



west virginia department of environmental protection

**State Implementation Plan Revision for
Clean Air Act § 110(a)(2)(A)-(M)
Requirements for 2015 8-Hour Ozone NAAQS**

DRAFT

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Promoting a healthy environment.

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DRAFT West Virginia State Implementation Plan Revision for Clean Air Act § 110(a)(2)(A)-(M) Requirements for 2015 8-Hour Ozone NAAQS

A State Implementation Plan (SIP) is a plan for each state that identifies how that state will attain and/or maintain the primary and secondary National Ambient Air Quality Standards (NAAQS). The SIP is a series of complex, fluid documents containing regulations, source-specific requirements, non-regulatory items such as plans and inventories, and in some cases additional requirements promulgated by the U.S. Environmental Protection Agency (EPA). The initial SIPs for states were approved by EPA on May 31, 1972. SIPs can be revised by the state as necessary with EPA approval. The federally enforceable SIP for West Virginia is compiled in Title 40 of the Code of Federal Regulations (CFR) Part 52, Subpart XX. In this revision to the SIP, West Virginia is demonstrating that it has adequate resources and authority to implement the 2015 primary and secondary 8-hour ozone NAAQS. The 2015 8-hour ozone NAAQS is incorporated by reference in West Virginia legislative rule 45CSR8, *Ambient Air Quality Standards*.

This SIP revision addresses the applicable requirements of Section 110 (a)(2)(A)-(M) of the Clean Air Act (CAA), many of which have been addressed in other SIP revisions; this action does not address section 110(a)(2)(D)(i)(I) which will be addressed in a later, separate action. It is a compilation of elements that demonstrate how the 2015 8-hour ozone NAAQS is being implemented, maintained and enforced in West Virginia. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable compilation of how West Virginia will continue to comply with the § 110(a)(2) requirements of the CAA.

In 1961, the West Virginia Legislature passed the Air Pollution Control Act (APCA), making West Virginia the sixteenth state to have a statewide air pollution control law. The law provided for a separate state agency composed of a seven-member Commission, a Director and staff. The powers, authorities and funding of the original Commission were subsequently conveyed to the Office of Air Quality and then to the Division of Air Quality (DAQ) within the West Virginia Department of Environmental Protection (DEP). Staffing, funding and legal authorities incorporate approximately 80 full time staff, with a multi-million dollar annual budget and approximately 40 legislative air quality rules. The DAQ has a variety of substantial funding sources, including construction/modification permit fees, Title V operating permit fees, non-Title V operating fees, general State revenue and federal grant monies.

The agency has demonstrated the ability to implement state and federal requirements for over fifty years as evidenced by the federal approval of the *Approval of the Redesignation to Attainment Requests and Associated Maintenance Plans of the Charleston Nonattainment Area for the 1997 Annual and the 2006 24-Hour Fine Particulate Matter Standards* (79 FR 17884, 31 March 2014), the *110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards* (79 FR 19001, 07 Apr 2014), and the *Removal of Source-Specific Requirements for Permanently Shutdown Facilities* (83 FR 11887, 19 Mar 2018). Legislative authority for the West Virginia air quality program relating to the responsibilities in the Clean Air Act is codified in the West Virginia APCA, W.Va. Code §22-5, more specifically §22-5-1, which gives West Virginia the primary responsibility for assuring air quality pursuant to the CAA. Many elements of § 110(a)(2)(A)-(M) already exist in the SIP or recently submitted SIP revisions for other NAAQS. This SIP revision may reiterate and/or reinforce some of these previously submitted and/or approved elements. Some requirements, such as those for intergovernmental consultation, air quality modeling and compliance with Part D of the CAA, are fulfilled during the development and submission to EPA, as a SIP revision, of attainment plans and related requirements due under Subpart

1 and Subpart 2 of the CAA. All areas of West Virginia have been designated as attainment with the 2015 8-hour ozone NAAQS and is currently monitoring attainment with the standard at all ozone monitoring sites within the state (82 FR 54232, 16 Nov 2017 and 83 FR 25776, 04 June 2018).

