



This document is scheduled to be published in the Federal Register on 05/12/2017 and available online at <https://federalregister.gov/d/2017-09504>, and on [FDsys.gov](#)

6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2016-0373; FRL-9961-87-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Infrastructure Requirements for the 2012 Fine Particulate Standard

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of a state implementation plan (SIP) revision submitted by the State of West Virginia. Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the Clean Air Act (CAA) requires states to submit a plan to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure implementation, maintenance, and enforcement of the NAAQS. These elements are referred to as infrastructure requirements. The State of West Virginia made a submittal addressing the infrastructure requirements for the 2012 fine particulate matter ( $PM_{2.5}$ ) NAAQS, and EPA is approving portions of this SIP revision in accordance with the requirements of 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-2016-0373. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov)

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 <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:** Ellen Schmitt, (215) 814-5787, or by e-mail at schmitt.ellen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 16, 1997, the EPA promulgated a new 24-hour and a new annual NAAQS for PM<sub>2.5</sub>. See 62 FR 38652 (July 18, 1997). Subsequently, on December 14, 2012, the EPA revised the level of the health based (primary) annual PM<sub>2.5</sub> standard to 12 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). See 78 FR 3086 (January 15, 2013).<sup>1</sup>

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA

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<sup>1</sup> In EPA's 2012 PM<sub>2.5</sub> NAAQS revision, EPA left unchanged the existing welfare (secondary) standards for PM<sub>2.5</sub> to address PM related effects such as visibility impairment, ecological effects, damage to materials and climate impacts. This includes a secondary annual standard of 15  $\mu\text{g}/\text{m}^3$  and a 24-hour standard of 35  $\mu\text{g}/\text{m}^3$ .

for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

## **II. Summary of SIP Revision**

On November 17, 2015, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2012 PM<sub>2.5</sub> NAAQS. On December 23, 2016 (81 FR 94281), EPA published a notice of proposed rulemaking (NPR) proposing approval of portions of the West Virginia November 17, 2015 SIP submittal. In the NPR, EPA proposed approval of the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (relating to prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA.

At this time, EPA is not taking action on the portions of West Virginia's November 17, 2015 SIP submission which addressed section 110(a)(2)(D)(i)(I) of the CAA relating to interstate transport of emissions, nor is the Agency taking action on the portion of the November 17, 2015 SIP submission which addressed section 110(a)(2)(D)(i)(II) relating to visibility protection. EPA intends to take later separate action on these portions of West Virginia's submittal as explained in the NPR and the Technical Support Document (TSD), which accompanied the NPR. The TSD is available in the docket for this rulemaking which is also available online at [www.regulations.gov](http://www.regulations.gov). Finally, West Virginia did not address in its submittal section 110(a)(2)(I)

which pertains to the nonattainment requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) and will be addressed in a separate process if necessary.

The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIPs in general, is explained in the published NPR and the TSD and will not be restated here. The NPR and TSD are available in the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2016-0373.

### **III. Public Comments and EPA's Responses**

EPA received two anonymous comments on the December 23, 2016 proposed approval of portions of the West Virginia's 2012 PM<sub>2.5</sub> infrastructure SIP.

Comment 1: One commenter asked why West Virginia is any different than other states and stated that how particulate matter is measured and "the standard" for particulate matter should be the same for all states. The commenter stated that "[w]hat is safe in one State, should not be different than another."

Response 1: EPA thanks the commenter for the submitted statements. To clarify, West Virginia is not treated any differently than any other state in the United States under the CAA's NAAQS. Indeed, the "standard" for particulate matter and how particulate matter is "measured" (i.e., monitored) is the same for all states.

Sections 108 and 109 of the CAA require EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. The NAAQS apply equally throughout all states. Once EPA sets a new or revised NAAQS, EPA must designate areas in every state as

either attainment, unclassifiable, or nonattainment pursuant to section 107(d)(1)(B) and states must develop, adopt, and submit to EPA for approval a SIP that contains emissions limitations and other control measures to attain and maintain the relevant NAAQS in accordance with section 110(a).

Pursuant to sections 108 and 109 of the CAA, EPA has promulgated NAAQS for two sizes of particulate matter: PM<sub>10</sub> and PM<sub>2.5</sub>.<sup>2</sup> Because this action concerns the 2012 PM<sub>2.5</sub> NAAQS, EPA's response addresses the relevant NAAQS. On December 14, 2012, EPA revised the health based (primary) annual PM<sub>2.5</sub> NAAQS to 12 µg/m<sup>3</sup>, and this standard applies equally throughout all states. *See* 78 FR 3086 (January 15, 2013). Two years later, on December 14, 2014, EPA designated all areas in West Virginia as “unclassifiable/attainment” for the primary 2012 PM<sub>2.5</sub> NAAQS. *See* 80 FR 2206, 2278-2279 (January 15, 2015).<sup>3</sup> Finally, on November 17, 2015, West Virginia submitted a SIP revision to EPA to address the requirements of section 110(a)(2) of the CAA for the 2012 PM<sub>2.5</sub> NAAQS and identified West Virginia's measures to attain and maintain that NAAQS.

