

**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 2012 PM <sub>2.5</sub> NAAQS.	* Statewide .....	* 11/17/15	* 10/5/18 [ <i>Insert Federal Register citation</i> ].	* Docket #2016–0373. This action addresses CAA section 110(a)(2)(D)(i)(I) (prongs 1 and 2).

[FR Doc. 2018–21668 Filed 10–4–18; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2017–0503; FRL–9984–95–Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Minor New Source Review Permitting**

**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 changes to West Virginia’s minor New Source Review (NSR) permit program. This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on November 5, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0503. 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:** Mr. David Talley, (215) 814–2117, or by email at [talley.david@epa.gov](mailto:talley.david@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On June 18, 2018 (83 FR 28179), EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the NPRM, EPA proposed approval of revisions to West Virginia’s minor NSR regulations, “45CSR13—Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permissions to Commence Construction, and Procedures for Evaluation,” as a revision to the West Virginia SIP. The formal SIP revision was submitted by the West Virginia Department of Environmental Protection (WVDEP) on behalf of the State of West Virginia on June 6, 2017.

Section 110(a)(2)(C) of the CAA requires SIPs to include a preconstruction permit program for both

major and minor sources. More specifically, SIPs must include the permit programs required under subpart C of title I and must have minor preconstruction programs that assure that the national ambient air quality standards (NAAQS) are maintained. Additionally, 40 CFR 51.160 through 51.163 outline the federal requirements which apply to minor permit issuance, including the required administrative and federally enforceable procedures, and the procedures for public participation. Under the minor source permitting rules under the Code of State Rules (CSR) at 45CSR13, West Virginia implements minor preconstruction program requirements by issuing permits to: (1) Construct and operate new stationary sources which are not major sources, (2) modify non-major stationary sources, (3) make non-major modifications to existing major stationary sources, and (4) relocate non-major stationary sources. These rules also establish requirements for obtaining a temporary permit and Class I and Class II general permit registration. EPA last approved a revision to 45CSR13 on July 21, 2014. *See* 79 FR 42211.

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

*A. Summary of SIP Revision*

WVDEP’s June 6, 2017 SIP submittal contains a number of revisions to 45CSR13, many of them administrative or clarifying in nature. The non-administrative changes include: (1)

Revisions to the definitions of modification and stationary source; (2) Revisions to and clarifications of the provisions allowing applicants to store equipment onsite prior to receiving a permit; and (3) Revisions to the applicability criteria for Class I and Class II administrative updates.

#### B. EPA Analysis

##### 1. “Modification” and “Stationary Source” Definition Changes

WVDEP added language excluding greenhouse gas (GHG) emissions under the definitions of “Modification” and “Stationary Source” at 45CSR13 sections 45–13–2.17.a and 45–13–2.24.b, respectively. The specific language added to both definitions is as follows, “. . . other than emissions of any one or the aggregate of all GHGs, the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.” The addition of this language to both definitions clarifies that GHG emissions are not subject to the minor NSR permitting requirements of 45CSR13. In accordance with West Virginia’s Prevention of Significant Deterioration (PSD) regulations at 45CSR14, preconstruction permitting requirements for GHG sources are only triggered for major sources or major modifications, and only when such source/modification is already “major” for another pollutant (*i.e.*, a source cannot be “major” for GHGs alone). This is consistent with the federal PSD regulations at 40 CFR 51.166 and 52.21. Additionally, these revisions are appropriate and meet the federal requirements of 40 CFR 51.160 and 51.161, and CAA section 110(a)(2)(C). Further, GHGs are not a criteria pollutant, and there are no GHG nonattainment areas. Therefore, the revisions are in accordance with section 110(l) of the CAA because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

##### 2. “Store-on-Site” Clarifications

WVDEP’s previously approved regulations allow sources to “(r)eceive or store on-site or off-site any equipment or supplies which make up in part or in whole an emission unit or any support equipment, facilities, building or structure,” prior to receiving a permit under 45CSR13.<sup>1</sup> See 45CSR13 section

