



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2024-0513; FRL-12075-01-R3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revisions to Regulation for Control of Ozone Season Nitrogen Oxide Emissions

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. The revision pertains to West Virginia 45 Code of State Rules (CSR) 40 (WV rule) that establishes the nitrogen oxides (NO_x) ozone season limitations and requirements for non-electrical generating unit (EGU) large industrial boilers and combustion turbines that have a maximum design heat input of greater than 250 million British thermal units per hour (MMBtu/hr), as well as affected stationary internal combustion engines and cement manufacturing kilns. 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-2024-0513** 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, the 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. The 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Michael Gordon, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2039. Mr. Gordon can also be reached via electronic mail at gordon.mike@epa.gov.

SUPPLEMENTARY INFORMATION: On April 17, 2024, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a revised version of West Virginia Legislative Rule 45CSR40-Control of Ozone Season Nitrogen Oxides Emissions (WV rule) for inclusion in the West Virginia SIP. This included two state revisions dated June 1, 2020 and April 1, 2023. The submission was supplemented on October 8, 2024, with additional information related to public noticing of the June 1, 2020 revision. The revisions to the WV rule included: (1) updating the characterization of units not subject to the rule because they are subject to a Federal NO_x ozone season trading program, and (2) amending monitoring requirements consistent with the Federal rule, “Emissions Monitoring Provisions in State Implementation Plans Required Under the NO_x SIP Call” (84 FR 8422, March 8, 2019).

I. Background

On October 27, 1998 (63 FR 57356), the EPA finalized the “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone” (NO_x SIP Call). The NO_x SIP Call was designed to mitigate significant transport of NO_x, one of the precursors of ozone. The EPA developed the NO_x Budget Trading Program, an allowance trading program that states

could adopt to meet their obligations under the NO_x SIP Call. The NO_x Budget Trading Program allowed EGUs greater than 25 megawatts and industrial non-electrical generating units, such as boilers and turbines, with a rated heat input greater than 250 MMBtu/hr, referred to as “large non-EGUs”, to participate in a regional NO_x cap and trade program. The NO_x SIP call also established NO_x reduction requirements for other non-EGUs, including cement kilns and stationary internal combustion engines. The EPA has implementing regulations for the NO_x SIP Call at 40 CFR 51.121.

On May 12, 2005 (70 FR 25162), the EPA promulgated the Clean Air Interstate Rule (CAIR) to address transported emissions that significantly contributed to downwind states' nonattainment and maintenance of the 1997 ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). CAIR required 28 states, including West Virginia, to reduce emissions of NO_x and sulfur dioxide (SO₂), which are precursors to ozone and PM_{2.5}. Under CAIR, the EPA established separate cap and trade programs for annual ozone season and annual emissions.¹ On April 28, 2006 (71 FR 25328), the EPA also promulgated Federal Implementation Plans (FIP) requiring the EGUs in each affected state, but not large non-EGUs, to participate in the CAIR trading programs. States could comply with the requirements of CAIR by either remaining on the FIP, which applied only to EGUs, or by submitting a CAIR SIP revision that included as trading sources EGUs and the non-EGUs that formerly traded in the NO_x Budget Trading Program under the NO_x SIP Call. The EPA discontinued administration of the NO_x Budget Trading Program in 2009 upon the start of the CAIR trading programs.²

¹ CAIR developed three separate cap and trade programs that could be used to achieve the required reductions: the CAIR NO_x ozone season trading program, the CAIR annual NO_x trading program, and the CAIR annual SO₂ trading program. The CAIR NO_x ozone season and annual programs began in 2009, while the CAIR SO₂ annual program began in 2010.

² CAIR was subsequently vacated and remanded. See *North Carolina v. EPA*, 531 F.3d 896 (District of Columbia Circuit 2008), modified by 550 F.3d 1176 (remanding CAIR). CAIR was replaced with the Cross-State Air Pollution Rule, or CSAPR (76 FR 48208, August 8, 2011), which, after legal challenges, was implemented starting in January 2015. The NO_x Ozone Season Trading Program under CSAPR was replaced in West Virginia and most other states by a new trading program for ozone season NO_x under the CSAPR Update rule in January 2017 (81 FR 74504, October 26, 2016).

