



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0539; FRL-9950-29-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Prevention of Significant Deterioration and Approval of Infrastructure State Implementation Plans for Specific National Ambient Air Quality Standards

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 West Virginia Department of Environmental Protection (WVDEP) for the State of West Virginia on June 3, 2015.

This revision pertains to West Virginia's Prevention of Significant Deterioration (PSD) permit program regulations for preconstruction permitting requirements for major sources. The revision includes a change in West Virginia's PSD regulations related to emissions of fine particulate matter (PM_{2.5}). The State's June 3, 2015 submittal satisfies its obligations pursuant to an earlier rulemaking in which EPA granted final conditional approval of West Virginia's PSD implementing regulations. This action also addresses specific infrastructure program elements specified in Clean Air Act (CAA) section 110(a)(2) necessary to implement, maintain, and enforce several national ambient air quality standards (NAAQS). This action is being taken under the CAA.

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2015-0539. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., 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 may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Wentworth, (215) 814–2183, or by email at *Wentworth.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 2016 (81 FR 1133), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. In the NPR, EPA proposed approval of a revision to West Virginia’s PSD permit program regulations for preconstruction permitting requirements for major sources. The revision includes revised West Virginia PSD regulations related to emissions of PM_{2.5}. The

formal SIP revision was submitted by the State of West Virginia on June 3, 2015.

II. Summary of SIP Revision

The SIP revision submitted by WVDEP on June 3, 2015 pertains to revisions to its PSD permit program regulations at 45CSR14–16.7.c that establish a significant monitoring concentration (SMC) value of zero micrograms per cubic meter for PM_{2.5}. The submission of this revision allows EPA to change its conditional approval of 45CSR14 to a full approval. Because this submission fulfills the commitment made by West Virginia in the final conditional approval of West Virginia's earlier submittals of revisions to 45CSR14 as discussed in the NPR, EPA is now fully approving West Virginia's PSD regulations at 45CSR14 in its entirety as 45CSR14 meets requirements in the CAA and its implementing regulations and removing the prior conditional approval. *See* 80 FR 36483 (final conditional approval of prior SIP submissions of revisions to 45CSR14).

With its submittal, West Virginia has made all of the changes to its PSD implementing regulations necessary to address PM_{2.5} as prescribed by the CAA, 40 CFR 51.166, and the May 16, 2008 new source review implementation rule for PM_{2.5} at 73 FR 28321. Because West Virginia's regulations at 45CSR14 fully meet the federal requirements for PSD in the CAA, EPA also found that West Virginia's PSD program now addresses specific PSD-related portions of the infrastructure program elements in section 110(a)(2) of the CAA for the 1997 ozone and PM_{2.5} NAAQS, the 2006 PM_{2.5} NAAQS, the 2008 lead and ozone NAAQS, and the 2010 nitrogen dioxide (NO₂) and sulfur dioxide (SO₂) NAAQS. Other specific requirements of and the rationale for EPA's approval action of West Virginia's revised PSD regulations and relevant infrastructure SIP revisions for several NAAQS are explained in the NPR and will not be

restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving this SIP revision submitted by WVDEP as a revision to the West Virginia SIP for its PSD program and removing a prior conditional approval on the PSD program. In this action, EPA is also approving several of West Virginia's infrastructure SIP revisions as meeting the PSD elements of section 110(a)(2) of the CAA for the 1997 ozone and PM_{2.5} NAAQS, the 2006 PM_{2.5} NAAQS, the 2008 lead and ozone NAAQS, and the 2010 NO₂ and SO₂ NAAQS.

IV. Incorporation by Reference

In this rule the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of 45CSR14-16.7.c, described in the amendments to 40 CFR part 52 set forth below.

The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or may be viewed at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

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 (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. This action which revises

West Virginia's PSD regulations related to emissions of PM_{2.5} and which approves portions of several infrastructure SIPs as addressing PSD elements in CAA section 110(a)(2) 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, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 25, 2016.