45–13–5.1.i. WVDEP’s June 6, 2017 submittal included a revision to 45–13–5.1.i which clarifies permissible on-site activities that do not constitute commencement of construction and clarifies that such supplies etc. may be stored on-site “. . . on its permanent pad or foundation or at any other location at the stationary source.” In addition, section 45–13–2 has been revised to add a definition of “store on-site” which clarifies that any equipment stored on-site must be kept in the same condition as it was received, and not “. . . modified, erected or installed.” See 45CSR13 subsection 45–13–2.26. As discussed in the NPRM in more detail, there are no corresponding federal minor NSR regulations for the definition of “commencement of construction,” “begin actual construction,” or corresponding federal minor NSR regulations laying out what on-site activities are allowable in the absence of a permit. Because the revisions do not allow for the construction or operation of an actual emissions unit prior to issuance of a permit, there are no increased emissions associated with any of the activities allowed by WVDEP’s “store onsite” provisions. Further, because a permit is required prior to erecting and operating any emissions units being stored on site, West Virginia’s program has legally enforceable procedures to prevent construction of a minor source or the minor modification of an existing source if it would violate SIP control strategies or interfere with attainment or maintenance of the NAAQS, as required by 40 CFR 51.160(b). Therefore, EPA finds these revisions approvable because they meet the requirements of CAA section 110(a)(2)(C) for a program for regulation of modification and construction of stationary sources in areas to assure the national ambient air quality standards are achieved and are consistent with 40 CFR 51.160–51.163 for review of new minor sources and minor modifications including required procedures and public availability of information. In addition, the revisions to 45 CSR13 are essentially adding conditions to an already SIP approved regulation for what on-site activities may occur before commencement of construction. Additionally, they are consistent with CAA section 110(l) because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

##### 3. Class I and Class II Administrative Updates

WVDEP’s June 6, 2017 submittal also revised the applicability criteria for sources seeking Class I and Class II administrative updates to minor NSR permits issued under 45CSR13.

The primary difference between Class I and II updates is that, pursuant to 45–13–4.1.d, public notice is not required for Class I updates. For Class II updates, WVDEP provides a 30-day public notice period, in accordance with 45–13–8.3. Additionally, sources requesting Class I amendments may make the change upon submitting the request, prior to receiving a revised permit from WVDEP. In WVDEP’s currently approved SIP, only changes to permit conditions which result in a *decrease* in emissions can be approved under a Class I update. Class II updates must be used for changes which result in an increase or no change in emissions. See 45CSR13 sections 45–13–4.2.a.8 and 45–13–4.2.b. WVDEP’s June 6, 2017 submittal revised those provisions so that rather than applying only to permit revisions which result in an emissions decrease, a Class I update can be used for a permit revision resulting in no emissions increase. A Class II update now must be used in instances where the revision would result in an emissions increase. EPA believes this is a reasonable approach to streamlining WVDEP’s administrative burden, and is approving them as a revision to the West Virginia SIP because they meet the requirements of 40 CFR 51.160–51.163 and CAA section 110(a)(2)(C) for permit programs regulating modification and construction of sources not subject to major new source review. Additionally, they are consistent with CAA section 110(l) because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement as all modifications resulting in an emissions increase are still subject to public notice and the change only affects notice on actions where there is no effect on emissions (and thus no affect likely on attainment or reasonable further progress).

##### 4. Non-Substantive Changes

In addition to the revisions previously discussed, WVDEP’s June 6, 2017 submittal included a number of non-substantive, clarifying and/or administrative changes. Some examples include the deletion of 45CSR13 section 45–13–1.5, which referenced the former version of 45CSR13, re-codifications required by insertions or deletions, (*e.g.*, 45CSR13 sections 45–13–2.26 through

<sup>1</sup> WVDEP’s “store on-site” provisions do not apply to major PSD or nonattainment NSR permits issued in accordance with 45CSR14 or 45CSR19.

45–13–28), and the deletion of 45CSR13 section 45–13–5.8, which was an antiquated reference to operating permits (permits issued under 45CSR13 include authorization to construct and operate). WVDEP’s submittal included an underline/strikeout version of the submittal so that all revisions to 45CSR13 can be seen. This is included in the docket for this action and online at [www.regulations.gov](http://www.regulations.gov).

These changes to 45CSR13 have been made in order to clarify and streamline the minor NSR program, and are appropriate and meet the federal requirements of 40 CFR 51.160 through 51.163, and CAA section 110(a)(2)(C). Additionally, the revisions are in accordance with section 110(l) of the CAA because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

### III. Public Comments and EPA Response

EPA received two sets of comments on the June 18, 2018 NPR. These comments are included in the docket for this action. However, one of the sets of comments did not concern any of the specific issues raised in the NPR, nor did they address EPA’s rationale for the proposed approval of WVDEP’s submittal. Therefore, EPA is not addressing them here. EPA did receive one set of relevant comments. Those comments, and EPA’s response, are discussed below.

