



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2022-0912; FRL-11269-02-R3]

Approval and Promulgation of Air Quality Implementation Plan;

Maryland; Regional Haze State Implementation Plan for the Second Implementation

Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze state implementation plan (SIP) revision submitted by Maryland on February 8, 2022, as satisfying applicable requirements under the Clean Air Act (CAA) and the EPA's Regional Haze Rule (RHR) for the program's second implementation period. Maryland's SIP submission addresses the requirement that states must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2022-0912. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available through www.regulations.gov, or please contact the person identified in the **For**

Further Information Contact section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Yarina, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region 3, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103-2852. The telephone number is (215) 814-2108. Mr. Yarina can also be reached via electronic mail at yarina.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 8, 2022, the Maryland Department of the Environment (MDE) submitted a revision to its SIP to address regional haze for the second implementation period. MDE made this SIP submission to satisfy the requirements of the CAA's regional haze program pursuant to CAA sections 169A and 169B and 40 Code of Federal Regulations (CFR) 51.308.

On August 25, 2023 (88 FR 58178), EPA published a notice of proposed rulemaking (NPRM) proposing approval of Maryland's February 8, 2022, SIP submission as satisfying the regional haze requirements for the second implementation period contained in the CAA and 40 CFR 51.308. EPA is now determining that the Maryland regional haze SIP submission for the second implementation period meets the applicable statutory and regulatory requirements and is thus approving Maryland's submission into its SIP.

II. EPA's Response to Comments Received

EPA received two sets of comments in response to the NPRM. One set of comments originated from three Non-Governmental Organization (NGO) conservation groups writing as a coalition (i.e., the National Parks Conservation Association (NPCA), Sierra Club, and the Coalition to Protect America's National Parks), and one set of comments from an individual. These comments are available in the docket for this action via Docket ID Number EPA-R03-OAR-2022-0912 on the www.regulations.gov website. EPA's summary of and response to those

comments is provided below.

Comment: NGO commenters praised Maryland's submittal, stating that "the MDE has engaged with many of the worst haze-polluting facilities" for the second implementation period, that "Maryland's SIP should be a model for all of EPA Region 3", and that "the MDE engaged early with the National Park Service ("NPS") as part of the Federal Land Manager (FLM) consultation period and provided in-depth information regarding control technologies, emissions limits, and retirement plans for the majority of sources identified by NPS." NGO commenters also provided additional feedback as to how Maryland's submittal could be further improved, which is described in more detail below.

Response: EPA appreciates and agrees with this comment.

Comment: NGO commenters also stated that SIP measures, including stationary source emission limitations, must be practically enforceable and approved into the SIP. NGO commenters express their belief that MDE improperly excluded certain facilities, including Brandon Shores Generating Station and the AES Warrior Run Facility, from a four-factor analysis. Specifically, NGO commenters express concern that MDE excluded the Brandon Shores Generating Station from being selected for a four-factor analysis based on an agreement between Brandon Shores Generating Station's owner and Sierra Club to cease coal combustion at the site by December 31, 2025, because the plans to cease fuel combustion or shutdown the facility are not a federally enforceable part of the revised SIP. NGO commenters therefore request that EPA require MDE to "amend its Revised SIP to either (1) make Brandon Shores' plans to cease coal combustion or retire a federally enforceable part of the State's Revised SIP or (2) conduct a four-factor analysis for Brandon Shores to ensure the facility is supporting the MDE long-term strategy and reasonable progress goals." Regarding the AES Warrior Run Facility, which MDE did not select for a four-factor analysis, NGO commenters request that EPA require MDE to conduct a four-factor analysis for this facility per FLM recommendations.