Shawn M. Garvin,
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:

a. The table in paragraph (c) is amended by revising the entries for 45CSR Series 14.

b. The table in paragraph (e) is amended by revising the entries for:

- i. Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS,
- ii. Section 110(a)(2) Infrastructure Requirements for the 1997 PM_{2.5} NAAQS,
- iii. Section 110(a)(2) Infrastructure Requirements for the 2006 PM_{2.5} NAAQS,
- iv. Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS,
- v. Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS,
- vi. Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS,
and
- vii. Section 110(a)(2) Infrastructure Requirements for the 2010 1-Hour Sulfur Dioxide
NAAQS.

The revised text reads as follows:

§ 52.2520 Identification of plan.

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(c) ***

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16-20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
* * * * *				
[45CSR] Series 14 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration				
Section 45-14-1	General	06/01/2015	[Insert date of Federal Register publication] [Insert Federal Register citation]	
Section 45-14-2	Definitions	06/01/2015	[Insert date of Federal Register publication] [Insert Federal Register citation]	
Section 45-14-3	Applicability	06/01/2015	[Insert date of Federal Register publication] [Insert Federal Register citation]	
Section 45-14-4	Ambient Air Quality Increments and Ceilings	06/01/2015	[Insert date of Federal Register publication] [Insert Federal Register citation]	
Section 45-14-5	Area Classification	06/01/2015	[Insert date of Federal Register publication]	

State citation [Chapter 16-20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
			[Insert Federal Register citation]	
Section 45-14-6	Prohibition of Dispersion Enhancement Techniques	06/01/2015	[Insert date of Federal Register publication] [Insert Federal Register citation]	
Section 45-14-7	Registration, Report and Permit Requirements for Major Stationary Sources and Major Modifications	06/01/2015	[Insert date of Federal Register publication] [Insert Federal Register citation]	
Section 45-14-8	Requirements Relating to Control Technology	06/01/2015	[Insert date of Federal Register publication] [Insert Federal Register citation]	
Section 45-14-9	Requirements Relating to the Source's Impact on Air Quality	06/01/2015	[Insert date of Federal Register publication] [Insert Federal Register citation]	
Section 45-14- 10	Modeling Requirements	06/01/2015	[Insert date of Federal Register publication] [Insert	

State citation [Chapter 16-20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
			<u>Federal Register citation]</u>	
Section 45-14-11	Air Quality Monitoring Requirements	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal Register citation]</u>	
Section 45-14-12	Additional Impacts Analysis Requirements	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal Register citation]</u>	
Section 45-14-13	Additional Requirements and Variances for Source Impacting Federal Class 1 Areas	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal Register citation]</u>	
Section 45-14-14	Procedures for Sources Employing Innovative Control Technology	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal Register citation]</u>	
Section 45-14-15	Exclusions From Increment Consumption	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert</u>	

State citation [Chapter 16-20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
			<u>Federal Register citation]</u>	
Section 45-14-16	Specific Exemptions	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal Register citation]</u>	
Section 45-14-17	Public Review Procedures	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal Register citation]</u>	
Section 45-14-18	Public Meetings	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal Register citation]</u>	
Section 45-14-19	Permit Transfer, Cancellation and Responsibility	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal Register citation]</u>	
Section 45-14-20	Disposition of Permits	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal</u>	

State citation [Chapter 16-20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
			<u>Register citation]</u>	
Section 45-14-21	Conflict with Other Permitting Rules	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal Register citation]</u>	
Section 45-14-25	Actual PALs	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal Register citation]</u>	
Section 45-14-26	Inconsistency Between Rules	06/01/2015	[<u>Insert date of Federal Register publication]</u> [<u>Insert Federal Register citation]</u>	
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Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS	Statewide	12/3/07, 5/21/08 12/3/07, 12/11/07, 8/31/11 6/1/2015	8/4/11, 76 FR 47062 10/17/12, 77 FR 63736 [Insert date of Federal Register publication] [Insert Federal Register citation]	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Approval of the following PSD-related elements or portions thereof: 110(a)(2)(D)(i)(II), except taking no action on the definition of “regulated NSR pollutant” found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See §52.2522(i). Approval of PSD-related element 110(a)(2)(D)(i)(II). See §52.2520.
Section 110(a)(2) Infrastructure Requirements for the 1997 PM _{2.5} NAAQS	Statewide	4/3/08, 5/21/08, 7/9/08, 3/18/10 12/11/07, 4/3/08, 8/31/11	8/4/11, 76 FR 47062 10/17/12, 77 FR 63736	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Approval of the following PSD-related elements or portions thereof: 110(a)(2)(D)(i)(II), except taking no action on the definition of “regulated