The NO_x SIP Call requirements continued to apply, however, and EGUs that were formerly trading under the NO_x Budget Trading Program continued to meet their NO_x SIP Call requirements under the generally more stringent requirements of the CAIR ozone season trading program. Large non-EGUs that were trading under the NO_x Budget Trading Program were not addressed in the CAIR FIPs. States therefore needed to assess their NO_x SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for the large non-EGUs continued to be met. Under CAIR, states had the option to include the non-EGUs as trading participants in the regional CAIR ozone season trading program either through a full CAIR SIP or through an abbreviated CAIR SIP. In either of these options, expansion of the applicability to include the non-EGUs and increasing the ozone season NO_x budget by the amount of the non-EGU budget in appendix C of subpart E to 40 CFR part 97, effected inclusion of the non-EGUs into the trading program. Otherwise, states needed to assess their NO_x SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for these units continued to be met. West Virginia chose to include the non-EGUs as CAIR trading sources, and submitted, for inclusion in the SIP WV rule 45CSR40 which consisted of provisions that implemented the CAIR NO_x ozone season trading program, included the large non-EGUs as trading sources, and also included emission reduction requirements for certain non-trading non-EGUs (cement kilns and internal combustion engines) that were subject to the NO_x SIP Call. The EPA approved WV rule 45CSR40 into the West Virginia SIP on August 4, 2009 (74 FR 38536).

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008,³ but ultimately remanded the rule to the EPA without vacatur to

³ North Carolina v. EPA, 531 F.3d 896 (DC Cir. 2008).

preserve the environmental benefits provided by CAIR.⁴ The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the Court's opinion was developed. While the EPA worked on developing a replacement rule, the CAIR program continued as planned with the NO_x annual and NO_x ozone season programs beginning in 2009 and the SO₂ annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, the EPA promulgated the Cross State Air Pollution Rule CSAPR to replace CAIR and to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 PM_{2.5} NAAQS. The rule also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of CSAPR compliance requirements. CSAPR was to become effective January 1, 2012; however, the timing of CSAPR's implementation was delayed by litigation, and the EPA began implementing CSAPR on January 1, 2015.

Starting in January 2015, the CSAPR FIP trading programs for annual ozone season NO_x and annual SO₂ were applicable in West Virginia. As a result, the provisions related to implementation of the CAIR ozone season trading program in WV rule 45CSR40 became obsolete and were removed by the state in a 2016 action. The CSAPR FIP trading programs applied only to EGUs and, unlike CAIR, did not provide for expansion of the ozone season trading program to include the NO_x SIP Call non-EGUs. States, like West Virginia, whose non-EGUs had previously traded in the CAIR ozone season trading program, were therefore required to address the non-EGU reduction requirements of the NO_x SIP Call outside of a regional trading program.⁵

⁴ North Carolina v. EPA, 550 F.3d 1176 (DC Cir. 2008).

⁵ After a July 13, 2016 SIP submission from West Virginia, EPA finalized the CSAPR Update Rule to address transport related to the 2008 ozone NAAQS. It is noted that the CSAPR Update Rule included flexibility for states to submit SIPs that expand the CSAPR ozone season trading program to include the large non-EGUs.

On October 26, 2016 (81 FR 74504), the EPA finalized the CSAPR Update Rule to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS, and issued FIPs that updated the ozone season NO_x budgets for 22 states, including West Virginia. Starting in January 2017, the CSAPR Update Rule NO_x budgets were implemented via establishment of a new CSAPR NO_x ozone season allowance trading program that was established under the original CSAPR. The CSAPR Update Rule reinstated the option for states to allow non-EGUs to participate in a regional trading program. States wishing to do this could at any time submit a SIP revision that expands the CSAPR Ozone Season NO_x budget and applicability to include large non-EGUs.

On January 3, 2019, the EPA approved two SIP revisions submitted by the State of West Virginia on July 13, 2016 and October 10, 2017 (83 FR 62470) pertaining to WV rule 45CSR40.

As previously noted, the EPA-administered trading programs under CAIR were discontinued upon the implementation of CSAPR which was promulgated by the EPA to replace CAIR. CSAPR established FIPs for 28 states, including West Virginia, and applied to EGUs. The SIP submittals were comprised of revisions to 45CSR40, that at the time implemented the CAIR ozone season NO_x trading program that had previously been included in the West Virginia SIP, and a NO_x Ozone Season Budget Demonstration for non-EGUs showing that the total ozone season emissions from large non-EGUs subject to the NO_x SIP Call did not exceed the non-EGU trading budget of 2,184 tons.⁶ The trading budget was established in the 2002 SIP responding to the NO_x SIP Call.⁷ The revised WV rule 45CSR40 removed the CAIR ozone season NO_x trading program provisions, which also addressed certain large non-EGUs, established new requirements for these large non-EGUs, included a state-wide NO_x emissions

⁶ See 40 CFR part 97, appendix C of subpart E for non-EGU trading budgets for affected states.