Response: As explained in the NPRM, the RHR does not require states to consider

controls for all sources, all source categories, or any or all sources in a particular source category. Rather, states have discretion to choose any source selection methodology or threshold that is reasonable, provided that the choices they make are reasonably explained.^{1, 2} To this end, 40 CFR 51.308(f)(2)(i) requires that a state’s SIP submission must include “a description of the criteria it used to determine which sources or groups of sources it evaluated.” The technical basis for source selection must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii). In this particular instance, EPA proposed to find that Maryland’s information and explanation included in its SIP submittal indicated that the State had in fact examined a reasonable set of sources, including sources identified by the FLMs. Furthermore, EPA proposed that Maryland had reasonably concluded that four-factor analyses were not necessary for all identified sources because the outcome would be that no further emission reductions would be reasonable for this planning period. EPA based the proposed finding on the State’s examination of its largest operating electric generating units (EGUs) and its industrial commercial institutional (ICI) boilers, at the time of SIP submission, and on the emissions from and controls that apply to those sources, as well as on Maryland’s existing SIP-approved nitrogen oxides (NO_x) and sulfur dioxide (SO₂) rules that effectively control emissions from the largest contributing stationary-source sectors. Therefore, it is reasonable to assume that selecting additional sources from the Mid-Atlantic/Northeast-Visibility Union (MANE–VU’s) or FLMs’ lists for four-factor analysis would not have resulted in additional emission reduction measures being determined to be necessary to make reasonable progress for the second implementation period.

Regarding Brandon Shores Generating Station, EPA notes that based on an existing consent agreement between the owner/operator of Brandon Shores and Sierra Club, the facility is

¹ See 88 FR 58178, 58194 (August 25, 2023).

² See Sections 2 and 2.1 of Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

scheduled to shut down by June 1, 2025. As noted by the NGO commenters, it is possible that the shutdown date could be extended as far as 2028. However, EPA notes that, even if the owner/operator of this facility were to extend or delay its currently scheduled shutdown date of June 1, 2025, to 2028, which is the date anticipated by NGO commenters,³ this would be unlikely to affect Maryland's conclusion for this facility (i.e., that no additional controls are reasonable based on installing controls during the short remaining useful life of the source).⁴ Regarding the AES Warrior Run facility, EPA notes that the facility recently filed a deactivation notice with its Regional Transmission Organization (RTO), PJM Interconnection LLC, to retire by June 1, 2024,⁵ and PJM's response to that notice indicated that the facility could deactivate as desired.⁶ Thus, any assessment of additional emissions controls for this facility would also likely conclude that no additional controls are reasonable based on the short remaining useful life of the source.

It is therefore likely that both Brandon Shores and AES Warrior Run will be shut down by 2025 or 2028 at the latest, and EPA notes that either of these dates would still fall within the second implementation period. However, Maryland was not obligated to select these facilities for a four-factor analysis in order to make reasonable progress and fulfill its RHR obligations for the second implementation period, and EPA's proposed approval of Maryland's SIP submission was not dependent on Maryland selecting those facilities for a four-factor analysis.

Therefore, regardless of the ultimate outcome for those facilities, Maryland satisfied its RHR obligations under 40 CFR 51.308(f)(2) and considered and reasonably explained the

³ See docket document, "2023-11-13 - Sierra Club ex parte letter to PJM re Brandon Shores, AES Warrior Run" dated November 13, 2023; and Sierra Club press release dated November 15, 2023, "Maryland On Track To Be Coal-Free by 2025 with Announced Retirement of Warrior Run Plant," at www.sierraclub.org/press-releases/2023/11/maryland-track-be-coal-free-2025-announced-retirement-warrior-run-plant.

⁴ In addition, whether such an extension or delay occurs appears to be dependent on whether one NGO commenter, Sierra Club, will agree to a revision of the consent agreement with the owner/operator of Brandon Shores. See docket documents, "2023-12-05 – PJM Letter to Sierra Club re Brandon Shores Consent Decree" dated December 5, 2023, and "2023-12-07 – Talen Energy response to PJM re Brandon Shores", dated December 7, 2023.

⁵ See docket document, "2023-09-30 - AES Warrior Run Deactivation Notice to PJM", dated September 30, 2023.

⁶ See docket document, "2023-11-30 - PJM Response Letter to AES Warrior Run Deactivation Notice", dated November 30, 2023.

methodology by which it selected and analyzed the particular sources that have the largest contribution to visibility impairment in Class I areas.

