



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2016-0373; FRL-9984-96-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Interstate Transport Requirements for the 2012 Fine Particulate Matter Standard**

**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. This revision pertains to the infrastructure requirement for interstate transport of pollution with respect to the 2012 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). EPA is approving this revision in accordance with the requirements of 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:** 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 <https://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 <https://www.regulations.gov>, or please contact the person

identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schulingkamp, (215) 814-2021, or by e-mail at [schulingkamp.joseph@epa.gov](mailto:schulingkamp.joseph@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On November 17, 2015, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a SIP revision addressing all required infrastructure elements under CAA section 110(a) for the 2012 PM<sub>2.5</sub> NAAQS. As stated in the notice of proposed rulemaking (NPRM) published on August 3, 2018, EPA has previously taken action on other portions of the November 17, 2015 submittal addressing requirements in CAA section 110(a)(2) for the 2012 PM<sub>2.5</sub> NAAQS, and EPA is taking rulemaking action herein on only the portion of the November 12, 2015 submittal addressing requirements in CAA section 110(a)(2)(D)(i)(I) (prongs 1 and 2). *See* 83 FR 38112. In addition, EPA stated in the NPRM that the Agency had proposed separate action on the portion of the November 12, 2015 submittal addressing requirements in CAA section 110(a)(2)(D)(i)(II) (prong 4). *See* 83 FR 27734 (June 14, 2018) (proposing approval of the November 12, 2015 submittal for prong 4). EPA is not at this time taking final action on the 2015 SIP submittal addressing prong 4. For more information on particulate pollution, EPA’s infrastructure requirements, and interstate transport requirements, see Section I of the August 3, 2018 NPRM.

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

West Virginia’s November 17, 2015 SIP submittal stated that the current West Virginia SIP

contains adequate measures to ensure that the State will not cause significant contribution to nonattainment in, or interfere with the maintenance of, any other State with respect to the 2012 PM<sub>2.5</sub> NAAQS. West Virginia refers to the measures detailed in the section pertaining to requirements in CAA section 110(a)(2)(A), which included numerous SIP-approved measures and other federally enforceable measures, under the CAA, that apply to sources of PM<sub>2.5</sub> and its precursors within West Virginia.

In evaluating whether the measures identified by West Virginia addressed CAA section 110(a)(2)(D)(i), EPA used the information in the memorandum dated March 17, 2016, entitled, “Information on the Interstate Transport “Good Neighbor” Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I),” Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, [https://www.epa.gov/sites/production/files/2016-08/documents/good-neighbor-memo\\_implementation.pdf](https://www.epa.gov/sites/production/files/2016-08/documents/good-neighbor-memo_implementation.pdf) (the 2016 PM<sub>2.5</sub> Memorandum). This 2016 PM<sub>2.5</sub> Memorandum is included in the docket for this rulemaking action. After considering the 2016 PM<sub>2.5</sub> Memorandum and additional information, EPA came to the same conclusion as West Virginia and proposed in the NPRM that West Virginia’s emissions do not significantly contribute to nonattainment or interfere with maintenance in another State with respect to the 2012 PM<sub>2.5</sub> NAAQS.

A detailed summary of West Virginia’s submittal, EPA’s review, and the rationale for EPA’s conclusion approving the November 17, 2015 submittal as addressing requirements of prongs 1 and 2 are explained in the NPRM and the technical support document (TSD) that accompanied the NPRM and will not be restated here. The TSD is available online at [www.regulations.gov](http://www.regulations.gov),

### **III. Response to Comments**

EPA received a total of three comments on the August 3, 2018 NPRM. Two comments generally discussed matters irrelevant to this rulemaking. As these two comments did not concern any of the specific issues raised in the NPRM or address EPA's rationale for the proposed approval of West Virginia's submittal, EPA provides no response to these comments. EPA did receive one relevant comment; that comment, and EPA's response is discussed in this Section of this rulemaking action.

*Comment:* The commenter first stated that EPA did not need to analyze interstate transport of PM<sub>2.5</sub> emissions from West Virginia to California, Idaho, or Florida, and further questioned the likelihood of West Virginia's PM<sub>2.5</sub> emissions impacting those three States. The commenter then stated that EPA's time and limited resources would be better spent on other more meaningful issues, especially since it took three years to develop the analysis EPA presented.

