

Nitrogen dioxide, Ozone, Volatile organic compounds.

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

**Dated:** August 5, 2019.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2019-17667 Filed 8-15-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2013-0299 and EPA-R03-OAR-2019-0349; FRL-9998-34-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; State Implementation Plans for the Cross-State Air Pollution Rule and for the Interstate Transport Requirements of the 2008 Ozone Standard

**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, one submitted on March 27, 2018, and one on June 5, 2019. The June 5, 2019 submittal consists of a regulation that adopts the Cross-State Air Pollution Rule (CSAPR). Under the Federal CSAPR, large electricity generating units (EGUs) in West Virginia are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's Federal trading program for annual emissions of nitrogen oxides (NO<sub>x</sub>), one of CSAPR's two Federal trading programs for annual emissions of sulfur dioxide (SO<sub>2</sub>), and one of CSAPR's two Federal trading programs for ozone season emissions of NO<sub>x</sub>. This action would approve the State's regulation requiring large West Virginia EGUs to participate in new CSAPR state trading programs for annual NO<sub>x</sub>, annual SO<sub>2</sub>, and ozone season NO<sub>x</sub> emissions integrated with the CSAPR Federal trading programs, replacing the corresponding FIP requirements. EPA is proposing to approve the SIP revision because the submittal meets the requirements of the Clean Air Act (CAA) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of the SIP revision would automatically eliminate West Virginia EGU's requirements under the corresponding CSAPR FIPs, thereby

addressing West Virginia's interstate transport (or "good neighbor") obligations for the 1997 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS), the 2006 PM<sub>2.5</sub> NAAQS, and the 2008 ozone NAAQS. Like the CSAPR FIP requirements that would be replaced, approval of the SIP revision would fully satisfy West Virginia's good neighbor obligations for the 1997 PM<sub>2.5</sub> NAAQS, the 2006 PM<sub>2.5</sub> NAAQS, and the 2008 ozone NAAQS.

In conjunction with EPA's proposed approval of West Virginia's June 5, 2019 CSAPR regulation, EPA is also proposing to approve West Virginia's March 27, 2018 submittal related to West Virginia's good neighbor obligations under the 2008 ozone NAAQS. These actions are being taken in accordance with the CAA.

**DATES:** Written comments must be received on or before September 16, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2013-0299 (for the West Virginia 2008 ozone good neighbor SIP) and EPA-R03-OAR-2019-0349 (for the West Virginia CSAPR SIP) at <https://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.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:** Marilyn Powers, Planning & Implementation Branch (3AD30), Air and Radiation Division, U.S.

Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Ms. Powers can be reached at (215) 814-2308, or via electronic mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** On March 27, 2018, West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), supplemented its February 17, 2012 infrastructure SIP for the 2008 ozone NAAQS to satisfy the requirements of CAA section 110(a)(2)(D)(i)(I). The March 27, 2018 submittal requested conditional approval contingent on the State's adoption of the emission reduction requirements of 40 CFR 97, subpart EEEEE, the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program. On June 5, 2019, EPA received a SIP revision submittal from WVDEP seeking to incorporate the requirements of 40 CFR 97, subparts AAAAA (CSAPR NO<sub>x</sub> Annual Trading Program), CCCCC (CSAPR SO<sub>2</sub> Group 1 Trading Program), and EEEEE (CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program) into the West Virginia SIP (West Virginia CSAPR SIP). The June 5, 2019 submittal requested that EPA fully approve the March 27, 2018 submittal instead of the conditional approval West Virginia originally requested.

