



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2024-0513; FRL-12075-02-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:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving 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<sub>x</sub>) 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:** 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-2024-0513**. All documents in the docket are listed on the 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](http://www.regulations.gov), or please contact the person identified in the **For Further Information Contact** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Bryan Cashman, 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) 814-2012. Mr. Cashman can also be reached via electronic mail at *Cashman.Bryan@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<sub>x</sub> 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<sub>x</sub> SIP Call” (84 FR 8422, March 8, 2019).

## **I. Background**

On June 11, 2025 (90 FR 24549), the EPA published a notice of proposed rulemaking (NPRM) for the state of West Virginia. In the NPRM, the EPA proposed approval of West Virginia's April 17, 2024 SIP revision pertaining to 45CSR40 – Control of Ozone Season Nitrogen Oxides Emissions. For additional background information on the EPA rulemakings and court decisions relevant to this SIP revision, beginning with the EPA’s October 27, 1998 (63 FR 57356), “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<sub>x</sub> SIP Call), please refer to the June 2025 NPRM.

## **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<sub>x</sub> emissions limitations, monitoring, recordkeeping, reporting, excess emissions, and NO<sub>x</sub> budget demonstration requirements for non-EGU large industrial boilers and combustion turbines that have a maximum design heat input greater than 250 MMBtu/hr, in accordance with 40 CFR 51.121; (b) ozone season NO<sub>x</sub> reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines; and (c) ozone season NO<sub>x</sub> control standards, ozone season NO<sub>x</sub> for cement kilns.<sup>1</sup>

As explained in the NPRM, WV rule 45CSR40, approved most recently into the West Virginia SIP on January 3, 2019, was adopted to implement the ozone season trading program under the Cross State Air Pollution Rule (CSAPR), and to address NO<sub>x</sub> 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,<sup>2</sup> 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<sub>x</sub> 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<sub>x</sub> 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

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<sup>1</sup> 45 CSR 40-1.1.

<sup>2</sup> 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<sub>x</sub> 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.

are subject to a Federal NO<sub>x</sub> ozone season trading program. Definitions, applicability, and other provisions responding to the NO<sub>x</sub> 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<sub>x</sub> SIP Call Rule amendments (84 FR 8422, March 8, 2019) and 40 CFR part 60<sup>3</sup> for units that are not part of a Federal trading program. The ozone season NO<sub>x</sub> emission budget of 2,184 tons and the limits that applied to non-EGU sources, stationary internal combustion engines, and cement kilns were retained and recodified. For detailed descriptions of the revisions please see the June 2025 NPRM (90 FR 24549).

The April 17, 2024 West Virginia SIP Non-EGU Budget Demonstration submission shows that total ozone season NO<sub>x</sub> emissions from non-EGUs that are subject to the NO<sub>x</sub> SIP Call do not exceed the West Virginia ozone season budget of 2,184 tons for non-EGUs. The ozone season NO<sub>x</sub> budget for non-EGUs was established in the West Virginia SIP in 2002 in response to the NO<sub>x</sub> SIP Call. As detailed and explained further in the June 2025 NPRM, the maximum potential ozone season NO<sub>x</sub> emissions of 1,202 tons based on permit and consent order limits is less than the total West Virginia NO<sub>x</sub> non-EGU budget and leaves 982 tons available for new units which may at a later date become subject to NO<sub>x</sub> SIP Call requirements.

Whenever a new unit that meets the applicability of section 4.1 of WV rule 45CSR40 (and thus is also subject to the NO<sub>x</sub> 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<sub>x</sub> emissions cap of 2,184 tons for applicable units. The EPA finds that West

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<sup>3</sup> 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.

Virginia's revised provisions in WV rule 45CSR40 meet the requirements for the NO<sub>x</sub> 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<sub>x</sub> SIP Call non-EGUs that are not subject to a seasonal NO<sub>x</sub> trading program established under 40 CFR part 97; (2) the enforceable cap on the collective ozone season NO<sub>x</sub> 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<sub>x</sub> 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. As explained in the June 2025 NPRM, the SIP revision is consistent with the provisions of CAA section 110(l). 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.