Section 110(a) element	<i>The implementation plan shall:</i>	West Virginia Implementation
§ 110(a)(2)(A)	<p><i>include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.</i></p>	<p>Enforceable Emission Limitations and Other Control Measures: Pursuant to the W.Va. Code, §22-5-1 declares the state’s public policy “to fulfill its primary responsibility for assuring air quality pursuant to the ‘Federal Clean Air Act’, as amended.” The West Virginia Department of Environmental Protection Cabinet Secretary (Secretary) has the authority under §§22-5-4(a)(1) & (3) “to develop ways and means for the regulation and control of pollution of the air of the state”. The Secretary has the authority under §§22-1-3(a), 22-5-4(a)(4) and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act set forth in W.Va. Code §§29A3-1 et seq. Approximately forty air quality rules implemented under the auspices of the APCA are currently in effect and codified at Title 45 of the West Virginia Code of State Rules (CSR), including the ambient air quality standards for criteria pollutants (including the 2015 8-hour ozone NAAQS) contained in the SIP approved legislative rule 45CSR8 (83 FR 12677, 23 March 2018).</p> <p>Existing, enforceable SIP provisions or EPA delegated programs which DAQ has adopted that limit emissions of ozone and its precursors, nitrogen oxides (NO_x) and volatile organic compounds (VOC), and other control measures may be found in the CSR as necessary or appropriate to meet the applicable requirements of the CAA:</p> <p>45CSR11 - The purpose of this SIP approved rule (58 FR 34526, 28 Jun 1993) is to provide a mechanism to prevent the buildup of air pollutant concentrations during periods of adverse meteorological conditions in which air pollutants may accumulate, thereby preventing the occurrence of an emergency due to the effects of these pollutants on health. To achieve this purpose, three stages of criteria (pollutant concentration levels) have been established and specific emission reduction plans will be developed which will be initiated at each criteria stage to prevent further deterioration of the air supply to any air quality region or substantial portion thereof. 45CSR11 contains episode criteria, methods of measurement, preplanned reduction strategies and emission reduction plan requirements for sources of ozone emissions in West Virginia.</p>

**§ 110(a)(2)(A)
(continued)**

45CSR13 - The purpose of this SIP approved rule (79 FR 42211, 21 Jul 2014) is to set forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source which is not a major stationary source, to modify a non-major stationary source, to make modifications which are not major modifications to an existing major stationary source, to relocate non-major stationary sources within the state of West Virginia. Such a permit may contain a federally enforceable NO_x, or VOC emission limit. NO_x and VOC are “regulated pollutants” as defined under 45CSR13 § 2.20. An emissions increase of six (6) pounds per hour and ten (10) tons per year or more, or more than 144 pounds per calendar day of a “regulated pollutant” triggers a modification under 45CSR13. On June 7, 2017, West Virginia submitted a revision to the SIP and although it has not been finally approved by the EPA, the EPA proposed approval of the SIP submission on June 18, 2018 at 83 FR 28179.

45CSR14 - The purpose of this SIP rule (81 FR 53008, 11 Aug 2016) is to satisfy the prevention of significant deterioration permit program requirements in Part C of the CAA. The definition of “regulated NSR pollutant” identifies NO_x and VOC as precursors to ozone in all attainment and unclassified areas. 45CSR14 contains a significance level for ozone of 40 tpy of VOC or NO_x. A de minimis air quality level is not provided for ozone. However, any net emissions increase of 100 tpy or more of VOC or NO_x subject to PSD would be required to perform an ambient impact analysis, including the gathering of air quality data. A PSD source in an attainment area may have a NO_x or VOC emission limitation in a permit under 45CSR14 based upon a Best Available Control Technology (BACT) analysis in accordance with CAA §§ 165(a)(3) and (4). On June 7, 2017, West Virginia submitted a revision to the SIP which, in addition to other changes, added subsection 16.11 to include the grandfathering provisions of 40 CFR § 51.166(i)(11) that were added in conjunction with the 2015 8-hour ozone NAAQS final rule (80 FR 65292, 26 Oct 2015). No action has yet been taken by EPA regarding the June 7, 2017 SIP revision submittal.

45CSR16 - The purpose of this federal delegation rule is to incorporate the federal New Source Performance Standards (NSPS) under Part A of the CAA and 40 CFR Part 60. West Virginia first received NSPS program delegation for Part 60 NSPS authority under 45CSR16 on December 14, 1984 at FR 48692. West Virginia has received automatic delegation of authority to enforce Part 60 NSPS in accordance with EPA letters of March 19, 2001, and January 8, 2002, as well as EPA’s Notice at 67 FR 15486. All current emission limitations or standards of performance for NO_x, and VOC promulgated under 40 CFR Part 60 are incorporated by reference under 45CSR16, with limited exception.