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
		6/1/2015	<u>[Insert date of Federal Register publication]</u> <u>[Insert Federal Register citation]</u>	<p>NSR pollutant” found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See §52.2522(i).</p> <p>Approval of PSD-related element 110(a)(2)(D)(i)(II). See §52.2520.</p>
Section 110(a)(2) Infrastructure Requirements for the 2006 PM _{2.5} NAAQS	Statewide	10/1/09, 3/18/10 10/1/09, 8/31/11 6/1/2015	8/4/11, 76 FR 47062 10/17/12, 77 FR 63736 <u>[Insert date of Federal Register publication]</u> <u>[Insert Federal</u>	<p>This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).</p> <p>Approval of the following PSD-related elements or portions thereof: 110(a)(2)(D)(i)(II), except taking no action on the definition of “regulated NSR pollutant” found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See §52.2522(i).</p> <p>Approval of PSD-related element 110(a)(2)(D)(i)(II). See §52.2520.</p>

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
			<u>Register citation]</u>	
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Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS	Statewide	10/26/11 8/31/11, 10/26/11 6/1/2015	9/10/12, 77 FR 55417 10/17/12, 77 FR 63736 [Insert date of Federal Register publication] [Insert Federal Register citation]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. Approval of the following elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J), except taking no action on the definition of “regulated NSR pollutant” found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See §52.2522(i). Approval of PSD-related element 110(a)(2)(C), (D)(i)(II), and (J). See §52.2520.
Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS	Statewide	8/31/11, 2/17/12	10/17/12, 77 FR 63736	Approval of the following PSD-related elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J), except taking no action on the definition of “regulated NSR pollutant” found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
		2/17/12	4/7/2014, 79 FR 19001	§52.2522(i). This action addresses the following CAA elements, or portions thereof: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).
		7/24/14	3/9/15, 80 FR 12348	Addresses CAA element 110(a)(2)(E)(ii).
		6/1/2015	<u>[Insert date of Federal Register publication]</u> <u>[Insert Federal Register citation]</u>	Approval of PSD-related element 110(a)(2)(C), (D)(i)(II), and (J). <i>See</i> §52.2520.
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Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS	Statewide	12/13/12	1/22/14, 78 FR 3504	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.
		7/24/14	3/9/15, 80 FR 12348	Addresses CAA element 110(a)(2)(E)(ii)
		6/1/2015	<u>[Insert date of Federal Register publication]</u> <u>[Insert Federal Register citation]</u>	Approval of PSD-related element 110(a)(2)(C), (D)(i)(II), and (J). <i>See</i> §52.2520.
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Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Section 110(a)(2) Infrastructure Requirements for the 2010 1-Hour Sulfur Dioxide NAAQS	Statewide	6/25/13	10/16/14, 79 FR 62035	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C) (enforcement and minor new source review), (D)(ii), (E)(i) and (iii), (F), (G), (H), (J) (consultation, public notification, and visibility protection), (K), (L), and (M).
		7/24/14	3/9/15, 80 FR 12348	Addresses CAA element 110(a)(2)(E)(ii)
		6/1/2015	[Insert date of Federal Register publication] [Insert Federal Register citation]	Approval of PSD-related element 110(a)(2)(C), (D)(i)(II), and (J). <i>See</i> §52.2520.
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[FR Doc. 2016-18518 Filed: 8/10/2016 8:45 am; Publication Date: 8/11/2016]