

- 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 (Pub. L. 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, the SIP is not approved to apply on any Indian reservation land or in any other area where 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).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 16, 2018.

**Cathy Stepp,**

*Regional Administrator, Region 5.*

[FR Doc. 2018–18640 Filed 8–27–18; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2017–0633; FRL–9982–79–Region 3]

#### 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:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve two state implementation plan (SIP) revisions submitted by the State of West Virginia. The revisions pertain to a West Virginia regulation that established the nitrogen oxides (NO<sub>x</sub>) ozone season trading program under the Clean Air Interstate Rule (CAIR), which implemented requirements for NO<sub>x</sub> reductions necessary to reduce interstate transport of pollution. The EPA-administered trading programs under CAIR were discontinued upon the implementation of the Cross-State Air Pollution Rule (CSAPR), which was promulgated by EPA to replace CAIR. CSAPR established federal implementation plans (FIPs) for 28 states, including West Virginia, and applied to electric generating units (EGUs) as defined. The SIP submittals are comprised of revisions to the West Virginia regulation that implemented the CAIR ozone season NO<sub>x</sub> trading program and that had previously been included in the West Virginia SIP. The revised West Virginia regulation removed the CAIR ozone season NO<sub>x</sub> trading program provisions, which also addressed certain large non-electric generating units (non-EGUs), established new requirements for these large non-EGUs, included a state-wide NO<sub>x</sub> emissions cap, and recodified certain other provisions that address the NO<sub>x</sub> emission reductions required for cement kilns and internal combustion engines. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before September 27, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0633 at <http://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted,

comments cannot be edited or removed from [Regulations.gov](http://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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814–2308, or by email at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** On July 13, 2016, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a revised version of West Virginia Regulation 45CSR40—*Control of Ozone Season Nitrogen Oxides Emissions* for inclusion in the West Virginia SIP. The revised 45CSR40 made the following changes—(1) removed the provisions that implemented the CAIR ozone season trading program, (2) added new requirements to address the NO<sub>x</sub> reduction obligations for non-EGUs in the State that were trading under the CAIR ozone season trading program but are no longer part of a trading program, and (3) recodified the requirements that applied to cement kilns and internal combustion engines. On October 13, 2017, WVDEP provided a supplemental SIP submission comprised of a demonstration showing that NO<sub>x</sub> emissions from applicable non-EGUs do not exceed the West Virginia NO<sub>x</sub> budget under the NO<sub>x</sub> SIP Call.

#### I. Background

On October 27, 1998 (63 FR 57356), EPA finalized the “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone”—commonly called the NO<sub>x</sub> SIP Call. The

NO<sub>x</sub> SIP Call was designed to mitigate significant transport of NO<sub>x</sub>, one of the precursors of ozone. EPA developed the NO<sub>x</sub> Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO<sub>x</sub> SIP Call. The NO<sub>x</sub> Budget Trading Program allowed EGUs greater than 25 megawatts and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as “large non-EGUs”, to participate in a regional NO<sub>x</sub> cap and trade program. The NO<sub>x</sub> SIP call also established NO<sub>x</sub> reduction requirements for other non-EGUs, including cement kilns and stationary internal combustion (IC) engines. EPA has implementing regulations for the NO<sub>x</sub> SIP Call at 40 CFR 51.121.

On May 12, 2005, 70 FR 25162, EPA promulgated CAIR to address transported emissions that significantly contributed to downwind states’ nonattainment and maintenance of the 1997 ozone and fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). CAIR required 28 states, including West Virginia, to reduce emissions of NO<sub>x</sub> and sulfur dioxide (SO<sub>2</sub>), which are precursors to ozone and PM<sub>2.5</sub>. Under CAIR, EPA established separate cap and trade programs for annual NO<sub>x</sub>, ozone season NO<sub>x</sub>, and annual SO<sub>2</sub> emissions. On April 28, 2006 (71 FR 25328), EPA also promulgated FIPs requiring the EGUs in each affected state, but not large non-EGUs, to participate in the CAIR trading programs. States could comply with the requirements of CAIR by either remaining on the FIP, which applied only to EGUs, or by submitting a CAIR SIP revision that included as trading sources EGUs and the non-EGUs that formerly traded in the NO<sub>x</sub> Budget Trading Program under the NO<sub>x</sub> SIP Call. EPA discontinued administration of the NO<sub>x</sub> Budget Trading Program in 2009 upon the start of the CAIR trading programs.<sup>1</sup> The NO<sub>x</sub> SIP Call requirements continued to apply, however, and EGUs that were formerly trading under the NO<sub>x</sub> Budget Trading Program continued to meet their NO<sub>x</sub> SIP Call requirements under the