**§ 110(a)(2)(A)
(continued)**

45CSR19 - The purpose of this SIP approved rule (80 FR 29972, 26 May 2015) is to satisfy the nonattainment area new source review permit program requirements set forth in Part D of the CAA. The definition of “regulated NSR pollutant” identifies NO_x and VOC as precursors to ozone in all ozone nonattainment areas. 45CSR19 contains a significant level for ozone as 40 tpy of VOC or NO_x. A NNSR permit may be granted if the source meets Lowest Achievable Emission Rate (LAER), emission offset requirements, and additional requirements. West Virginia does not have any non-attainment areas for ozone.

45CSR21 - The purpose of this SIP approved rule (60 FR 6022, 1 Feb 1995) is to apply reasonably available control technology (RACT) for sources of VOC located in Putnam County, Kanawha County, Cabell County, Wayne County, and Wood County West Virginia. 45CSR30 - This rule establishes a major source permitting program pursuant to Title V of the CAA. Any major stationary source subject to federally enforceable NO_x or VOC emission limitations or control measures pursuant to 45CSR13, 45CSR14, 45CSR16, 45CSR19, 45CSR21 or 45CSR33 will be contained in a permit issued by the Secretary under its established Title V permit program. The effective date of interim approval of West Virginia’s Title V Program and 45CSR30 was December 15, 1995. EPA fully approved the West Virginia Title V program (66 FR 50325, 3 Oct 2001). West Virginia received approval of the June 1, 2015 revision of its approved Operating Permit Program (81 FR 7463, 12 Feb 2016).

45CSR33 - This rule establishes and adopts general provisions and the operating permit program requirements for affected sources under the Acid Rain Program promulgated by the EPA under Title IV of the CAA. This rule incorporates by reference the following provisions: 40 CFR Part 72, “Permits Regulation”; 40 CFR Part 74, “Sulfur Dioxide Opt-Ins”; 40 CFR Part 75, “Continuous Emissions Monitoring”; 40 CFR Part 76, “Nitrogen Oxides Reduction Program”; and 40 CFR Part 77, “Excess Emissions”. The rule was submitted to EPA on June 23, 1995 as part of the state’s Title V requirements and approved effectively on December 15, 1995 with interim approval of the West Virginia Title V program.

45CSR40 – This SIP approved rule (74 FR 38536, 4 Aug 2009) establishes an ozone season NO_x emission limitation, monitoring, recordkeeping, reporting, excess emissions, and NO_x budget demonstration requirements for large industrial boilers and combustion turbines. This rule also establishes an ozone season NO_x reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines. This rule further establishes ozone season NO_x control standards, NO_x compliance plan, reporting, monitoring, and recordkeeping requirements for applicable cement manufacturing kilns. The rule requires that WV

<p>§ 110(a)(2)(A) (continued)</p>		<p>demonstrate that the ozone season NO_x budget has been met. WV submitted a SIP revision to the EPA on July 13, 2016 following the July 1, 2016 revision to 45CSR40. On October 10, 2017, WV submitted <i>West Virginia NO_x SIP Call Non-EGU Budget Demonstration, a Non-Regulatory Supplement to the Revision to the West Virginia State Implementation Plan to Revise the Ozone Season NO_x Rule 45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions - Request for Approval</i>. To date, the EPA has not yet acted on the July 13, 2016 SIP revision submittal.</p>
<p>§ 110(a)(2)(B)</p>	<p><i>provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the Administrator;</i></p>	<p>Establishment of Ambient Air Quality Monitoring System: Pursuant to W.Va. Code, §22-1-1(a)(1), “protecting the environment is fundamental to the health and welfare of individual citizens,” and, the state “has a duty to provide and maintain a healthful environment for our citizens.” Under §22-1-1(a)(2), “the state has the primary responsibility for protecting the environment.” §22-1-1(b) “declares that the establishment of a department of environmental protection is in the public interest” and that “It is the policy of the state ...to use all practical means and measures to prevent or eliminate harm to the environment and biosphere, to create and maintain conditions under which man and nature can exist in productive harmony...”</p> <p>Additionally, §22-5-1 declares the state’s public policy “to fulfill its primary responsibility for assuring air quality pursuant to the ‘Federal Clean Air Act’, as amended.”</p> <p>As set forth in §22-1-1(b)(5), the DEP, “insofar as federal environmental programs require state participation” must “endeavor to obtain and continue state primacy in the administration of such federally-mandated programs... and to cooperate with appropriate federal agencies to meet environmental goals.”</p> <p>Under §22-1-6(a), the Secretary “is the chief officer of the department” with the powers, duties and authority pursuant to §§22-5-2(3) and 22-5-4.</p> <p>The Secretary has the authority under W.Va. Code §§22-5-4(a)(1) & (3) “to develop ways and means for the regulation and control of pollution of the air of the state” and “conduct such studies and research relating to air pollution and its control and abatement”.</p> <p>Therefore, under manifold statute authority, West Virginia operates and maintains an established network of eight ambient ozone monitors in West Virginia to assess compliance with the 2015 8-hour ozone NAAQS.</p> <p>Monitoring System Operation: To assess compliance with the 2015 8-hour ozone NAAQS, DAQ operates a network of ozone air quality monitors in West Virginia that have been designated by EPA as either Federal Reference Method or Federal Equivalent</p>