### I. Background

#### 1. Cross-State Air Pollution Rule (CSAPR)

On August 8, 2011, and October 26, 2016, EPA issued the Cross-State Air Pollution Rule (CSAPR) and the CSAPR Update, respectively, to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution.<sup>1</sup> As amended (including by the CSAPR Update), CSAPR requires 27 eastern states to limit their statewide emissions of sulfur dioxide (SO<sub>2</sub>) and/or oxides of nitrogen (NO<sub>x</sub>) in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four national ambient air quality standards (NAAQS): The 1997 annual fine particulate matter (PM<sub>2.5</sub>) NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, the 1997 ozone NAAQS, and the 2008 ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO<sub>2</sub>, annual NO<sub>x</sub>, and/or ozone season NO<sub>x</sub> by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of general increasing stringency:

<sup>1</sup> See 76 FR 48208 (August 8, 2011) and 81 FR 74504 (October 26, 2016).

The Phase 1 budgets apply to emissions in 2015 and 2016; and the Phase 2 and CSAPR Update budgets apply to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five Federal emissions trading programs: A program for annual NO<sub>x</sub> emissions; two geographically separate programs for annual SO<sub>2</sub> emissions; and two geographically separate programs for ozone season NO<sub>x</sub> emissions. CSAPR also establishes requirements in a FIP applicable to the large EGUs in each covered state.<sup>2</sup> Currently, the CSAPR FIP provisions require each state's units to participate in up to three of the five CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA may approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's Federal emissions trading programs or state emissions trading programs integrated with the Federal programs, provided that the SIP revisions meet all relevant criteria.<sup>3</sup> Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any states elected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's Federal trading programs for ozone season NO<sub>x</sub> emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller EGUs.<sup>4</sup> If a state wants to replace the CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the Federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes

to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR Federal trading programs may submit SIP revisions to modify or replace the FIP requirements with respect to some or all of those trading programs.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.<sup>5</sup> Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations. Under the first alternative—an “abbreviated” SIP revision—a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR Federal trading program for the state.<sup>6</sup> Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant Federal trading program in place for the state's units. Under the second alternative—a “full” SIP revision—a state may submit a SIP revision that upon approval replaces a CSAPR Federal trading program for the state with a state trading program integrated with the Federal trading program, so long as the state trading program is substantively identical to the Federal trading program or does not substantively differ from the Federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.<sup>7</sup> For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the Federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision, two of which are potentially relevant to West Virginia.<sup>8</sup> First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's SIP that was the basis for a particular set of CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR

Federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP revision as meeting the requirements of the CSAPR regulations is full and unconditional.<sup>9</sup> Second, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the Federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.<sup>10</sup>

In the 2011 CSAPR rulemaking, EPA determined that air pollution transported from West Virginia would unlawfully affect other states' ability to attain or maintain the 1997 PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 ozone NAAQS and therefore included the State's EGUs in the CSAPR Federal trading programs for SO<sub>2</sub> and annual NO<sub>x</sub>, fully addressing the State's obligations regarding transported PM<sub>2.5</sub> pollution, and the original CSAPR Federal trading program for ozone season NO<sub>x</sub>, fully addressing the State's obligations regarding transported ozone pollution with respect to the 1997 ozone NAAQS.<sup>11</sup> Upon judicial review, the State's CSAPR Phase 2 budget for ozone season NO<sub>x</sub> was remanded to EPA for reconsideration.<sup>12</sup> In the 2016 CSAPR Update rulemaking, based on updated data and analysis, EPA determined that air pollution transported from West Virginia would no longer unlawfully affect other states' ability to attain or maintain the 1997 ozone NAAQS but would unlawfully affect other states' ability to attain or maintain the 2008 ozone NAAQS, and EPA therefore included the State's EGUs in the CSAPR Update Federal trading program for ozone season NO<sub>x</sub> as a partial remedy addressing the State's good neighbor obligations with respect to the 2008 ozone NAAQS.<sup>13</sup> Most recently, in a 2018 action, based on further updated data and analyses, EPA determined that implementation of the ozone season

<sup>2</sup> States are required to submit good neighbor SIPs three years after a NAAQS is promulgated. CAA section 110(a)(1) and (2). Where EPA finds that a state fails to submit a required SIP or disapproves a SIP, EPA is obligated to promulgate a FIP addressing the deficiency. CAA section 110(c)(1).