Regarding measurement of particulate matter, state and, where applicable, local and/or tribal, agencies (referred to herein as “monitoring agencies”) are responsible for providing an air quality surveillance system in order to, among other goals, assess the extent of pollution, provide information on air quality trends, and support the implementation of air quality goals or standards (i.e., the NAAQS). Monitoring agencies are required to submit to EPA an annual monitoring network plan which provides for the documentation of the establishment and

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<sup>2</sup> Coarse particulate matter (PM<sub>10</sub>) are generally 10 micrometers and smaller, while fine particulate matter (or PM<sub>2.5</sub>) consist of fine inhalable particles, with diameters that are generally 2.5 micrometers and smaller.

<sup>3</sup> The rule explains that “EPA is designating areas as nonattainment, unclassifiable, or unclassifiable/attainment.”

maintenance of their air quality surveillance system.<sup>4</sup> These annual monitoring network plans require that ambient particulate matter data are collected through an approved network of specified ambient monitoring stations. Data from the approved monitoring stations are used to compare an area's air pollution levels against the NAAQS to make sure air quality is protective of public health and the environment. Monitoring agencies provide all ambient air quality data, including those related to PM<sub>2.5</sub>, to EPA through the Agency's Air Quality Management System (AQS).

As discussed in the TSD for this action, WVDEP has the authority under state law "to develop ways and means for the regulation and control of pollution of the air of the state" and "conduct such studies and research relating to air pollution and its control and abatement." EPA-R03-OAR-2016-0373-0006, p. 10. WVDEP currently operates and maintains an established network of ambient air monitors in West Virginia for the purpose of assessing compliance with the 2012 PM<sub>2.5</sub> NAAQS, and submits to EPA for approval, on an annual basis, a monitoring network plan, which describes how West Virginia is complying with monitoring requirements and explains any changes to the monitoring network. *Id.*; *see also* EPA-R03-OAR-2016-0373-0007 (Approval letter regarding WVDEP's 2015 annual monitoring network plan).

In summary, the NAAQS apply to all states in the country, all states monitor (or measure) particulate matter in accordance with CAA statutory and regulatory requirements, and West Virginia is not treated any differently for such purposes.

Comment 2: The commenter stated that "[A]ir quality is important for our environment and our health. Infrastructure improvements can provide jobs as well."

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<sup>4</sup> Each monitoring agency must submit to EPA for approval an annual monitoring network plan that is in accordance with the monitoring requirements contained in 40 CFR parts 50, 53, and 58.

Response 2: EPA thanks the commenter for the support for air quality and health. The commenter's statement regarding "infrastructure improvements" likely reflects the commenter's concern for improvements to bridges and roads which are more traditionally understood as "infrastructure" in the United States. Thus, EPA believes the comment related to "infrastructure improvements" is likely unrelated to EPA's approval of West Virginia's "infrastructure" SIP submittal which addresses requirements in CAA section 110(a)(2) to provide the necessary structural requirements such as emission limitations and monitoring requirements for attaining and maintaining the 2012 PM<sub>2.5</sub> NAAQS in West Virginia. EPA described in detail in the NPR and in the TSD, which accompanied the NPR, how West Virginia's SIP provides the basic structural requirements. As the comment is not germane to EPA's rulemaking, no further response is provided.

#### **IV. Final Action**

EPA is approving portions of the West Virginia's SIP revision regarding the infrastructure program elements specified in section 110(a)(2)(A), (B), (C), (D)(i)(II) (relating to prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2012 PM<sub>2.5</sub> NAAQS. EPA will conduct separate rulemaking action on the portions of West Virginia's November 17, 2015 SIP submission addressing section 110(a)(2)(D)(i)(I) of the CAA relating to interstate transport of emissions and addressing section 110(a)(2)(D)(i)(II) relating to visibility protection. This rulemaking action does not include any action addressing section 110(a)(2)(I) of the CAA for the 2012 PM<sub>2.5</sub> NAAQS which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of

section 110(a)(1), and will be addressed in a separate process, if necessary.

## **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 approves portions of the West Virginia SIP submittal to address the CAA section 110(a)(2) infrastructure requirements for the 2012 PM<sub>2.5</sub> NAAQS, may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

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

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 12, 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 table in paragraph (e) is amended by adding the entry “Section 110(a)(2) Infrastructure Requirements for the 2012 PM<sub>2.5</sub> NAAQS” at the end of the table to read as follows:

#### §52.2520 Identification of plan.

\* \* \* \*

(e) \* \* \*

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 2012 PM <sub>2.5</sub> NAAQS	Statewide	11/17/15	[insert date of publication in the Federal Register], [insert Federal Register citation]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

[FR Doc. 2017-09504 Filed: 5/11/2017 8:45 am; Publication Date: 5/12/2017]