Comment: NGO commenters also state that EPA must thoroughly consider environmental justice concerns, and state that the Maryland SIP revision fails to adequately account for these concerns. The commenters go on to state that the energy and non-air quality environmental impacts of compliance factor directs states to consider the broader environmental implications of their regional haze plans, by requiring an analysis of the “non-air quality environmental impacts of compliance,” including environmental justice. In addition, the commenters assert that EPA failed to consider environmental justice concerns in several Maryland communities around AES Warrior Run, NRG Morgantown Generating Station, and Wheelabrator Baltimore, identified as having high percentiles of low-income populations and unemployment rates, which are two of the Socioeconomic Indicators in the Database. The commenters also assert that, according to EPA’s EJ Screen, the community near the Wheelabrator Baltimore facility ranks above the 80th percentile for State environmental justice indexes for fine particulate matter (PM_{2.5}) and ozone.

Response: The regional haze statutory provisions do not explicitly address considerations of environmental justice, and neither do the regulatory requirements of the second planning period in 40 CFR 51.308(f), (g), and (i). As explained in “EPA Legal Tools to Advance Environmental Justice,”⁷ the CAA provides states with the discretion to consider environmental justice in developing rules and measures related to regional haze. While a State may consider environmental justice under the reasonable progress factors, neither the statute nor the regulation requires states to conduct an environmental justice analysis for EPA to approve a SIP submission. Furthermore, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation of environmental justice with regard to a regional haze

⁷ See EPA Legal Tools to Advance Environmental Justice, May 2022, available at www.epa.gov/system/files/documents/2022-05/EJ%20Legal%20Tools%20May%202022%20FINAL.pdf at 35–36.

SIP. In this instance, Maryland concluded that it “has documented its long-term strategy to assure reasonable progress toward visibility goals in nearby Class I areas and assessed its progress in reducing emissions of visibility impairing pollutants.”⁸

The NGO commenters provided additional information from an EJ Screen analysis. Without agreeing with the particular relevance or accuracy of this information, EPA acknowledges the EJ Screen information provided as part of the comment, which identifies certain demographic and environmental information regarding communities near AES Warrior Run, NRG Morgantown Generating Solution, and Wheelabrator Baltimore. The focus of the SIP at issue here, the regional haze SIP for Maryland, is SO₂ and NO_x emissions as they impact visibility in Class I areas. This action addresses ten EGU sources and six industrial/institutional sources of air pollution impacting Class I areas. As discussed in the NPRM and in this final rule, EPA has evaluated Maryland’s SIP submission against the statutory and regulatory regional haze requirements and determined that it satisfies those minimum requirements.

Comment: NGO commenters also alleged that the timing and nature of MDE’s state public comment period for this SIP submission hindered stakeholder participation, due to alleged insufficient notification of Maryland’s comment period on the revised SIP, and the fact that the state’s public comment period encompassed two Federal holidays. The commenters state that, as a result, they were unable to engage directly with MDE during its public comment period for this SIP submittal. The commenters also state that they want “to ensure that EPA is aware of the lack of public communication related to the State’s public comment period on the Revised SIP.”

Response: In reviewing Maryland’s February 8, 2022, regional haze SIP revision, EPA found that MDE satisfied the public notice and comment requirements for SIP revisions.⁹ Maryland provided an opportunity to submit written comments and request a public hearing.

⁸ See Section 3 of the MD Regional Haze SIP for the Second Implementation Period 2018 – 2028 (February 8, 2022).

⁹ See 40 CFR 51.102; 40 CFR 51.104; and 40 CFR part 51, appendix V, section 2.1.

MDE published Maryland's revised SIP on the MDE website for public comment from December 1, 2021 to January 4, 2022. The publication included notification of the 30-day notice period and information about the date, place, and time of the public hearing, as required under 40 CFR 51.102(a). After reasonable notice, the public hearing was held online on January 4, 2022, due to the COVID-19 pandemic. *See* 40 CFR 51.102(d). The 30-day notice period is not limited to business days. *Id.* Finally, Maryland's revised SIP submittal includes a certification that the state satisfied the requirements in 40 CFR 51.102(a) and (d). *See* 40 CFR 51.102(f). EPA notes that the commenters do not allege that MDE failed to fulfill its public notice and comment obligations, nor is there any indication that the commenters requested an extension to the state's public comment period to allow for more time. EPA has seen no evidence that Maryland did not fulfill its public notice requirements. In this instance, the State's public comment process meets the minimum requirements in the 40 CFR part 51, Appendix V for SIP submissions.