<sup>3</sup> See 40 CFR 52.38 and 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR Federal trading programs or integrated state trading programs.

<sup>4</sup> States covered by both the CSAPR Update and the NO<sub>x</sub> SIP Call have the additional option to expand applicability under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program to include non-EGUs that would have participated in the NO<sub>x</sub> Budget Trading Program.

<sup>5</sup> CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 (or 2018 for CSAPR NO<sub>x</sub> Ozone Season Group 2 units) and is not relevant here. See 40 CFR 52.38(a)(3), (b)(3), (b)(7); 52.39(d), (g).

<sup>6</sup> See 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.29(e), (h).

<sup>7</sup> See 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

<sup>8</sup> Because there is no Indian country within West Virginia's borders, the possible consequences of construction of new EGUs in Indian country are not relevant here.

<sup>9</sup> See 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

<sup>10</sup> See 40 CFR 52.38(a)(7), (b)(11); 52.39(k).

<sup>11</sup> See 76 FR at 48209–13; see also 40 CFR 52.38(a)(2)(i), 52.39(b).

<sup>12</sup> *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 138 (D.C. Cir. 2015).

<sup>13</sup> See 81 FR at 74506–09. EPA also ended requirements for West Virginia's EGUs to participate in the original CSAPR ozone season NO<sub>x</sub> trading program after 2016. See 40 CFR 52.38(b)(2)(ii)–(iii).

NO<sub>x</sub> budgets established in the 2016 CSAPR Update rulemaking for West Virginia and 19 other states now represents a full remedy for the states' interstate transport obligations with respect to the 2008 ozone NAAQS.<sup>14</sup>

As a result of the three actions just discussed, West Virginia units meeting the CSAPR applicability criteria are currently subject to FIP requirements for participation in three CSAPR (or CSAPR Update) Federal trading programs that fully address the State's interstate transport obligations with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS and the 2008 ozone NAAQS. This proposed action would incorporate into the SIP the CSAPR state trading program regulations to replace the three currently applicable CSAPR Federal trading program regulations for West Virginia units, thereby fully addressing through SIP provisions the State's interstate transport obligations with respect to each of these three NAAQS.<sup>15</sup>

## 2. Infrastructure SIP for the 2008 Ozone NAAQS

On March 27, 2008 (73 FR 16436), EPA promulgated an ozone NAAQS that revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm. Pursuant to CAA section 110(a)(1), within three years after promulgation of a new or revised NAAQS (or shorter, if EPA prescribes), states must submit SIPs that meet the applicable requirements of section 110(a)(2). EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), also known as the "good neighbor" provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution. There are four sub-elements, or "prongs," within section 110(a)(2)(D)(i) of the CAA. CAA section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two provisions of this section

are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance). Section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). This proposed action addresses only prongs 1 and 2 of section 110(a)(2)(D)(i). The other portions of section 110(a)(2)(D), specifically 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii), were addressed in EPA's approval of West Virginia's February 17, 2012 SIP submission.<sup>16</sup>

## II. Summary of West Virginia's SIP Revisions

Because EPA had not at that time determined that the CSAPR Update constituted a full remedy, on March 27, 2018, West Virginia submitted a SIP revision to address its remaining interstate transport obligations for the 2008 8-hour ozone NAAQS. The submittal was intended to show that the emission reductions required by the CSAPR Update, along with other existing measures, are adequate to prohibit emissions in West Virginia from significantly contributing to nonattainment, or interfering with the maintenance, of downwind states with respect to the 2008 ozone NAAQS. In the submittal, West Virginia stated its intent to adopt the requirements of 40 CFR 97, subpart EEEEE. The submittal letter requested that EPA conditionally approve the submittal, with the condition that West Virginia adopt the requirements of the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program under subpart EEEEE (West Virginia rule 45 CSR 43) and submit the rule to EPA for approval.