*Comment 1:* The commenter takes issue with the revision to 45–13–5.1.i, specifically the addition of the language relating to “permanent pad(s)” or “foundation(s)” to the existing provision that allows sources to store materials onsite prior to receiving a preconstruction permit from WVDEP. The commenter asserts that the addition of the reference to pads and foundations imparts implicit approval for the construction of such facilities in the absence of a permit, and therefore conflicts with the definition of “begin actual construction” at 40 CFR 51.165(a)(1)(xv) and 40 CFR 52.21(b)(11),<sup>2</sup> and also conflicts with 40 CFR 51.160 (which requires SIPs to preclude the construction or modification of sources which would interfere with attainment or maintenance of the NAAQS). In support of this assertion, the commenter submitted a letter from EPA Region IX,

<sup>2</sup> Under both sets of regulations, and under 40 CFR 51.166, sources subject to those regulations may not “begin actual construction” without first obtaining the proper major source preconstruction permit.

commenting on regulations that were submitted to the Region by Maricopa County Air Quality Department (MCAQD) as an official SIP revision request.<sup>3</sup> In this letter, EPA identified MCAQD’s definition of “begin actual construction” relating to minor NSR as deficient because it “. . . allow[ed] various activities, such as the installation of underground pipework, and building and equipment supports . . .” contrary to the federal requirements and long standing agency policy regarding major NSR.<sup>4</sup> Commenter cited the EPA letter as stating such construction of building and equipment supports is not allowed without first obtaining a preconstruction permit.

*EPA Response 1:* In contrast to the considerable requirements prescribed for major NSR in 40 CFR 51.165, the CAA contains minimal requirements for minor NSR. CAA section 110(a)(2)(C) simply requires that each SIP include a program that provides for “. . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved . . .” The implementing regulations for minor NSR at 40 CFR 51.160–51.163 are similarly non-prescriptive. As a result, states have considerable discretion with regard to the implementation of their minor NSR programs as long as the program assures the national ambient air quality standards are attained. Therefore, as discussed in more detail below, EPA disagrees with the commenter’s assertion that a disapproval is warranted.

First, EPA does not interpret the inclusion of the reference to “permanent pad(s) or foundation(s)” in WVDEP’s revised definition of “store onsite” relating to allowable activities that occur before the commencement of construction to impart any permission for construction activities to occur prior to permit issuance that did not already exist in WVDEP’s regulations. Indeed, section 45–13–5.1.d allows sources to “Dig and construct foundations and/or caissons and grade beams.” While such activities would conflict with the federal definition of “begin actual construction” as it relates to major NSR, EPA believes it is within West Virginia’s discretion to allow such activities in the context of a minor NSR program as no definition of “begin actual construction” constrains minor NSR programs in CAA section 110(a)(2)(C) or

<sup>3</sup> The Region IX letter is included in the docket as an attachment to the comment letter.

<sup>4</sup> See Region IX comment letter at 4.

in 40 CFR 51.160–51.163. WVDEP’s regulations are very clear that these permissions do not extend to major sources or major modifications which are subject to WVDEP’s major nonattainment PSD and NSR regulations at 45CSR14 and 45CSR19, respectively (subsection 5.1). Further, they do not allow for the installation, erection, or operation of the emissions unit (subsection 5.2), and are undertaken at the sole risk of the operator (subsection 5.3). Any source operator who wishes to store equipment on a pad or foundation must still obtain a permit before erecting an emissions unit or any of the specialized appurtenances associated with the unit. Additionally, if a source operator undertakes any of the activities allowed under these minor NSR rules, and the construction or modification ends up having a potential to emit greater than major source thresholds, they are subject to major NSR liability. Any source that intends to take synthetic minor restrictions to avoid major source permitting requirements remains subject to 45CSR14 or 45CSR19 until such time as a permit with enforceable limits is issued, and is therefore not eligible for the flexibilities provided by subsections 45–13–5 and 45–13–16.<sup>5</sup>