⁷ See 67 FR 31733 (May 10, 2002). The EPA notes that the non-EGU budget amount adopted by West Virginia in its NO_x Budget Trading Program regulations matches the budget amount separately established for the state's non-EGUs under a different Federal rule promulgated contemporaneously with the NO_x SIP Call pursuant to CAA section 126. See 40 CFR part 97, subpart E, appendix C.

cap, and recodified certain other provisions that address the ozone season NO_x emission reductions required for cement kilns and internal combustion engines.

On March 8, 2019 (84 FR 8422), the EPA finalized the “Emissions Monitoring Provisions in State Implementation Plans Required Under the NO_x SIP Call Rule”, amending the NO_x SIP Call regulations to allow states to amend their SIPs, for NO_x SIP Call purposes only, and establish emissions monitoring requirements for certain units. Under 40 CFR 51.121(i)(4)⁸ of the regulations as originally promulgated, a state’s SIP was required to include 40 CFR part 75 monitoring if the SIP included control measures for large EGUs or large non-EGUs. The amendment to the NO_x SIP Call regulations makes inclusion of 40 CFR part 75 monitoring for sources in SIPs optional rather than mandatory, thus allowing states greater flexibility to establish the form of the NO_x emissions monitoring, recordkeeping, and reporting requirements included in their SIPs. The units potentially affected by the amendment include non-EGU boilers and combustion turbines, and certain EGUs—specifically, combustion turbines that are considered large EGUs for NO_x SIP Call purposes and that are not required to monitor according to 40 CFR part 75 under other programs such as the Acid Rain Program or a CSAPR trading program. West Virginia amended 45CSR40 to incorporate these monitoring, reporting and recordkeeping provisions, as well as revising the applicability section, and submitted it as a SIP revision on April 17, 2024 to the EPA.

II. Summary of SIP revisions and EPA analysis

For the applicable units, as described in subsection 4, West Virginia rule 45CSR40 establishes: (a) ozone season NO_x emissions limitations, monitoring, recordkeeping, reporting, excess emissions, and NO_x budget demonstration requirements for non-EGU large industrial boilers and combustion turbines that have a maximum design heat input greater than 250

⁸ As originally promulgated, 40 CFR 51.121(i)(4) states that if a SIP revision contains measures to control fossil fuel-fired NO_x sources serving electric generators with a nameplate capacity greater than 25 MW or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 MMBtu/hr, then the revision may require some or all such sources to comply with the full set of monitoring, recordkeeping, and reporting provisions of 40 CFR part 75, subpart H.

MMBtu/hr, in accordance with 40 CFR 51.121; (b) ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines; and (c) ozone season NO_x control standards, ozone season NO_x compliance plan, monitoring, recordkeeping, and reporting requirements for cement kilns.⁹ As noted previously, WV rule 45CSR40, effective July 13, 2016 and approved most recently into the West Virginia SIP on January 3, 2019, was adopted to implement the ozone season trading program under CSAPR, and to address NO_x SIP Call requirements including the requirements that apply to stationary internal combustion engines and cement manufacturing kilns. WV rule 45CSR40 was revised effective June 1, 2020,¹⁰ and further revised effective April 1, 2023, to conform the applicability section to changes in the Federal ozone season “trading programs,” and monitoring, reporting and recordkeeping requirements set forth in the 2019 NO_x SIP Call Rule amendments (84 FR 8422, March 8, 2019). Notably, West Virginia did not previously submit the June 1, 2020 revisions for approval into the SIP.

The April 17, 2024 West Virginia SIP submittal is comprised of revised WV rule 45CSR40 (both the June 2020 and April 2023 amendments) and the NO_x SIP Call non-EGU Budget Demonstration, a non-regulatory supplement that is required under Section 8 of WV rule 45CSR40. Specific references to CSAPR ozone season trading program provisions were replaced with language updating the characterization of units not subject to the rule because they are subject to a Federal NO_x ozone season trading program. Definitions, applicability, and other provisions responding to the NO_x SIP Call including monitoring and reporting under 40 CFR part 75, were retained. New requirements were added to the WV rule for monitoring, reporting, and recordkeeping consistent with the 2019 NO_x SIP Call Rule amendments (84 FR 8422,

⁹ 45 CSR 40-1.1.

