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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[WV103-6041; FRL-9240-1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Update to Materials Incorporated by Reference**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; administrative change.

SUMMARY: EPA is updating the materials submitted by West Virginia that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the West Virginia Department of Environmental Protection and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC and the Regional Office.

DATES: *Effective Date:* This action is effective December 28, 2010.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, and NARA. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566-1742; or NARA. For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814-2108 or by e-mail at frankford.harold@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

The SIP is a living document which the State revises as necessary to address its unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 **Federal Register** document. On February 10, 2005 (70 FR 7024), EPA published a **Federal Register** beginning the new IBR procedure for West Virginia. On February 28, 2007 (72 FR 8903) and February 10, 2009 (74 FR 6542), EPA published updates to the IBR material in West Virginia.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the IBR materials in paragraph 52.2520(c):

1. Addition of Regulation 45 CSR 39.
2. Revisions to the following regulations: 45 CSR 6, 45 CSR 8, 45 CSR 40, and 45 CSR 41.
3. Removal of the following regulations: 45 CSR 1, 45 CSR 9, 45 CSR 12, and 45 CSR 26.

II. EPA Action

In this document, EPA is doing the following:

1. Announcing the update to the IBR material as of November 1, 2010.
2. Making corrections to the following entries listed in the paragraph 52.2520(c) chart, as described below:
 - a. 45 CSR 6—removing text from the "Additional explanation/citation at 40 CFR § 52.2565" column.
 - b. 45 CSR 7—revising the dates in the State effective date column so that the date format is consistent with that found throughout the paragraph.
 - c. 45 CSR 21—reinstating section 45 CSR 45-21-36, which had been inadvertently removed from this paragraph. On February 1, 1995, (60 FR 6022), EPA approved 45 CSR 21, Section 36 as part of the West Virginia SIP.
 - d. 45 CSR 39—Correcting the regulation title of section 45-39-15 in the "Title/subject" column.
 - e. 45 CSR 41—correcting the regulation title to read "Control of Annual Sulfur Dioxides Emissions."
3. In paragraph 52.2420(e), correcting the date format in the "EPA approval date column" for the entry entitled

"State of West Virginia Transportation Conformity Requirements."

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation, and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and correcting non-substantive errors in the table entries.

III. Statutory and Executive Order Reviews*A. General Requirements*

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 Clean Air Act; 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 rule 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**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the West Virginia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” reorganization update action for West Virginia.

List of Subjects in 40 CFR Part 52

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

Dated: December 3, 2010.

W. C. Early,

Acting, Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by:

- a. Revising paragraph (b),
- b. Amending paragraph (c) as follows:
 - i. Revising all entries for [45 CSR] Series 6 and [45 CSR] Series 7.
 - ii. Adding an entry for Section 45–21–36.
 - iii. Revising the entry for Section 45–39–15 and the Title for [45 CSR] Series 41.

■ c. In paragraph (e), revising the entry for State of West Virginia Transportation Conformity Requirements.

The amendments read as follows:

§ 52.2520 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after November 1, 2010 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations and source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations and source-specific requirements which have been approved as part of the State implementation plan as of November 1, 2010.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814–2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460. For further information, call (202) 566–1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) EPA-approved regulations.

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
* * * * *				
[45 CSR] Series 6	To Prevent and Control Air Pollution From Combustion of Refuse			
Section 45–6–1	General	6/1/08	3/25/09, 74 FR 12560.	
Section 45–6–2	Definitions	6/1/08	3/25/09, 74 FR 12560.	
Section 45–6–3	Open Burning Prohibited	6/1/08	3/25/09, 74 FR 12560.	