Additional information regarding West Virginia's submittal and the rationale for the EPA's action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

### **III. Final Action**

The EPA is approving the April 17, 2024 West Virginia SIP revision, as supplemented on October 8, 2024. This revision pertains to the amended version of WV rule 45CSR40 that addresses CAA requirements in section 110 and 40 CFR 51.121 for the NO<sub>x</sub> SIP Call and for units subject to the NO<sub>x</sub> SIP Call.

#### IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference the revisions to West Virginia Rule 45CSR40-Control of Ozone Season Nitrogen Oxides Emissions as described in section II of this preamble. 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

##### A. General Requirements

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 Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, 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, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Recording and recordkeeping requirements, Sulfur oxides.

Amy Van Blarcom-Lackey,  
Regional Administrator,  
Region III.

For the reasons stated in the preamble, the 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 XX—West Virginia**

2. In § 52.2520, the table in paragraph (c) is amended by revising the entries “Section 45-40-1”, “Section 45-40-2”, “Section 45-40-3”, “Section 45-40-4”, “Section 45-40-6” and “Section 45-40-9” 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<br/>[Chapter 16-20<br/>or 45 CSR ]</b>                    | <b>Title/subject</b> | <b>State<br/>effective<br/>date</b> | <b>EPA<br/>approval<br/>date</b>  | <b>Additional<br/>explanation/<br/>citation at 40<br/>CFR 52.2565</b>                   |
|---|----------------------|-------------------------------------|---|---|
| * * * * *   |                      |                                     |   |   |
| <b>[45 CSR] Series 40 Control of Ozone Season Nitrogen Oxides Emissions</b> |                      |                                     |   |   |
| Section 45-40-1   | General              | 04/01/2023                          | <b>[INSERT<br/>DATE OF<br/>PUBLICAT<br/>ION IN<br/>THE<br/>FEDERAL<br/>REGISTER<br/>, 90 FR<br/>[INSERT<br/>FEDERAL<br/>REGISTER<br/>PAGE<br/>WHERE<br/>THE<br/>DOCUMEN<br/>T BEGINS]</b> | Revising 1.5.<br>Prior approval<br>of this section<br>was 83 FR<br>62470 on<br>12/04/18 |
| Section 45-40-2   | Definitions          | 04/01/2023                          | <b>[INSERT<br/>DATE OF<br/>PUBLICAT<br/>ION IN<br/>THE</b>  | Revising 2.15,<br>2.17, 2.6.<br>Adding new<br>2.16, 2.19,<br>2.20, 2.21 and             |

|                 |  |            |  |  |
|-----------------|--|------------|--|--|
|                 |  |            | <b>FEDERAL REGISTER</b> , 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]                             | renumbered. Prior approval of this section was 83 FR 62470 on 12/04/18                                       |
| Section 45-40-3 | Measurements, Abbreviations and Acronyms             | 04/01/2023 | [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS] | Section 3 was renumbered and acronyms were added. Prior approval of this section was 83 FR 62470 on 12/04/18 |
| Section 45-40-4 | Applicability  | 04/01/2023 | [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS] | Revised 4.1. Prior approval of this section was 83 FR 62470 on 12/04/18                                      |
| * * *           | * *  |            |  |  |
| Section 45-40-6 | Monitoring, Recordkeeping and Reporting Requirements | 04/01/2023 | [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER  | Revised 6.1, 6.2, 6.3, 6.4, 6.5. Prior approval of this section was 83 FR                                    |

|                 |   |            |   |  |
|-----------------|---|------------|---|--|
|                 |   |            | ], 90 FR<br>[INSERT<br>FEDERAL<br>REGISTER<br>PAGE<br>WHERE<br>THE<br>DOCUMENT<br>BEGINS]   | 62470 on<br>12/04/18   |
| * * * * *       |   |            |   |  |
| Section 45-40-9 | Ozone season NOX<br>reduction requirements for<br>stationary internal<br>combustion engines | 04/01/2023 | [INSERT<br>DATE OF<br>PUBLICAT<br>ION IN<br>THE<br>FEDERAL<br>REGISTER<br>], 90 FR<br>[INSERT<br>FEDERAL<br>REGISTER<br>PAGE<br>WHERE<br>THE<br>DOCUMENT<br>BEGINS] | Revised 9.2.1.<br>Prior approval<br>of this section<br>was 83 FR<br>62470 on<br>12/04/18 |
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[FR Doc. 2025-19238 Filed: 10/1/2025 8:45 am; Publication Date: 10/2/2025]