West Virginia's June 5, 2019 submittal is comprised of West Virginia regulation 45 CSR 43, entitled *Cross-State Air Pollution to Control Annual Nitrogen Oxides Emissions, Annual Sulfur Dioxide Emissions, and Ozone Season Nitrogen Oxides Emissions*, which is intended to replace the CSAPR FIP for the corresponding Federal trading programs. The regulation generally incorporates by reference the requirements of 40 CFR 97, subparts AAAAA, CCCCC, and EEEEE, with exception of the provisions that are applicable to Indian Country and the

provisions for allowance allocations (for which 45 CSR 43 established new provisions substantively identical to the analogous provisions of 40 CFR 97 applicable to West Virginia, with budgets starting in 2019).<sup>17</sup> Specifically, section 45-43-3 incorporates by reference most of the provisions of the three Federal trading programs, while sections 45-43-4, 45-43-5, and 45-43-6 adopt the amounts of the emissions budgets, new unit set-asides, and variability limits that apply to West Virginia units for, respectively, the CSAPR NO<sub>x</sub> Annual Trading Program, the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, and the CSAPR SO<sub>2</sub> Group 1 Trading Program. In its June 5, 2019 submittal, WVDEP also requested that EPA grant full rather than conditional approval of its March 27, 2018 transport SIP submittal because the reason for previously requesting only conditional approval of the transport SIP submittal no longer applied.

## III. EPA Analysis

West Virginia's June 5, 2019 submittal is a full CSAPR SIP submission that is intended to replace the Federal CSAPR trading programs with state trading programs integrated with the Federal trading programs and does not seek to alter either allowance allocations or applicability. Under 40 CFR 52.38 and 52.39, a full CSAPR SIP revision of this nature must meet the following criteria:

- *Complete, substantively identical trading program provisions.* The SIP revision must adopt complete state trading program regulations substantively identical to the complete Federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, 97.702 through 97.735, or 97.802 through 97.835, as applicable.
- *Only non-substantive substitutions for the term "State."* The SIP revision may substitute the name of the state for the term "State" as used in the Federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the trading program regulations.
- *Exclusion of provisions addressing units in Indian country.* The SIP

<sup>17</sup> Although West Virginia rule 45 CSR 43 establishes 2019 as the beginning year for EGU budgets, new unit set-asides, and variability limits under the State's rule, allocations have already been recorded under the CSAPR FIPs for the control periods through 2022 for the CSAPR NO<sub>x</sub> Ozone Season Group 2 trading program and through 2023 for the CSAPR NO<sub>x</sub> Annual and CSAPR SO<sub>2</sub> Group 1 trading programs. Allocations under the West Virginia CSAPR SIP (which are identical to the allocations under the FIPs) will therefore start with the 2023 and 2024 control periods.

<sup>14</sup> See 83 FR 65878 (December 21, 2018).

<sup>15</sup> As noted earlier, EPA determined in the CSAPR Update that West Virginia has no remaining good neighbor obligation with respect to the 1997 ozone NAAQS.

<sup>16</sup> EPA approved West Virginia's February 17, 2012 infrastructure SIP submittal on April 7, 2014 (79 FR 19001), which did not include a submission for the 2008 ozone good neighbor SIP.

revision may not impose requirements on any unit in any Indian country within the state's borders and must not include the Federal trading program provisions governing allocation of allowances from any Indian country new unit set-aside for the state.