*Response:* First, with respect to the period of time for EPA's analysis, CAA section 110(a)(1) requires all States to submit a SIP addressing the elements of CAA section 110(a)(2), including CAA section 110(a)(2)(D)(i)(I) on interstate transport, within three years of EPA promulgating a new or revised NAAQS. Further, CAA section 110(k)(2) and (3) requires EPA action on the SIP submission within twelve months of EPA finding the SIP submission complete. Therefore, the submission of a SIP addressing interstate transport requirements for the 2012 PM<sub>2.5</sub> NAAQS in CAA section 110(a)(2)(D)(i)(I) is required by the CAA as is EPA's action on such SIP submittal. In addition, the requirement for a new infrastructure SIP submission provides an opportunity for the air agency, the public, and EPA to review the basics of the air quality management program

in light of each new or revised NAAQS. In the case of CAA section 110(a)(2)(D)(i)(I), this review is specifically focused on whether a State's SIP will prevent interference with attainment or maintenance of the NAAQS in a nearby State, and meets requirements for prevention of significant deterioration and visibility in another State, as well as international pollution.

Second, with regards to EPA's analysis of West Virginia's impact on California, Idaho, or Florida, EPA disagrees that such an analysis is not necessary. As discussed in the TSD and in EPA's 2016 PM<sub>2.5</sub> Memorandum, most of the potential areas of concern with nonattainment or maintenance issues for the 2012 PM<sub>2.5</sub> NAAQS were located in California, Shoshone County, Idaho, and in Allegheny County, Pennsylvania. In addition, the 2016 PM<sub>2.5</sub> Memorandum noted air quality monitoring data quality problems in all or portions of Florida, Illinois, Idaho (outside of Shoshone County), Tennessee, and Kentucky. Subsequent to the 2016 PM<sub>2.5</sub> Memorandum's release, data quality problems were resolved for Idaho (outside of Shoshone County), Tennessee, Kentucky, and portions of Florida. Therefore, the remaining potential receptors of interest included 17 receptors in California, one receptor in Shoshone County, Idaho, one receptor in Allegheny County, Pennsylvania, four counties in Florida, and all of Illinois.<sup>1</sup> Based on this information from the 2016 PM<sub>2.5</sub> Memorandum and the resolution of the monitoring quality issues, EPA narrowed the scope of analysis down to these remaining potential receptors and did not evaluate the entire continental United States for potential contribution to downwind PM<sub>2.5</sub> nonattainment and maintenance receptors. While EPA agrees that the likelihood of West Virginia's sources of PM<sub>2.5</sub> emissions contributing to attainment or maintenance air quality issues in geographically distant areas in California, Florida, and Idaho is unlikely, EPA and the State are still obligated to analyze whether the State's sources will significantly contribute to

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<sup>1</sup> A receptor is a monitor within the photochemical modeling domain that is modeled as "receiving" emissions.

nonattainment or interfere in the maintenance of, the NAAQS at those receptors and at receptors in other States. In addressing this obligation, EPA relied upon the information in the TSD and on the 2016 PM<sub>2.5</sub> Memorandum to conclude West Virginia's SIP was adequate to prevent West Virginia sources from significantly contributing to nonattainment or interfering with maintenance in other States.

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

EPA is approving the November 17, 2015 SIP revision as it addresses the interstate transport requirements for the 2012 PM<sub>2.5</sub> NAAQS in CAA section 110(a)(2)(D)(i)(I).

#### **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);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 (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, addressing West Virginia's interstate transport obligations with respect to the 2012 PM<sub>2.5</sub> NAAQS, 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, Particulate matter.

Dated: September 25, 2018.

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:

a. Revising the entry for “Section 110(a)(2) Infrastructure Requirements for the 2012 PM<sub>2.5</sub> NAAQS”; and

b. Adding a second entry entitled “Section 110(a)(2) Infrastructure Requirements for the 2012 PM<sub>2.5</sub> NAAQS” at the end of the table.

The revision and addition 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	5/12/17, 82 FR 22078	Docket #2016-0373. This action addresses the following CAA elements of section 110(a)(2): A, B, C, D(i)(II) (prong 3), D(ii), E, F, G, H, J, K, L, and M, or portions thereof.
Section 110(a)(2) Infrastructure Requirements for the	Statewide	11/17/15	<u>Insert date of</u>	Docket #2016-0373.

<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
2012 PM <sub>2.5</sub> NAAQS			<b><u>publication in the Federal Register</u></b> <b><u>[Insert Federal Register citation]</u></b>	This action addresses CAA section 110(a)(2)(D)(i)(I) (prongs 1 and 2)

[FR Doc. 2018-21668 Filed: 10/4/2018 8:45 am; Publication Date: 10/5/2018]