¹⁰ WV rule 45CSR40 was revised effective June 1, 2020 to update references to CSAPR trading programs in effect at that time and incorporate alternate monitoring, reporting and recordkeeping requirements consistent with the amended 2019 NO_x SIP Call Rule regulations (84 FR 8422, March 8, 2019) for units that are not subject to a Federal trading program. The “Applicability” section of the WV rule was further revised effective April 1, 2023 to replace specific outdated references to the CSAPR Group 2 trading program with language referring to “Federal trading program” to facilitate compliance with future changes to Federal trading programs that may include non-EGUs and large stationary sources.

March 8, 2019) and 40 CFR part 60¹¹ for units that are not part of a Federal trading program.

The ozone season NO_x emission budget of 2,184 tons and the limits that applied to non-EGUs sources, stationary internal combustion engines, and cement kilns were retained and recodified.

The June 1, 2020 revisions to WV rule 45CSR40 updated reference to the CSAPR Ozone Season Group 2 trading program that was in effect at the time that the rule was revised, and amended the monitoring, recordkeeping, and reporting requirements consistent with the 2019 NO_x SIP Call Rule amendments. The revisions applied primarily to Section 2 “Definitions”, Section 4 “Applicability”, and Section 6 “Monitoring, recordkeeping, and reporting requirements” and did not substantively alter any other requirements beyond the allowance of optional alternative monitoring, recordkeeping, and reporting provisions.

The April 1, 2023 revisions to the rule were primarily to Section 4 “Applicability” and replaced references to CSAPR Ozone Season Group 2 trading program with “a seasonal NO_x trading program established under 40 CFR part 97” and revised the characterization of units that are not subject to the rule because they are subject to a seasonal NO_x trading program established under a SIP revision, to accommodate future changes to Federal trading program rules.¹² There was a non-substantive edit to section 1.1.a and the manner of approval or disapproval by the secretary under section 9.2.1 was edited from “by certified mail” to “in writing.”

Below are detailed descriptions of the revisions¹³:

¹¹ 40 CFR part 60 Standards of Performance for New Stationary Sources are pollution control standards, adherence to which maintains the air quality in an area or region by reducing or eliminating pollutants release. Included in 40 CFR part 60 are various subparts that define methods by which facilities or operations can achieve compliance with emission guidelines or standards of performance.

¹² Section 4 notes that such a future Federal trading program may be implemented via a Federal implementation plan or via a SIP approved seasonal NO_x trading program.

¹³ Note that the description below encompasses the cumulation of the June 2020 and April 2023 revisions – for example, Section 4 was revised in both June 2020 and April 2023, and the description below references the most recent April 2023 revisions.

Section 1 - “General” subsection 1.5 was renamed Sunset Provision and states that the rule is exempt from Sunset Provisions.

Section 2 - “Definitions”, was renumbered and sets forth revised definitions for terms used in section 5 and section 6. Subsection 2.6 revised the definition of “continuous emissions monitoring system” or “CEMS” to total equipment required for the determination of NO_x emission rate, expressed in pounds per million British thermal units (lb/MMBtu). For the purposes of the rule, CEMS is used for continuous compliance determinations and the sample interface, pollutant analyzer, diluent analyzer, and data recorder are defined as the major subsystems of the CEMS. Subsection 2.15 revised the definition of “monitoring system” to include reference to section 6.2 of the WV rule and 40 CFR part 75, as defined in 40 CFR 72.2. A new subsection 2.16 defines “nitrogen oxides” or “NO_x” as all oxides of nitrogen except nitrous oxide (N₂O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO₂). Subsection 2.17 (previously 2.16) “NO_x SIP Call Engine Inventory” includes a revised reference to the 65 FR 11222¹⁴ and 69 FR 21604¹⁵. New subsection 2.19 defines “Performance Specification 2” or “PS2” for CEMS as provided in appendix B of 40 CFR part 60¹⁶ and states that for purposes of subsections 6.3 and 6.5, these procedures are used for measuring CEMS relative accuracy and calibration drift and include CEMS installation and measurement location specifications, equipment specifications, performance specifications, and data reduction. New subsection 2.20 defines “Performance Specification 16” or “PS16” for Predictive Emissions Monitoring Systems (PEMS) as provided in appendix B of 40 CFR part 60¹⁷ and states that for purposes of subsection 6.4, these procedures are used to determine whether the PEMS is

¹⁴ 65 FR 11222-Technical Amendments to the Findings of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone.