generally more stringent requirements of the CAIR ozone season trading program. Large non-EGUs that were trading under the NO<sub>x</sub> Budget Trading Program were not addressed in the CAIR FIPs. States therefore needed to assess their NO<sub>x</sub> SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for the large non-EGUs continued to be met. Under CAIR, states had the option to include the non-EGUs as trading participants in the regional CAIR ozone season trading program either through a full CAIR SIP or through an abbreviated CAIR SIP. In either of these options, expansion of the applicability to include the non-EGUs and increasing the ozone season NO<sub>x</sub> budget by the amount of the non-EQU budget in 40 CFR part 97 Appendix C of Subpart E effected inclusion of the non-EGUs into the trading program. Otherwise, states needed to assess their NO<sub>x</sub> SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for these units continued to be met. West Virginia chose to include the non-EGUs as CAIR trading sources, and submitted, for inclusion in the SIP Regulation 45CSR40 which consisted of provisions that implemented the CAIR NO<sub>x</sub> ozone season trading program, included the large non-EGUs as trading sources, and also included emission reduction requirements for certain non-trading non-EGUs (cement kilns and IC engines) that were subject to the NO<sub>x</sub> SIP Call. EPA approved Regulation 45CSR 40 into the West Virginia SIP on August 4, 2009 (74 FR 38536).

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008,<sup>2</sup> but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR.<sup>3</sup> The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the Court’s opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued as planned with the NO<sub>x</sub> annual and ozone season programs beginning in 2009 and the SO<sub>2</sub> annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit’s remand, EPA promulgated CSAPR to replace CAIR and to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by

CAIR as well as the 2006 PM<sub>2.5</sub> NAAQS. The rule also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of CSAPR compliance requirements. CSAPR was to become effective January 1, 2012; however, the timing of CSAPR’s implementation was delayed by litigation, and EPA began implementing CSAPR on January 1, 2015.

Starting in January 2015, the CSAPR FIP trading programs for annual NO<sub>x</sub>, ozone season NO<sub>x</sub> and annual SO<sub>2</sub> were applicable in West Virginia. Thus, since January 1, 2015, the provisions related to implementation of the CAIR ozone season trading program in West Virginia regulation 45CSR40 have become obsolete. The CSAPR FIP trading programs applied only to EGUs and, unlike CAIR, did not provide for expansion of the ozone season trading program to include the NO<sub>x</sub> SIP Call non-EGUs. States, like West Virginia, whose non-EGUs had previously traded in the CAIR ozone season trading program, were therefore required to address the non-EQU reduction requirements of the NO<sub>x</sub> SIP Call outside of a regional trading program.<sup>4</sup>

On October 26, 2016 (81 FR 74504), EPA finalized the CSAPR Update Rule to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS, and issued FIPs that updated the ozone season NO<sub>x</sub> budgets for 22 states, including West Virginia. Starting in January 2017, the CSAPR Update budgets were implemented via establishment of a new CSAPR NO<sub>x</sub> ozone season allowance trading program that was established under the original CSAPR. The CSAPR Update Rule reinstates the option for States to allow non-EGUs to participate in a regional trading program. States wishing to do this can at any time submit a SIP revision that expands the CSAPR Ozone Season NO<sub>x</sub> budget and applicability to include large non-EGUs.

## II. Summary of SIP Revision and EPA Analysis

Regulation 45CSR40 was originally adopted by WVDEP to implement the ozone season trading program under CAIR, which included as CAIR trading sources EGUs and the non-EGUs that had formerly been trading under the NO<sub>x</sub> SIP Call trading program. As noted previously, WVDEP consolidated all the

<sup>4</sup> Subsequent to West Virginia’s July 13, 2016 submission, EPA finalized the CSAPR Update Rule to address transport related to the 2008 ozone NAAQS. It is noted that CSAPR Update included flexibility for states to submit SIPs that expand the CSAPR ozone season trading program to include the large non-EGUs.

