipment maintenance or malfunction.* The provisions of 9VAC5–20–180 (Facility and control equipment maintenance or malfunction) apply.
D09	Article 57. Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4–57).	*9VAC5–40–8640. Facility and control equipment maintenance or malfunction.* The provisions of 9VAC5–20–180 (Facility and control equipment maintenance or malfunction) apply.
D09	Article 58. Emissions Standards for Miscellaneous Industrial Adhesive Application Processes in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4–58).	*9VAC5–40–8790. Facility and control equipment maintenance or malfunction.* The provisions of 9VAC5–20–180 (Facility and control equipment maintenance or malfunction) apply.
E09	Article 59. Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4–59).	*9VAC5–40–8940. Facility and control equipment maintenance or malfunction.* The provisions of 9VAC5–20–180 (Facility and Control Equipment Maintenance or Malfunction) apply.

III. Proposed Action

EPA is proposing to approve the Virginia SIP revision, submitted August 1, 2016, which addresses the deficiency cited in EPA's 2015 SSM SIP Action and makes other small changes to Virginia's SIP. The revision removes the language from 9VAC5–20–180 which stated that no violation of applicable emission standards or monitoring requirements shall be judged to have taken place if the excess emissions or cessation of monitoring activities is due to a malfunction, under certain circumstances. EPA is therefore also proposing to determine that this portion of Virginia's 2016 SIP revision corrects the deficiencies identified in EPA's 2015 SSM SIP Action. EPA is not reopening the 2015 SSM SIP Action and is only taking comment on whether this SIP revision is consistent with CAA requirements and whether it addresses the inadequacies in the specific Virginia SIP provision (9VAC5–20–180) identified in the 2015 SSM SIP Action.

[12] 9VAC5–20–180(C) contains requirements a facility must undertake in the event that ''air pollution control equipment fails, or malfunctions . . .'' Revision B16 adds text to 9VAC5–20–180(C) which states ''and the demonstrations in subsection G of this section.'' making the criteria in 9VAC5–20–180(G) a reporting requirement.

[13] See 81 FR 72711 (October 21, 2016).

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 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 amendments to 9VAC5–20–180 (Pertaining to Facility Control Equipment and Malfunction), 9VAC5–40–8416, 9VAC5–40–8470, 9VAC5–40–8640, 9VAC5–40–8790, and 9VAC5–40–8940 in section 52.2420, as explained in Section II of this document. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document 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);
- 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
- Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the

negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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, the rule pertaining to Virginia's Startup, Shutdown, and Malfunction Amendments to Facility and Control Equipment Maintenance or Malfunction Regulations 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, Reporting and recordkeeping requirements.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2023–08235 Filed 4–19–23; 8:45 am]

BILLING CODE 6560–50–P