



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2017-0413; FRL-9969-48-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans;  
West Virginia; 2015 Ozone National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of West Virginia state implementation plan (SIP). The revisions update the effective date by which the West Virginia regulations incorporate by reference the national ambient air quality standards (NAAQS), additional monitoring methods, and additional equivalent monitoring methods. This update will effectively add the following to the West Virginia SIP: The 2015 ozone NAAQS, monitoring reference and equivalent methods pertaining to fine particulate matter (PM<sub>2.5</sub>), Carbon Monoxide (CO), and coarse particulate matter (PM<sub>10</sub>), and it will revise the ozone monitoring season, the Federal Reference Method (FRM), the Federal Equivalent Method (FEM), and the Photochemical Assessment Monitoring Stations (PAMS) network. The SIP revision will also change a reference from the “West Virginia Department of Environmental Protection,” to the “Division of Air Quality.” EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the

public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2017-0413 at <https://www.regulations.gov>, or via email to [stahl.cythia@epa.gov](mailto:stahl.cythia@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://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:** Joseph Schulingkamp, (215) 814-2021, or by e-mail at [schulingkamp.joseph@epa.gov](mailto:schulingkamp.joseph@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On June 13, 2017, the State of West Virginia through the West Virginia Department of Environmental Protection (WVDEP) submitted a formal revision to West Virginia’s SIP

pertaining to amendments of Legislative Rule, 45 CSR 8 – Ambient Air Quality Standards. The SIP revision consists of revising the effective date of the incorporation by reference of 40 CFR parts 50 and 53.

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

West Virginia has submitted this SIP revision to update the State's incorporation by reference of 40 CFR part 50, which contains the Federal NAAQS, and 40 CFR part 53, which contains the ambient air monitoring reference methods and equivalent reference methods. Currently, the version of 45 CSR 8 in the West Virginia SIP incorporates by reference 40 CFR parts 50 and 53 as effective on June 1, 2013; this SIP revision will update the effective date to June 1, 2016.

In the June 13, 2017 SIP submittal, WVDEP submitted amendments to the legislative rule which include the following changes: To section 45-8-1 (General), the filing and effective dates are changed to reflect the update of the legislative rule; to section 45-8-3 (Adoption of Standards), the effective dates for the incorporation by reference of 40 CFR parts 50 and 53 are changed; to section 45-8-4 (Inconsistency Between Rules), the reference to the "West Virginia Department of Environmental Protection," is changed to the "Division of Air Quality." West Virginia has amended 45 CSR 8 to revise the filing and effective dates of the rule to May 15, 2017 and June 1, 2017 respectively. The effective date of the incorporation by reference of 40 CFR parts 50 and 53 changed from June 1, 2013 to June 1, 2017. EPA finds the revised version of 45 CSR 8 with new effective dates incorporating by reference 40 CFR parts 50 and 53, as well as the changes to the reference of the state air agency, are in accordance with requirements in section 110 of the CAA.

This update will effectively add the following to the West Virginia SIP: The 2015 ozone

NAAQS, monitoring reference and equivalent methods pertaining to PM<sub>2.5</sub>, CO, and PM<sub>10</sub>, and it will revise the ozone monitoring season to March 1<sup>st</sup> through October 31<sup>st</sup>, the FRM, the FEM, and the PAMS network.

### **III. Final Action**

EPA is approving the amendments to Legislative Rule, 45 CSR 8 – Ambient Air Quality Standards, into the West Virginia SIP pursuant to section 110 of the CAA. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**.

If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### **IV. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the update to West Virginia’s

Legislative Rule, 45 CSR 8, as effective on June 1, 2017. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region III 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 rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update of the SIP compilation.<sup>1</sup>

## **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.);

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

- 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 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.

## **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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action, to approve West Virginia's SIP revisions to update of the effective date by which the State regulations incorporate by reference the Federal NAAQS, additional monitoring methods, and additional equivalent monitoring methods, which effectively adds the 2015 ozone NAAQS and ambient air monitoring reference and equivalent methods pertaining to PM<sub>2.5</sub>, PM<sub>10</sub>, and CO, and changing the reference to the state air agency, 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, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 27, 2017.

Cecil Rodrigues,  
Acting Regional Administrator,  
Region III.

40 CFR part 52 is amended 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 XX--West Virginia**

2. In § 52.2520, the first table in paragraph (c) is amended by revising the entries for 45-8-1 through 45-8-4 to read as follows:

**§ 52.2520 Identification of plan.**

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(c) \*\*\*

**EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP**

<b>State citation [Chapter 16-20 or 45 CSR]</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation/ citation at 40 CFR 52.2565</b>
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<b>[45 CSR] Series 8 Ambient Air Quality Standards</b>				
Section 45-8-1	General	6/1/17	[Insert Federal Register publication date]. [Insert Federal Register Citation]	Filing and effective dates are revised.
Section 45-8-2	Definitions	6/1/17	[Insert Federal Register publication date]. [Insert Federal Register Citation]	Previous Approval 9/22/2014
Section 45-8-3	Adoption of Standards	6/1/17	[Insert Federal Register publication date]. [Insert Federal Register Citation]	Effective date is revised.
Section 45-8-4	Inconsistency Between Rules	6/1/17	[Insert Federal Register publication date]. [Insert Federal Register Citation]	Replaced “West Virginia Department of Environmental Protection” with “Division of Air Quality”
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[FR Doc. 2017-22254 Filed: 10/13/2017 8:45 am; Publication Date: 10/16/2017]