<sup>1</sup> CAIR was subsequently vacated and remanded. See *North Carolina v. EPA*, 531 F.3d 896 (DC Cir. 2008), modified by 550 F.3d 1176 (remanding CAIR). CAIR was replaced with the Cross-State Air Pollution Rule, or CSAPR (76 FR 48208, August 8, 2011), which, after legal challenges, was implemented starting in January 2015. The NO<sub>x</sub> Ozone Season Trading Program under CSAPR was replaced in West Virginia and most other states by a new trading program for ozone season NO<sub>x</sub> under the CSAPR Update rule in January 2017 (81 FR 74504, October 26, 2016).

<sup>2</sup> *North Carolina v. EPA*, 531 F.3d 896 (DC Cir. 2008).

<sup>3</sup> *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. 2008).

NO<sub>x</sub> SIP Call and CAIR ozone season requirements into 45CSR40, including the requirements that apply to stationary IC engines and cement manufacturing kilns. The CSAPR FIPs which replaced CAIR only applied to EGUs, and, at the time West Virginia developed its SIP submittal, states did not have an option under CSAPR to bring their non-EGUs into the CSAPR NO<sub>x</sub> Ozone Season Trading Program. So, while EGU compliance with CSAPR satisfied their NO<sub>x</sub> SIP Call requirements, West Virginia needed to modify its ozone season NO<sub>x</sub> regulation to address the NO<sub>x</sub> SIP Call requirements for the large non-EGUs that were formerly trading in the CAIR NO<sub>x</sub> ozone season trading program. 40 CFR 51.121(f) sets forth alternatives for states to address NO<sub>x</sub> SIP Call reduction obligations for non-EGUs including (1) imposing a NO<sub>x</sub> mass emissions cap on each source, (2) imposing a NO<sub>x</sub> emissions rate limit on each source and assuming maximum operating capacity for every such source for purposes of estimating NO<sub>x</sub> mass emissions, or (3) imposing other regulatory requirements that the state has demonstrated to EPA provide equivalent or greater assurance that the state will comply with its ozone season NO<sub>x</sub> budget.

The July 13, 2016 West Virginia SIP submittal includes a modified 45CSR40 which removed the CAIR ozone season trading program provisions, retained the definitions, applicability, and other provisions responding to the NO<sub>x</sub> SIP Call, added new requirements to address its NO<sub>x</sub> SIP Call obligations for sources that were trading under CAIR but are no longer part of a trading program, and retained and recodified the limits on NO<sub>x</sub> emissions that applied to stationary IC engines and cement kilns previously in the former version of 45CSR40 (with a State effective date of May 1, 2008) which EPA had included in the West Virginia SIP.

#### *Removal of CAIR Ozone Season Trading Program Requirements*

Former Regulation 45CSR40 (State effective date of May 1, 2008), which was approved into the West Virginia SIP, was originally adopted by WVDEP to implement the ozone season trading program under CAIR and to address NO<sub>x</sub> SIP Call requirements. The July 13,

2016 SIP submission (with revised 45CSR40, effective in West Virginia on July 1, 2016) removed all the requirements in sections 1 through 75 that pertained to the CAIR ozone season trading program, but retained the general provisions, definitions (including references to continuous emissions monitoring under 40 CFR part 75, subpart H), and applicability provisions that applied to the West Virginia regulated sources under the NO<sub>x</sub> SIP Call. As the CAIR trading program has been replaced by the trading programs under CSAPR, as described previously, these revisions removing references to CAIR are approvable for CAA 110(l) as the provisions related to CAIR were moot as CAIR was replaced by CSAPR and thus CAIR no longer yielded reductions in pollutants nor presently applied to any sources. In addition, sources formerly subject to CAIR are now subject to the more stringent NO<sub>x</sub> and SO<sub>2</sub> provisions of CSAPR to which the EGU sources in West Virginia are subject via a FIP. See 81 FR 74504.