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 45–6–4	Emission Standards for Incinerators and Incineration.	6/1/08	3/25/09, 74 FR 12560.	Deleted paragraphs 4.8, and 4.8.a through 4.8.d; Added paragraphs 4.9 and 4.10.
Section 45–6–5	Registration	6/1/08	3/25/09, 74 FR 12560.	
Section 45–6–6	Permits	6/1/08	3/25/09, 74 FR 12560.	Added paragraph 6.2.
Section 45–6–7	Reports and Testing	6/1/08	3/25/09, 74 FR 12560.	
Section 45–6–8	Variances	6/1/08	3/25/09, 74 FR 12560.	
Section 45–6–9	Emergencies and Natural Disasters.	6/1/08	3/25/09, 74 FR 12560.	Added paragraphs 9.1.c, 9.2, and 9.2.a through 9.2.c.
Section 45–6–10	Exemptions	6/1/08	3/25/09, 74 FR 12560.	New Section.
Section 45–6–11	Effect of the Rule	6/1/08	3/25/09, 74 FR 12560.	Recodified—formerly section 45–6–10.
Section 45–6–12	Inconsistency Between Rules	6/1/08	3/25/09, 74 FR 12560.	Recodified—formerly section 45–6–11.

[45 CSR] Series 7 To Prevent and Control Particulate Matter Air Pollution From Manufacturing Process Operations

Section 45–7–1	General	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–2	Definitions	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–3	Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement.	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–4	Control and Prohibition of Particulate Emissions by Weight from Manufacturing Process Source Operations.	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–5	Control of Fugitive Particulate Matter.	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–6	Registration	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–7	Permits	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–8	Reporting and Testing	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–9	Variance	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–10	Exemptions	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–11	Alternative Emission Limits for Duplicate Source Operations..	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
Section 45–7–12	Inconsistency Between Rules.	8/31/00	6/03/03, 68 FR 33010.	(c)(55).
TABLE 45–7A, TABLE 45–7B	[Maximum Allowable Emission Rates From Sources Governed by 45 CFR Series 7].	8/31/00	6/03/03, 68 FR 33010.	(c)(55).

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[45 CSR] Series 21 Regulation To Prevent And Control Air Pollution From The Emission Of Volatile Organic Compounds

Section 45–21–36	Perchloroethylene Dry Cleaning	7/7/93	2/1/95 60 FR 6022.	(c)(33).
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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
*	*	*	*	*
[45 CSR] Series 39	Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides			
*	*	*	*	*
Section 45–39–15	Delegation by CAIR Designated Representative and Alternate CAIR Designated Representative.	5/1/08	8/4/09, 74 FR 38536.	
*	*	*	*	*
[45 CSR] Series 41	Control of Annual Sulfur Dioxides Emissions			
*	*	*	*	*
(e) EPA-approved nonregulatory and quasi-regulatory material.				
Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
State of West Virginia Transportation Conformity Requirements.	Entire State	04/12/07	5/2/08, 73 FR 24175.	Memoranda of Understanding between EPA, FHWA, FTA, State of West Virginia, and six Metropolitan Planning Organizations.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0073; FRL–9243–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of amendments to the Commonwealth of Virginia’s ambient air quality standards for particulate matter (PM). This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on January 27, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0073. All documents in the docket are listed in the <http://www.regulations.gov> website. Although listed in the electronic docket, some information is not publicly available, i.e., 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 either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 17, 2008 (73 FR 67825), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of amendments to the Commonwealth’s existing ambient air quality standards for particulate matter in 9VAC5 Chapter 30. The formal SIP revision was submitted by the Commonwealth of Virginia on January 7, 2008. EPA received no comments on the proposal to approve Virginia’s SIP revision. However, regulation 9VAC5–30–65E included an incorrect reference of the **Federal Register** document for the annual and 24-hour PM_{2.5} NAAQS that were established by the EPA on July 18, 1997 as 62 FR 28856 instead of 62 FR 38652. On September 29, 2010, EPA received a correction to the regulation (9VAC5 Chapter 30) that contains the ambient air quality standards set out in 40 CFR 50. The SIP revision made the necessary correction to reference the **Federal Register** document appropriately.

II. Summary of SIP Revision

The Commonwealth’s SIP revision to the Virginia Regulations for the Control