Under the West Virginia CSAPR SIP, the subject EGUs in the State would participate in state trading programs that are integrated with and identical to the Federal trading programs with respect to the applicability provisions, allocation methodology, NO<sub>x</sub> ozone season budget, and other provisions that apply to units in West Virginia under the Federal trading programs. As noted above, the West Virginia CSAPR SIP submittal generally incorporates by reference the corresponding Federal trading programs under the CSAPR FIP, and is therefore substantively identical to the CSAPR FIP West Virginia seeks to replace. The SIP submittal replaces the provisions in 40 CFR 97.404, 97.604, and 97.804 that generically refer to a "State" and to "Indian Country" within a state to refer instead only to West Virginia. The SIP submittal also adopts only the emissions budget, new unit set-aside, and variability limit amounts that apply to West Virginia and omits the analogous amounts that apply to other states. These changes are appropriate for the State's trading program regulations, which will apply only to units subject to West Virginia's jurisdiction. The SIP submittal does not otherwise substitute for the term "State" and makes no other changes to the Federal trading program regulations besides the required exclusion of provisions that would impose requirements on units in Indian country or that would govern allocation of allowances from Indian country new unit set-asides. Because the West Virginia CSAPR SIP maintains the applicable requirements of subparts AAAAA, CCGCC, and EEEEE, is substantively identical to the Federal trading programs under CSAPR as applied to units in West Virginia, makes no substantive substitutions for the term "State", and excludes provisions addressing units in Indian County, the SIP revision meets the approvability conditions in 40 CFR 52.38 and 52.39 for a CSAPR SIP revision.

As discussed earlier, EPA has determined that participation of West Virginia's EGUs in the CSAPR Update trading program under 40 CFR 97, subpart EEEEE, fully addresses the State's good neighbor obligation with respect to the 2008 ozone NAAQS. The June 5, 2019 submittal of West Virginia regulation 45 CSR 43 that includes West Virginia's CSAPR ozone season NO<sub>x</sub> trading program meets the commitment

by West Virginia in its March 27, 2018 SIP submittal for 2008 ozone transport to address this Good Neighbor obligation through SIP provisions rather than FIP provisions. With West Virginia's adoption and submittal of a CSAPR ozone season NO<sub>x</sub> trading program that is substantively identical to the Federal ozone season NO<sub>x</sub> trading program under 40 CFR part 97, subpart EEEEE, with the exceptions previously noted, and which is approvable as discussed in the previous paragraph, West Virginia's March 27, 2018 transport SIP submittal, as supplemented by West Virginia's June 5, 2019 CSAPR SIP submittal, is approvable.

#### *Proposed Action*

For the reasons discussed in this document, EPA is proposing to approve West Virginia's CSAPR SIP submittal, Regulation 45 CSR 43, of June 5, 2019. This state rule establishes West Virginia CSAPR state trading programs for annual NO<sub>x</sub>, ozone season NO<sub>x</sub>, and annual SO<sub>2</sub> emissions for units in the state. The West Virginia CSAPR state trading programs would be integrated with the Federal CSAPR NO<sub>x</sub> Annual Trading Program, the Federal CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, and the Federal CSAPR SO<sub>2</sub> Group 1 Trading Program, respectively, and would be substantively identical to the Federal trading programs.

EPA is also proposing to approve the West Virginia 2008 transport SIP submittal of March 27, 2018, as supplemented with the portion of the June 5, 2019 submittal relating to subpart EEEEE (the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program). Although WVDEP originally requested conditional approval of its March 27, 2018 submittal demonstrating compliance with its transport obligations under section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS, the State has now met its commitment to submit its CSAPR SIP ozone season NO<sub>x</sub> trading program through the June 5, 2019 submittal. EPA is soliciting public comments on the issues discussed in this document.<sup>18</sup> These comments will be considered before taking final action. We propose to find that, if approval of West Virginia's CSAPR SIP is finalized, the State will have addressed its section 110(a)(2)(D)(i)(I) obligations with

<sup>18</sup> EPA is not reopening for public comment any of the analysis or conclusions finalized in any of the CSAPR rulemakings. Rather, this action simply evaluates and seeks comment on whether the SIP submissions from West Virginia are consistent with the regulations issued and determinations made in those prior actions.

respect to the 1997 and 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS, consistent with the determinations made in the various CSAPR rulemakings.