#### *Requirements for Non-EGUs Subject to the NO<sub>x</sub> SIP Call Formerly Trading Under CAIR*

New sections 4 through 8 of 45CSR40 (effective July 1, 2016) established new ozone season NO<sub>x</sub> requirements for the large non-EGUs that were formerly trading in the CAIR NO<sub>x</sub> ozone season trading program. These requirements are summarized as follows:

Section 4—*Applicability* requires the owner or operator of a unit that has a maximum heat input greater than 250 MMBtu/hr to comply with the ozone season NO<sub>x</sub> emission limits, monitoring, recordkeeping, and reporting requirements established in sections 5 and 6 of 45CSR40. This section also specifically excludes any unit that is already subject to the federal CSAPR NO<sub>x</sub> Ozone Season Trading Program via a FIP.

Section 5—*Ozone Season NO<sub>x</sub> Emission Limitation* requires that an owner or operator of affected units (see section 4) limit ozone season NO<sub>x</sub> emissions pursuant to specific limits established in a permit issued under West Virginia regulations 45CSR13, 45CSR14, or 45CSR19, or under a consent order issued by the State,

including any limits on operating time during the ozone season.

Section 6—*Monitoring, Recordkeeping and Reporting Requirements* requires continuous emissions monitoring, reporting, and recording in accordance with 40 CFR part 75, subpart H for the non-EGUs to be used to determine compliance with the requirements in section 5.

Section 7—*Violation* establishes enforcement provisions in the event a unit emits in excess of its ozone season NO<sub>x</sub> emission limitations established via section 5.

Section 8—*Ozone Season NO<sub>x</sub> Budget Demonstration* establishes a NO<sub>x</sub> ozone season budget of 2,184 tons for all applicable units in the State. Subsection 8.2 requires submittal to EPA of a demonstration showing that the sum of NO<sub>x</sub> emissions from all affected units does not exceed the ozone season NO<sub>x</sub> budget, based on each unit's permitted limits or consent order limits operating at maximum capacity (or at the operational limit if required in the permit or consent order). Subsection 8.3 requires that whenever a new unit meets the applicability requirements under section 4, the demonstration is required to be revised to show continuing compliance with the statewide NO<sub>x</sub> budget.

The July 13, 2016 SIP revision submittal did not include the demonstration required under section 8.2 of 45CSR40. On October 11, 2017, WVDEP submitted a supplemental SIP revision consisting of such demonstration showing that total ozone season emissions from large non-EGUs in the State subject to the NO<sub>x</sub> SIP Call do not exceed the West Virginia non-EGU ozone season trading budget of 2,184 tons.<sup>5</sup> The demonstration identifies seven sources that meet the applicability criteria for large non-EGUs subject to NO<sub>x</sub> SIP Call requirements. Table 1 in this proposed rulemaking shows that with these limits at maximum operating capacity, or at permitted operating time restrictions if applicable, the total NO<sub>x</sub> emissions from these sources subject to the NO<sub>x</sub> SIP Call are 941 tons, which is less than 50 percent of the West Virginia ozone season NO<sub>x</sub> budget of 2,184 tons.

<sup>5</sup> See 40 CFR part 97, Appendix C of Subpart E for non-EGU trading budgets for affected states.

TABLE 1—TOTAL OZONE SEASON NO<sub>x</sub> EMISSIONS FROM LARGE NON-EGUS IN WEST VIRGINIA

Source	Units (boiler #)	Maximum design heat input (mmBtu/hr)	Ozone season operating time (hrs)	NO <sub>x</sub> emission rate limit	Ozone season emissions
Appalachian Power Company, John E Amos .....	AUX1	642	876	0.20 lb/mmBtu ....	56
	AUX3	600	876	0.20 lb/mmBtu ....	53
Appalachian Power Company, Mountaineer .....	AUX1	600	876	99.67 pounds per hour (lb/hr).	44
	AUX2	600	876	99.67 lb/hr .....	44
Westlake Chemical, Natrium .....	5	999	3,672	0.16 lb/mmBtu ....	293
Chemours Company, Belle .....	10	275	3,672	0.20 lb/mmBtu ....	101
Kentucky Power Company, Mitchell .....	AUX1	663	876	99.45 lb/hr .....	44
Union Carbide .....	16	350	3,672	.036 lb/mmBtu ....	23
Corporation, Institute .....	17	350	3,672	.036 lb/mmBtu ....	23
Union Carbide Corporation, South Charleston .....	26	352	3,672	70.4 lb/hr .....	130
	27	353	3,672	70.6 lb/hr .....	130
Total Ozone Season NO <sub>x</sub> (tons) .....					941

