



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2022-0656; FRL-10083-01-R3]

### Air Plan Approval; West Virginia; 2022 Amendments to West Virginia's Ambient Air Quality 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. This revision updates West Virginia's incorporation by reference (IBR) of EPA's national ambient air quality standards (NAAQS) and the associated monitoring reference and equivalent methods. 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-2022-0656 at [www.regulations.gov](https://www.regulations.gov), or via email to [Gordon.Mike@epa.gov](mailto:Gordon.Mike@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 [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:** Om P. Devkota, 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) 814-2172. Mr. Devkota can also be reached via electronic mail at [Devkota.om@epa.gov](mailto:Devkota.om@epa.gov).

**SUPPLEMENTARY INFORMATION:** On July 1, 2022, the West Virginia Department of Environmental Protection (WVDEP) submitted a revision to its SIP pertaining to the amendments of Legislative Rule, 45 Code of State Rule (CSR) Ambient Air Quality Standards. The SIP submittal updates West Virginia's IBR of the NAAQS promulgated by EPA and found at 40 Code of Federal Regulations (CFR) part 50 and ambient air monitoring reference methods and equivalent methods promulgated by EPA and found at 40 CFR part 53 into West Virginia's legislative rules.

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

WVDEP has historically chosen to incorporate by reference the NAAQS, found at 40 CFR part 50, and the associated Federal ambient air monitoring reference methods and equivalent methods for these NAAQS found at 40 CFR part 53. When incorporating by reference these Federal regulations, WVDEP has specified that it is incorporating by reference these regulations as they existed on a certain date. The IBR of the NAAQS that is currently approved in the West Virginia SIP incorporates by reference 40 CFR parts 50 and 53 as they existed on June 1, 2020. West Virginia's July 1, 2022, SIP revision updates the State's IBR of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods, found in 40 CFR parts 50 and 53, respectively, as of June 1, 2021. Primary NAAQS

establish air quality standards which the administrator of EPA determines are necessary, with an adequate margin of safety, to protect the public health. Secondary NAAQS establish air quality standards which the administrator of EPA determines necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. This revision also incorporates by reference the ambient air monitoring reference methods and equivalent methods promulgated by EPA under 40 CFR part 53.

Since the last West Virginia IBR of June 1, 2020, EPA: 1) updated method 201A of Appendix M of Part 51; (2) completed the review of the NAAQS for particulate matter; (3) completed the review of the NAAQS for ozone; and (4) designated one new reference method for measuring concentrations of sulfur dioxide and one new equivalent method for measuring concentrations of particulate matter (PM<sub>10</sub>) in ambient air. See 85 FR 63394 (October 7, 2020 – corrected in 86 FR 9470 (February 16, 2021)), 85 FR 82684 (December 18, 2020), 85 FR 87256 (December 31, 2020), and 86 FR 12682 (March 4, 2021).

The amendments to the legislative rule include changes to section 45-8-1 (General) and 45-8-3 (Adoption of Standards). The amendments alphabetize the criteria pollutants list in the scope (1.1), update the filing and effective dates (1.3, 1.4) and update West Virginia's IBR of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods from June 1, 2020 to June 1, 2021 (1.6, 3.1, 3.2). West Virginia is incorporating the Federal rules in 40 CFR parts 50 and 53 as they existed on June 1, 2021, into sections 45-8-1 and 45-8-3.

## **II. Proposed Action**

EPA is proposing to approve the West Virginia SIP revision of July 1, 2022 updating the IBR of EPA's NAAQS and associated ambient air monitoring reference methods and equivalent methods. EPA is soliciting public comments on the update to West Virginia's IBR. Please note that EPA is not seeking public comment on the level of the NAAQS which West Virginia incorporated by reference into its regulations. An opportunity for public comment on the level of

each individual NAAQS was given when EPA proposed each such NAAQS. Relevant comments will be considered before taking final action.

### **III. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes IBR. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 45CSR8, as effective on April 1, 2022, as discussed in Sections I and II of this document. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### **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);
- 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); and,
- 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.

In addition, this proposed rulemaking, proposing to approve the West Virginia SIP revision updating its IBR of EPA's NAAQS and associated ambient air monitoring reference methods and equivalent methods, 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."

WVDEP 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.

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.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Adam Ortiz,**

*Regional Administrator,*

*Region III.*