¹⁵ 69 FR 21604-Interstate Ozone Transport: Response to Court Decisions on the NO_x Sip Call, NO_x SIP Call Technical Amendments, and Section 126 Rules.

¹⁶ 40 CFR part 60-Standards of Performance for New Stationary Sources; Appendix B-Performance Specification 2-Performances Specifications and Test Procedures for SO₂ and NO_x CEMS in Stationary Sources.

¹⁷ 40 CFR part 60-Standards of Performance for New Stationary Sources; Appendix B-Performance Specification 16-Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources.

acceptable for use in demonstrating compliance with the NO_x emission limit and to certify the PEMS initially. They are also used periodically thereafter to ensure the PEMS is operating properly and apply to PEMS that are installed on or after April 24, 2009. New subsection 2.21 defines “Predictive Emissions Monitoring Systems” or “PEMS” major subsystems as any of the following major subsystems: sensors and sensor interfaces, emission model, algorithm, or equation that uses process data to generate an output that is proportional to the emission concentration or emission rate, diluent emission model, data recorder, and sensor evaluation system.

Section 3 - “Measurements”, Abbreviations and Acronyms” was renumbered and the following acronyms CEMS, CSAPR, g/bhp-hr, NO_x, O₂ PEMS, and SO₂ were added.

Section 4 - “Applicability” was revised to characterize units subject to the rule as units with a maximum design heat input greater than 250 MMBtu/hr, except for any unit subject to a seasonal NO_x trading program established under 40 CFR part 97 in accordance with a Federal implementation plan set forth in 40 CFR 52.38(b) or subject to a seasonal NO_x trading program established under a SIP revision approved by the EPA as meeting the requirements of 40 CFR 52.38(b).

Section 6 - “Monitoring, recordkeeping and reporting requirements” was expanded to include specific monitoring, recordkeeping, and reporting requirements for the CEMS, PEMS and other monitoring systems associated with each of the units described in subsection 4.1 and incorporates by reference the applicable requirements of 40 CFR part 75, subpart H and 40 CFR part 60. Subsection 6.1 was revised to specify that the owner or operator of an applicable unit under subsection 4.1 shall comply with the provisions of 40 CFR part 75, subpart H, including the use of any of the emissions monitoring methodologies which the unit qualifies to use under 40 CFR part 75, or shall install and operate a CEMS or a certified PEMS as necessary to attribute ozone season mass emissions of NO_x to each unit in accordance with subsection 6.2, 6.3, 6.4 or 6.5. NO_x mass emissions measurements recorded and reported in accordance with subsections

6.2, 6.3, 6.4 or 6.5 shall be used to determine a unit's compliance with the ozone season NO_x emission limitation set forth in section 5. Subsections 6.2 through 6.5 include specifications for monitoring, recordkeeping, and reporting and incorporate by reference the applicable requirements of 40 CFR parts 60 and 75, and WV rule 45CSR16¹⁸.

The April 17, 2024 West Virginia SIP Non-EGU Budget Demonstration submission shows that total ozone season NO_x emissions from non-EGUs that are subject to the NO_x SIP Call do not exceed the West Virginia ozone season budget of 2,184 tons for non-EGUs. The ozone season NO_x budget for non-EGUs was established in the West Virginia SIP in 2002 in response to the NO_x SIP Call. The maximum potential ozone season NO_x emissions of 1,202 tons based on permit and consent order limits shown in Table 1 in this document, is less than the total West Virginia NO_x non-EGU budget and leaves 982 tons available for new units which may at a later date become subject to NO_x SIP Call requirements.

Table 1-Total Ozone Season NO_x Emissions from Large Non-EGUs in West Virginia¹⁹

Source	Units (boiler #)	Maximum Design Heat Input (MMBtu/hr)	Ozone Season Operating Time (hrs)	NO _x Emission Rate Limit	Ozone Season NO _x Emissions (tons)
Altivia Services. LLC, Institute	BO16	350	3,672	0.036 lb/MMBtu	23
	BO17	350	3,672	0.036 lb/MMBtu	23
	BO18	350	3,672	0.036 lb/MMBtu	23
Appalachian Power Company. John E Amos	AUX1	642	876	0.020 lb/MMBtu	56
	AUX3	600	876	0.020 lb/MMBtu	53
Appalachian Power Company, Mountaineer (1301)	AUX1	600	876	99.67 lbs/hr	44
	AUX2	600	876	99.67 lbs/hr	44
Blue Racer Midstream. LLC, Natrium Power Plant	CT1	496.2	3,672	20.35 tons/yr	20
	CT2	496.2	3,672	20.35 tons/yr	20
	CT3	496.2	3,672	20.35 tons/yr	20
	CT4	496.2	3,672	20.35 tons/yr	20

¹⁸ WV rule 45CSR16 incorporates 40 CFR part 60 by reference.