The October 11, 2017 West Virginia supplemental SIP submission of an initial demonstration shows that total ozone season NO<sub>x</sub> emissions from non-EGUs in the State 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 that the State established in its SIP in 2002 responding to the NO<sub>x</sub> SIP Call.<sup>6</sup> The maximum potential ozone season NO<sub>x</sub> emissions of 941 tons based on permit limits shown in Table 1 for Appalachian Power, Westlake Chemical, Kentucky Power, and Union Carbide and the Consent Order limits for Chemours is less than 50 percent of the total West Virginia NO<sub>x</sub> budget and leaves 1,245 tons in the budget 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 (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 45CSR40 to submit a revised demonstration to EPA that shows continuing compliance with the state-wide emissions cap of 2,184 tons. EPA finds West Virginia's revised provisions in 45CSR40 meet requirements for NO<sub>x</sub> SIP Call in CAA (including section 110) and 40 CFR 51.121 for the large non EGUs.

<sup>6</sup> See 67 FR 31733, 31735 (May 10, 2002). EPA notes that the non-EGU budget amount adopted by West Virginia in its NO<sub>x</sub> Budget Trading Program regulations matches the budget amount separately established for the state's non-EGUs under a different federal rule promulgated contemporaneously with the NO<sub>x</sub> SIP Call pursuant to CAA section 126. See 40 CFR part 97, subpart E, appendix C.

#### Recodification of Previously SIP-Approved Provisions

The previously SIP-approved section 90 of 45CSR40 (effective 200x) entitled *Ozone Season NO<sub>x</sub> Reduction Requirements for Stationary Internal Combustion Engines* has been recodified as section 9. Other than revisions to cross referencing necessitated by the recodification and removal of references to the CAIR program, the provisions in section 9 which were formerly in section 90 are unchanged and include the same ozone season NO<sub>x</sub> caps for affected sources and compliance requirements including a compliance plan, monitoring, recordkeeping, and reporting requirements for IC engines as was in the regulation when EPA previously approved 45CSR40 for the West Virginia SIP.

Similarly, section 100 of 45CSR40 entitled *Ozone Season NO<sub>x</sub> Reduction Requirements for Emissions of NO<sub>x</sub> from Cement Manufacturing Kilns* has been recodified as section 10. Other than revisions to cross referencing necessitated by the recodification, the provisions in section 10 which were formerly in section 100 for cement kilns are unchanged and include the same requirements for specific controls (or reductions equivalent to that achieved by the control) and compliance plan requirements, and monitoring, recordkeeping, and reporting requirements for cement kilns as was in the regulation when EPA previously approved 45CSR40 for the West Virginia SIP.

The changes West Virginia has made to 45CSR40 are approvable under CAA section 110 because—(1) CAIR has been replaced by CSAPR and thus removal of CAIR provisions is appropriate; (2) the applicability provisions at section 4.1 of 45CSR40 cover all existing and new

NO<sub>x</sub> SIP Call non-EGUs not subject to the current CSAPR trading program for ozone season NO<sub>x</sub> emissions; (3) the enforceable cap on collective ozone season NO<sub>x</sub> emissions from covered non-EGUs in section 8.1 of the State's rule does not exceed the non-EGU emissions budget adopted by West Virginia in its SIP responding to the NO<sub>x</sub> SIP Call and identified in 40 CFR part 97, subpart E, appendix C.; (4) monitoring, recordkeeping and reporting in accordance with 40 CFR part 75 continue to be required for the non-EGUs; (5) the cement kiln and IC engine provisions are identical to requirements previously applicable to such sources in the West Virginia SIP and are merely recodified; and (6) the revised 45CSR40 generally addresses the requirements for large non-EGUs for the NO<sub>x</sub> SIP Call pursuant to 40 CFR 51.121. The SIP revision addresses provisions in CAA section 110(l) for revisions to a state's SIP because it maintains the NO<sub>x</sub> ozone season budget originally established under the NO<sub>x</sub> SIP Call and in the West Virginia SIP, removes the obsolete CAIR provisions, and recodifies other provisions maintaining requirements already in the SIP for cement kilns and IC engines. Thus, EPA does not expect any emission increases, or interference with attainment or maintenance of the NAAQS, reasonable further progress or any other CAA requirements.