EPA believes that granting the permission to store equipment on a foundation or pad prior to permit issuance of a minor NSR permit is within West Virginia’s discretion and does not compromise WVDEP’s ability to implement their minor NSR program in such a way to assure compliance with the NAAQS in accordance with CAA section 110(a)(2) and 40 CFR 51.160. With regard to Region IX’s letter to MCAQD, the comment does not undertake any analysis of the similarities or differences between MCAQD’s SIP submittal and West Virginia’s proposed regulatory revisions, nor compared to WVDEP’s program. Therefore, any similarities or differences between MCAQD’s regulations and WVDEP’s program are not relevant to the main issue in this rulemaking which is whether WVDEP’s regulations may be approved for the SIP as being consistent with CAA requirements. EPA has explained in the NPR and in this rulemaking why WVDEP’s revisions meet CAA requirements in both CAA section 110(a)(2)(C) and in 40 CFR 51.160–51.163. Notably, there is no federal regulatory requirement of “begin actual construction” for minor NSR in CAA or in 40 CFR 51.161–51.163. Further, EPA notes that in an August 17,

<sup>5</sup> Subsection 45–13–16.2.b expressly excludes sources seeking synthetic minor limits.

2017 notice of proposed rulemaking, EPA proposed to approve for the South Carolina SIP minor NSR program similar provisions to West Virginia's relating to permissible on-site activities allowable pre-permit. In that rulemaking proposal, EPA found that provisions allowing sources to pour concrete foundations prior to issuance of a minor NSR permit were “. . . not inconsistent with the requirements of the CAA and EPA's regulations, and are therefore approvable as part of the SIP.” See 82 FR 39085. EPA made similar determinations in final rulemaking actions for Mississippi<sup>6</sup> and Wisconsin<sup>7</sup>. Thus, despite the EPA comment letter cited by commenter, EPA disagrees with commenter that EPA's action to approve the West Virginia revision contradicts EPA regulations or policy. Accordingly, EPA is approving WVDEP's June 6, 2018 submittal as a revision to the West Virginia SIP.

*Comment 2:* The commenter asserts that “To allow a whole or even part of an emission unit to be stored on site before issuance of a permit to construct violates the intent of new source review permitting requirements,” and that because West Virginia “. . . has resubmitted Rule 45–13–5.1.i for approval into the SIP, the entire subsection is subject to review for approvability,” and EPA should disapprove the entire subsection. Commenter also states that EPA is incorrect in finding the SIP revision will not interfere with any other applicable CAA requirement per CAA section 110(l) because the West Virginia revision is inconsistent with CAA and longstanding EPA policy.

*EPA Response 2:* EPA does not disagree with the commenter's assertion that the entire subsection of 45 CSR13 is subject to review for approvability. However, other than the language on revise “on-site” activities, commenter does not cite to other inconsistencies in West Virginia's regulations. As stated above in response to the first comment, EPA disagrees that West Virginia's “store onsite” provisions violate the intent of NSR. The PSD provisions of the CAA prohibit commencement of construction without first obtaining the required permit authorizing construction; however, the requirement only applies to major sources, and no such restriction is specified under the minor NSR program requirements set forth in 40 CFR 51.160. In addition, EPA has made determinations which further support that limited construction may

begin before a permit is issued for minor sources. For example, EPA's October 10, 1978, memorandum from Edward E. Reich to Thomas W. Devine in Region 1 discusses limited preconstruction activities allowed at a site with both PSD and non-PSD sources. This memo states that construction may begin on PSD-exempt projects before the permit is issued. EPA has established its position that such limited waivers are acceptable for true minor sources in previous rulemaking. (See 68 FR 2217 and 73 FR 12893.) In addition, in a December 18, 1978 memo entitled “Interpretation of ‘Constructed’ as it Applies to Activities Undertaken Prior to Issuance of a PSD Permit,”<sup>8</sup> EPA attempted to clarify activities which would, in all cases, require a source operator to obtain a major NSR permit before undertaking, as well as activities which in all cases would not: “The new policy is that certain limited activities will be allowed in all cases. These allowable activities are planning, ordering of equipment and materials, site-clearing, grading, and *on-site storage of equipment and materials* (emphasis added).” Clearly, if such activities are acceptable prior to issuance in the context of the considerably more prescriptive major NSR program, West Virginia is well within its discretion to allow similar on-site activities under its minor NSR program for which the CAA and federal regulations provide less regulatory requirements. Accordingly, EPA is approving WVDEP's June 6, 2018 submittal as a revision to the West Virginia SIP as nothing in the minor NSR requirements in the CAA or in 40 CFR part 51 prohibit West Virginia from allowing certain on-site activities such as those West Virginia has added prior to issuance of a construction permit.