Comment: One individual commenter, requested that the EPA "reconsider" Maryland's SIP revision" and require that Maryland examine several source categories, including power plants (i.e., electric generating units), industrial boilers, cement kilns, glass plants, landfills, and legacy diesel vehicles and equipment, and that EPA require additional emissions control technologies for these source categories as part of Maryland's Regional Haze SIP (e.g., selective catalytic reduction, flue gas desulfurization, diesel oxidation catalysts, etc), and that it implement measures to "deter and punish" owners and operators of legacy diesel vehicles and equipment owners in con-compliance with the emission reduction measures. The commenter also expressed concern that Maryland would not be able to achieve the Reasonable Progress Goals (RPGs) for the second implementation period if these emissions controls were not implemented.

Finally, the commenter commended Maryland's efforts to increase its renewable energy production and reduce its reliance on fossil fuel and encouraged the state to install wind and solar power and consider small modular nuclear power as "a clean reliable and safe source of electricity."

Response: As explained in the NPRM, the 2021 Clarifications Memo for the RHR, and in the response to NGO commenters above, the RHR does not require states to consider controls for all sources, all source categories, or any or all sources in a particular source category. Rather, the states have discretion to choose any source selection methodology or threshold that is reasonable, provided that the choices they make are reasonably explained and result in a set of sources which capture a meaningful portion of the state’s total contribution to visibility impairment.^{10, 11} To this end, 40 CFR 51.308(f)(2)(i) requires that a state’s SIP submission must include “a description of the criteria it used to determine which sources or groups of sources it evaluated.” The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii). In this particular instance, EPA proposed to find that Maryland’s information and explanation included in its SIP submittal indicated that the State had in fact examined a reasonable set of sources, including sources identified by the FLMs. Furthermore, EPA proposed that Maryland had reasonably concluded that four-factor analyses for all identified sources were not necessary because the outcome would be that no further emission reductions would be reasonable for this planning period. EPA based the proposed finding on the State’s examination of its largest operating EGUs and ICI boilers at the time of SIP submission, and on the emissions from and controls that apply to those sources, as well as on Maryland’s existing SIP-approved NO_x and SO₂ rules that effectively control emissions from the largest contributing stationary-source sectors. In short, even though Maryland did not consider controls for every type of source and source category listed by the commenter, Maryland did consider and reasonably explain the methodology by which it

¹⁰ See 88 FR 58178, 58194 (August 25, 2023).

¹¹ See Sections 2 and 2.1 of Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

considered the particular sources that capture a meaningful portion of the state's total contribution to visibility impairment, consistent with EPA guidance and with Maryland's obligations under the RHR.

The commenter also asserts, without supporting documentation, that because the Maryland plan "relies heavily on existing measures and technologies that have already been implemented or required by other Federal or state regulations," that the plan may not be able to meet the reasonable progress goals (RPGs). The comment appears to misunderstand the relationship between the RPGs and long-term strategies established by the four-factor analysis for reasonable progress, as well as the difference between RPGs and the reasonable progress necessary to be achieved via the long-term strategies. EPA explained at length in the NPRM, in particular in section E. Long-Term Strategy for Regional Haze, that Maryland's long-term strategy includes the enforceable emission limitations, compliance schedules, and other measures necessary to make reasonable progress.

EPA reiterates that the process for establishing RPGs for each Class I area is prescribed in the Regional Haze Rule and its amendments and related guidance.^{12, 13, 14} The reasonable progress goals established by the states with Class I areas are not directly enforceable but will be considered by the Administrator in evaluating the adequacy of the measures in the implementation plan in providing for reasonable progress towards achieving natural visibility conditions at that area" 40 CFR 51.308(f)(3)(iii). EPA notes that only states with Class I areas within their borders are required to set RPGs for those areas. Maryland does not have any Class I areas within its borders and thus is not required to set RPGs.

¹² See 40 CFR 51.308; 64 FR 35714, July 1, 1999; and 82 FR 3078, January 10, 2017.