On February 8, 2018, WVDEP provided a letter clarifying a provision in the July 13, 2016 SIP submittal. The letter is available in the docket for this rulemaking and is available on [www.regulations.gov](http://www.regulations.gov). Specifically, subsection 4.1 of 45CSR40, which sets forth applicability provisions, exempted any unit that is already subject to the CSAPR NO<sub>x</sub> Ozone Season Trading

program under 40 CFR part 97 Subpart BBBB. The letter explains that when West Virginia revised regulation 45CSR40, it cited to the CSAPR NO<sub>x</sub> Ozone Season Trading Program that was in effect at the time the rule was finalized. Subsequent to WVDEP's submission of the SIP revision in 2016, EPA finalized an update to CSAPR that removed EGUs in West Virginia from the original CSAPR trading program for ozone season NO<sub>x</sub> emissions at 40 CFR part 97, subpart BBBB and instead made the state's EGUs subject to the new CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program at 40 CFR part 97, subpart EEEEE. The February 8, 2018 letter clarifies that the West Virginia regulation was intended to refer to current provisions of CSAPR, and thus is intended to refer to the updated CSAPR provisions. The letter states that West Virginia will work towards revising 45CSR40 as expeditiously as possible to conform the regulation to refer to currently enforceable CSAPR provisions and will submit the revised 45CSR40 as a SIP revision to EPA for approval once the regulation correctly refers to 40 CFR part 97, subpart EEEEE.<sup>7</sup> EPA finds 45CSR40 approvable for the West Virginia SIP (despite this inadvertent incorrect citation to CSAPR using subpart BBBB in lieu of subpart EEEEE) as the revised regulation 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 as discussed specifically above and because West Virginia clarified its intent to refer specifically to provisions of CSAPR presently enforceable and its intent to address the minor citation cross reference expeditiously with a future SIP revision submittal.

### III. Proposed Action

EPA's review of this material indicates the July 13, 2016 SIP revision submittal as supplemented on October 11, 2017 and clarified on February 8, 2018 is approvable. The 2016 SIP submission as amended by the 2017 submission and clarified on February 8, 2018, requests EPA include the amended version of 45CSR40 in the West Virginia SIP. Amended regulation 45CSR40 removes the moot provisions that implemented the CAIR NO<sub>x</sub> Ozone Season Trading Program, establishes new requirements to address the NO<sub>x</sub> SIP Call obligations for large non-EGUs in the State that were trading under CAIR but are no longer part of a trading

program, establishes an enforceable statewide cap on ozone season NO<sub>x</sub> emissions for these non-EGUs in accordance with West Virginia's state budget under the NO<sub>x</sub> SIP Call, and recodifies previously SIP-approved provisions that apply to IC engines and cement kilns. The non-EGUs are also required to meet the monitoring, recordkeeping, and reporting requirements under 40 CFR part 75, as required under 50 CFR 51.121. The October 11, 2017 supplemental submittal demonstrates that the total NO<sub>x</sub> emissions from all affected non-EGUs in West Virginia are less than the State cap previously established for West Virginia. As the amended regulation establishes a NO<sub>x</sub> emissions cap equal to the amount of the West Virginia NO<sub>x</sub> budget under the NO<sub>x</sub> SIP Call as discussed in this proposal and West Virginia has demonstrated that emissions from non-EGUs are well below the cap, there is no expected emissions impact on any pollutant and thus SIP revision is not expected to interfere with reasonable further progress, any NAAQS or any other CAA requirement, therefore meeting the requirements under section 110(l) of the CAA. EPA is proposing to approve the West Virginia SIP revision submitted on July 13, 2016, as supplemented on October 11, 2017, because the revised 45CSR40 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. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IV. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in a final EPA rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the revisions to West Virginia regulation 45CSR40—Control of Ozone Season Nitrogen Oxides Emissions. EPA has made, and will continue to make, these materials generally available through <http://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).

### V. 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 (Pub. L. 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 action proposing approval of revisions to West Virginia regulation 45CSR40 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.

<sup>7</sup> West Virginia has drafted the revision to 45CSR40 that corrects the reference to CSAPR, and expects to finalize the revision in its 2019 legislative session.

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone,

Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: August 9, 2018.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

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