#### **IV. 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 West Virginia regulation 45 CSR 43. 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).

#### **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 to approve West Virginia's CSAPR SIP submittal and West Virginia's transport submittal for the 2008 8-hour ozone NAAQS, 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 6, 2019.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 121

[EPA-HQ-OW-2019-0405; FRL-9998-38-OW]

**RIN 2040-AF86**

### Updating Regulations on Water Quality Certification

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

**ACTION:** Proposed rule; public meeting or (hearing).

**SUMMARY:** On August 8, 2019, the Environmental Protection Agency (EPA or agency) Administrator signed a notice of proposed rulemaking (NPRM) providing updates and clarifications to the substantive and procedural requirements for water quality

certification under Clean Water Act. The agency is announcing that a public hearing will be held in Salt Lake City, Utah on September 5 and 6, 2019, to provide interested parties the opportunity to present data, views, or information concerning the NPRM. The pre-publication version of this proposal can be found at <https://www.epa.gov/cwa-401>.

**DATES:** The agency will hold a public hearing on Thursday, September 5 and Friday, September 6, 2019, in Salt Lake City, Utah. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

**ADDRESSES:** The hearing will be held in the Nancy Tessman Auditorium at the Salt Lake City Public Library, Main Library, 210 East 400 South, Salt Lake City, Utah 84111. The September 5 session will convene at 2:00 p.m. (local time) and will conclude no later than 8:00 p.m. and the September 6 session will convene at 9:00 a.m. and will conclude no later than 12:00 p.m.

Documents related to the proposal will be available for public inspection through the Federal eRulemaking Portal: <https://www.regulations.gov>, Docket ID No. EPA-HQ-OW-2019-0405 once the NPRM publishes in the **Federal Register**. Documents can also be viewed at the Environmental Protection Agency Docket Center, located at 1301 Constitution Avenue NW, Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. In addition, the pre-publication version of the NPRM and the economic analysis for the proposed rulemaking are available at <https://www.epa.gov/cwa-401>.

If you are unable to attend the public hearing on September 5 or 6 you will be able to submit your comments, identified by Docket ID No. EPA-HQ-OW-2019-0405, to the *Federal eRulemaking Portal*: <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments. All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For additional information on the public hearing, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Lauren Kasperek, Office of Water (4504-T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone

number: (202) 564-3351; email address: [cwa401@epa.gov](mailto:cwa401@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 8, 2019, the agency Administrator signed a proposed rulemaking providing updates and clarifications to the substantive and procedural requirements for water quality certification under Clean Water Act section 401 and consistent with Executive Order 13868, signed on April 10, 2019, entitled "Promoting Energy Infrastructure and Economic Growth." The agency is holding a public hearing in Salt Lake City, Utah on September 5 and 6, 2019, to provide interested parties the opportunity to present data, views, or information concerning the NPRM. The agency has submitted the proposed rulemaking to the Office of the Federal Register, and it will be published separately in the **Federal Register**. The comment period on the proposed action will end 60 days after the NPRM publishes in the **Federal Register**. The pre-publication version of the NPRM can be found at <https://www.epa.gov/cwa-401> and will be replaced with the official version of the NPRM after it publishes.

##### II. Public Participation

###### A. Participation in Public Hearing

The public is invited to speak during the public hearing on September 5 and 6, 2019. The agency will begin pre-registering speakers for the hearing upon signature of this document. Those interested in speaking at the hearing can sign up for a three-minute speaking slot within an identified 45-minute timeframe. To register to speak at the hearing, please use the online registration form available at <https://www.epa.gov/cwa-401/outreach-and-engagement-cwa-section-401-certification>. The last day to pre-register to speak at the hearing will be August 30, 2019. On September 4, 2019, the agency will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: <https://www.epa.gov/cwa-401/outreach-and-engagement-cwa-section-401-certification>.

The agency will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The agency will make every effort to accommodate all speakers who arrive