¹³ See Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

¹⁴ See Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

All States, regardless of whether they have Class I areas within their borders are, however, instructed to establish criteria for selecting sources that emit visibility impairing pollutants that impact visibility at downwind Class I Areas for further evaluation of potential emissions controls as part of a four-factor analysis, in keeping with the state's long-term strategy for making reasonable progress toward meeting the national visibility goal. To that end, states have discretion in establishing source selection processes and criteria, provided that such processes and criteria: are adequately justified and supported; select a reasonable number of sources that emit visibility impairing pollutants affecting downwind Class I Areas; and put the state on target for remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas.¹⁵ To this end, 40 CFR 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, and each state having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas.

As noted in the NPRM, the core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a state's borders and each Class I area that may be affected by emissions from the state. The long-term strategy must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).¹⁶ The amount of progress that is "reasonable progress" is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a "four-factor" analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to

¹⁵ See CAA 169A(b)(2)(B).

¹⁶ See 40 CFR 51.308(f)(2).

implement in order to make reasonable progress towards the national visibility goal.¹⁷ Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing measures that a source is already implementing.¹⁸ Such measures must be represented by “enforceable emissions limitations, compliance schedules, and other measures” (i.e., any additional compliance tools) in a state's long-term strategy in its SIP.¹⁹ The 2021 Clarifications Memo to the RHR explains that RPGs cannot be determined before states have conducted their four-factor analyses and determined the control measures that are necessary to make reasonable progress and that RPGs for states with Class I areas are the modeled result of the measures in states’ long-term strategies.

Therefore, the outcome of a state’s source selection process and subsequent evaluation of technically feasible and cost-effective emissions controls as part of four-factor analyses determine what constitutes the state’s long-term strategy for that particular implementation period. If a state’s source selection process and evaluation of technically feasible and cost-effective controls results in a long-term strategy that includes the enforceable emissions limitations, compliance schedules and other measures that are necessary to make reasonable progress, then the requirements of the Regional Haze Rule are satisfied for that Implementation Period.

III. Final Action

EPA is approving, as a SIP revision, the State of Maryland’s February 8, 2022, SIP submission as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f).

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by

¹⁷ See 40 CFR 51.308(f)(2)(i).

¹⁸ See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10.

¹⁹ See 40 CFR 51.308(f)(2)

reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the consent order, effective July 6, 2021, between MDE and Raven Power Fort Smallwood LLC, for H.A. Wagner Generating Station to permanently cease the combustion of coal by January 1, 2026 as discussed in section II of this preamble. The consent order is contained in Appendix 19 of MDE's February 8, 2022 Regional Haze SIP for the Second Implementation Period 2018-2028 submitted on behalf of the State of Maryland. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 3 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

A. General Requirements

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 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

In addition, this rule 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.

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.”

MDE 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 Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart V—Maryland

2. In § 52.1070:

a. Amend the table in paragraph (d) by adding an entry for “Raven Power Fort Smallwood, LLC—H.A. Wagner Generating Station” at the end of the table; and

b. Amend the table in paragraph (e) by adding an entry for “Regional Haze Plan from 2018-2028” at the end of the table.

The additions read as follows:

§ 52.1070 Identification of plan.

* * * * *

(d) * * *

| Name of source | Permit number/type | State effective date | EPA approval date | Additional explanation |
|---|--------------------|----------------------|--|--|
| * * * | * * | * * | * | |
| Raven Power Fort Smallwood, LLC— H. A. Wagner Generating Station | Consent Order | 7/6/2021 | [INSERT DATE OF PUBLICATI ON IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION] | Consent Order approved via Docket EPA-R03-OAR-2022-0912, as an element of Maryland’s February 8, 2022 Regional Haze Plan from 2018-2028, Appendix 19 |

* * * * *

(e) * * *

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|--|-----------------------------------|-----------------------------|---|-------------------------------|
| * * | * * | * * | * | |
| Regional Haze Plan from 2018-2028 | State-wide | 2/8/2022 | [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION] | |

[FR Doc. 2024-06415 Filed: 3/29/2024 8:45 am; Publication Date: 4/1/2024]