¹⁹ Data presented on Table 1 of this document, was excerpted from the West Virginia April 17, 2024 SIP submission.

Chemours Company, Belle	10	275	3,672	0.20 lb/MMBtu	101
Kentucky Power Company, Mitchel (WV)	AUX1	663	876	99.45 lbs/hr	44
Union Carbide Corporation, South Charleston	B26	352	3,672	70.4 lbs/hr	129
	B27	353	3,672	70.6 lbs/hr	130
Westlake Natrium, LLC, Natrium	4	540	3,672	0.16 lb/MMBtu	159
	5	999	3,672	0.16 lb/MMBtu	293
Total Ozone Season NO _x					1,202

Whenever a new unit that meets the applicability of section 4.1 of WV rule 45CSR40 (and thus is also subject to the NO_x SIP Call) commences operation, or an existing unit becomes newly applicable, West Virginia is required under subsection 8.3 of WV rule 45CSR40 to submit a revised demonstration to the EPA that shows continuing compliance with the state-wide ozone season NO_x emissions cap of 2,184 tons for applicable units. The EPA finds that West Virginia's revised provisions in WV rule 45CSR40 meet the requirements for the NO_x SIP Call, the CAA (including section 110) and 40 CFR 51.121.

The changes West Virginia has made to rule 45CSR40 are approvable under CAA section 110 because: (1) the applicability provisions at section 4.1 cover all existing and new NO_x SIP Call non-EGUs that are not subject to a seasonal NO_x trading program established under 40 CFR part 97; (2) the enforceable cap on the collective ozone season NO_x emissions from covered non-EGUs does not exceed the limit set forth in Section 8.1 of the WV rule and previously approved as part of the 2016 SIP responding to the NO_x SIP Call and identified in 40 CFR part 97, subpart E, appendix C; (3) monitoring, recordkeeping and reporting in accordance with 40 CFR part 75, 40 CFR part 60, and West Virginia rule 45CSR16 are required for the non-EGUs; (4) the cement kiln and internal combustion engine provisions previously applicable to such sources in the 2016 West Virginia SIP have not been substantively changed and are simply recodified; and (5) the revised WV rule 45CSR40 generally addresses the requirements for large non-EGUs for the SIP Call pursuant to 40 CFR 51.121 and is consistent with all applicable CAA requirements.

The SIP revision is consistent with the provisions of CAA section 110(l) for revisions to a state's SIP because it maintains the NO_x ozone season budget originally established under the NO_x SIP Call and in the West Virginia SIP, and recodifies other provisions maintaining requirements already in the SIP for cement kilns and internal combustion engines. Thus, the EPA does not expect any emission increases, or interference with attainment or maintenance of the NAAQS, reasonable further progress, or any other CAA requirements.

III. Proposed Action

The EPA's review of this material indicates that the April 17, 2024 SIP revision submittal and supplemental information submitted on October 8, 2024, is approvable. The April 17, 2024 SIP submission, as clarified on October 8, 2024, requests that the EPA approve the amended version of WV rule 45CSR40 into the West Virginia SIP.

The EPA is proposing to approve the West Virginia SIP revision submitted on April 17, 2024, as clarified on October 8, 2024, because the revised WV rule 45CSR40 addresses CAA requirements in section 110 and 40 CFR 51.121 for the NO_x SIP Call and for units subject to the NO_x SIP Call. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in a final EPA rule that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the revisions to West Virginia Rule 45CSR40- Control of Ozone Season Nitrogen Oxides Emissions as described in section II of this document. The EPA has made, and will continue to make, these materials generally available through *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).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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);
- Is not subject to requirements of Executive Order 13563 because it is exempt from review by the Office of Management and Budget;
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- 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 Clean Air Act.

In addition, this action 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 the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Recording and recordkeeping requirements, Sulfur oxides.

Amy Van Blarcom-Lackey
Regional Administrator,
Region III.

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