



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0553; FRL-10002-39-Region 3]

Approval and Promulgation of Air Quality Implementation Plans;

West Virginia; 2019 Amendments to West Virginia's Ambient Air Quality Standards

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. This revision updates the effective date of the national ambient air quality standards (NAAQS) and the associated monitoring reference and equivalent methods for those NAAQS that West Virginia incorporates by reference into its state regulations. 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-2019-0553, at <https://www.regulations.gov>, or via email to spielberger.susan@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, 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. 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: Joseph Schulingkamp, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2021. Mr. Schulingkamp can also be reached via electronic mail at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: On May 6, 2019, the West Virginia Department of Environmental Protection (WVDEP) submitted a formal revision to its SIP pertaining to amendments of Legislative Rule, 45CSR8 – Ambient Air Quality Standards. The SIP submittal updates the version of the federal NAAQS and the associated monitoring reference and equivalent methods for those NAAQS that West Virginia incorporates by reference into West Virginia’s legislative rules.

I. Summary of SIP Revision

WVDEP has historically chosen to incorporate by reference the federal NAAQS, found at 40 CFR part 50, and the associated federal ambient air monitoring reference methods and equivalent methods for these NAAQS found at 40 CFR part 53. When incorporating by reference these

federal regulations, WVDEP has specified that it is incorporating by reference these regulations as they existed on a certain date. The incorporation by reference of the NAAQS that is currently SIP-approved by EPA incorporates by reference 40 CFR parts 50 and 53 as they existed on June 1, 2017. This SIP revision updates the State's incorporation by reference of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods, found in 40 CFR parts 50 and 53, respectively. Since the last West Virginia incorporation by reference of June 1, 2017, EPA reviewed the primary standards for oxides of nitrogen (NO_x), as required by CAA section 109(d), and retained the current 1-hour and annual nitrogen dioxide (NO₂) standards without revision. *See* 83 FR 17226. EPA has not made any changes to the ambient air monitoring reference methods or any ambient air monitoring equivalent methods since the last effective date of the West Virginia rule.

The amendments to the legislative rule include the following changes: To section 45-8-1 (General), the filing, effective, and incorporation by reference dates are changed to reflect the update of the legislative rule, subsection 1.5 was renumbered to subsection 1.6, and a new subsection 1.5 (Sunset Provision) was added; to section 45-8-3 (Adoption of Standards), the dates of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods that are to be incorporated by reference are changed. The filing and effective dates of the legislative rule were updated to April 24, 2019 and June 1, 2019 respectively. The date of the federal rules in 40 CFR parts 50 and 53 that are being incorporated by reference into 45-8-3 are changed from June 1, 2017 to June 1, 2018.

II. Proposed Action

EPA is proposing to approve the West Virginia SIP revision updating the date of incorporation by reference, which was submitted on May 6, 2019. EPA is soliciting public comments on the

update to West Virginia’s incorporation by reference. Please note that EPA is not seeking public comment on the level of the NAAQS being incorporated by reference into the West Virginia regulations. An opportunity for public comment on the level of each individual NAAQS was given when EPA proposed each such NAAQS. Relevant comments will be considered before taking final action.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 45CSR8, as effective on June 1, 2019. EPA has made, and will continue to make, these materials generally available through <https://www.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).

IV. Statutory and Executive Order Reviews

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 proposed 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 proposed rule, revising the incorporation by reference date of 45CSR8, 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: October 28, 2019

Cosmo Servidio
Regional Administrator,
Region III

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