Finally, EPA disagrees with the commenter's general assertion that EPA is incorrect in finding the SIP revision will not interfere with any other applicable CAA requirement per CAA section 110(l). As EPA has explained in response to first and second comment, there are no federal requirements in the CAA or federal regulations that address allowable on-site activities prior to issuance of a permit. As EPA has found West Virginia's regulations reasonable and within the scope of CAA requirements for minor NSR programs, EPA is approving the revisions as in accord with CAA section 110. Our

<sup>8</sup> The commenter cites this memo as well as three others in defense of their claims. See fn5 of comment letter. None of these memos speak directly to the issue of activities allowed pre-permit in the context of minor NSR.

approval is consistent with similar SIP revision approvals for South Carolina and Mississippi as discussed above.

#### IV. Final Action

EPA is approving WVDEP's June 6, 2017 SIP submittal as a revision to the West Virginia SIP because the revisions meet the requirements of 40 CFR 51.160–51.163 and CAA section 110(a)(2)(C). Additionally, they are consistent with CAA section 110(l) because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

#### V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the WVDEP rules regarding minor source permitting requirements discussed in section II of this preamble. 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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>9</sup>

#### VI. 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,

<sup>9</sup> 62 FR 27968 (May 22, 1997).

<sup>6</sup> See 71 FR 38773 (July 10, 2006).

<sup>7</sup> See 73 FR 12893 (March 11, 2008).

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 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 December 4, 2018. 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 related to West Virginia’s minor NSR program 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 24, 2018.

**Cosmo Servidio,**

*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 (c) entitled “EPA-Approved Regulations in the West Virginia SIP” is amended by revising the entries for sections 45-13-1 through 45-1-16, 45-13A, and 45-13B to read as follows:

**§ 52.2520 Identification of plan.**

\* \* \* \* \*  
(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
*	*	*	*	*
<b>[45 CSR] Series 13 Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permission to Commence Construction and Procedures for Evaluation</b>				
Section 45-13-1 .....	General .....	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	Administrative changes.
Section 45-13-2 .....	Definitions .....	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	Revised definitions of “modification,” “stationary source,” and “store on-site.”
Section 45-13-3 .....	Reporting Requirements for Stationary Sources.	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	New state effective date.
Section 45-13-4 .....	Administrative Updates to Existing Permits and General Permit Registrations.	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	Revised sections 4.1.d, 4.2, 4.2.a.8, and 4.2.b.1.

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [chapter 16–20 or 45 CSR ]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–13–5 .....	Permit Application and Reporting Requirements for Construction of and Modifications to Stationary Sources.	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	Revised section 5.1.e, 5.1.i; deleted existing section 5.8; renumbered following sections.
Section 45–13–6 .....	Determination of Compliance of Stationary Sources.	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	New state effective date.
Section 45–13–7 .....	Modeling .....	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	New state effective date.
Section 45–13–8 .....	Public Review Procedures .....	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	Revised section 8.1.
Section 45–13–9 .....	Public Meetings .....	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	New state effective date
Section 45–13–10 .....	Permit Transfer, Suspension, Revocation and Responsibility.	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	Administrative changes.
Section 45–13–11 .....	Temporary Construction or Modification Permits.	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	Administrative changes.
Section 45–13–12 .....	Permit Application Fees .....	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	New state effective date.
Section 45–13–13 .....	Inconsistency Between Rules .....	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	Administrative changes.
Section 45–13–14 .....	Statutory Air Pollution .....	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	New state effective date.
Section 45–13–15 .....	Hazardous Air Pollutants .....	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	Administrative changes.
Section 45–13–16 .....	Application for Permission to Commence Construction in Advance of Permit Issuance.	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	Administrative changes.
Table 45–13A .....	Potential Emission Rate .....	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	New state effective date.
Table 45–13B .....	De Minimus Sources .....	6/1/17	10/5/18 [Insert <b>Federal Register</b> citation].	Administrative changes.
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 [FR Doc. 2018–21557 Filed 10–4–18; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2018–0550; FRL–9985–00–Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; 2018 Amendments to West Virginia’s 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 State of West Virginia. This revision updates the effective date by which the state incorporates by reference the national ambient air quality standards (NAAQS) as well as their monitoring reference and equivalent methods. EPA is approving this revision to the West Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on November 5, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2018–0550. All documents in the docket are listed on the <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:** Joseph Schulingkamp, (215) 814–2021, or by email at [schulingkamp.joseph@epa.gov](mailto:schulingkamp.joseph@epa.gov).

**SUPPLEMENTARY INFORMATION:**