<p>§ 110(a)(2)(B) (continued)</p>		<p>Method monitors. This network monitors air quality for the 2015 8-hour ozone NAAQS at appropriate locations in accordance with the Ambient Air Monitoring Reference and Equivalent Methods under 40 CFR Part 53 and the Ambient Air Quality Surveillance requirements of 40 CFR Part 58. Ambient air monitors are subjected to the Quality Assurance requirements of 40 CFR Part 58 Appendix A. Additionally, all monitors have met the minimum siting requirements of Part 58, Appendix E. DAQ analyzes collected air quality data to determine attainment status under the 2015 8-hour ozone NAAQS.</p> <p>Availability of Data: In order to keep EPA informed of planned modifications to monitoring sites, DAQ provides EPA Region 3 with adequate prior notification. Details of these modifications and anticipated approvals of the modifications are communicated to EPA. On an annual basis, DAQ submits to EPA an annual monitoring network plan and periodic network assessment required under 40 CFR § 58.10 that describes how West Virginia is complying with monitoring requirements and explains any modifications to the monitoring network. This plan also provides a description of each system modification, the reason for each modification, and any other information relevant to the modification pursuant to 40 CFR § 58.14. West Virginia’s 2018 Annual Air Quality Monitoring Network Design Plan was submitted to EPA on June 13, 2018.</p> <p>As provided in W.Va. Code §§22-5-4(a)(2), 22-5-10 and § 110(a)(2)(B) of the CAA, DAQ collects and reports in a timely manner to EPA ambient air quality data for ozone. The reports comply with the Data Submittal and Archiving Requirements set forth in CFR § 58.16. The data is reviewed, edited, validated, and entered into the EPA air quality system (AQS) for updating pursuant to prescribed AQS procedures set forth in 40 CFR § 51.320. The EPA AQS receives each report within 90 days after the end of the quarterly reporting period. Data is certified annually as required under 40 CFR § 58.15.</p>
<p>§ 110(a)(2)(C)</p>	<p><i>include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;</i></p>	<p>Enforcement of Control Measures for the 2015 8-Hour Ozone NAAQS: Pursuant to W.Va. Code §22-1-6(a), the DEP Cabinet Secretary “is the chief officer of the department” with the powers, duties and authority pursuant to §§22-5-2(3) and 22-5-4.</p> <p>The Secretary has the authority under W.Va. Code §§22-1-3(a), 22-5-4(a)(4) and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act (W.Va. Code §§ 29A3-1 et seq.)</p> <p>The Secretary has the authority under W.Va. Code §22-5-4(a)(5) “to enter orders requiring compliance with the provisions of this article and <i>the rules lawfully promulgated hereunder.</i>”</p>

**§ 110(a)(2)(C)
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The Secretary has the authority under W.Va. Code §22-5-4(a)(9) “to enter and inspect any property, premise or place *for the purpose of ascertaining the state of compliance with this article and the rules promulgated under the provisions of this article.*”

The Secretary has the authority under W.Va. Code §22-5-4(a)(16) “to do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and *enforcement* of the Federal Clean Air Act

The Secretary also has the authority under W.Va. Code §22-5-5 to enter an order directing a person to *cease and desist activity which violates the provisions of §22-5-1 et seq. and the rules promulgated pursuant thereto.*

Pursuant to W.Va. Code §22-5-6, *violators of the provisions of §22-5-1 et seq. and the rules promulgated pursuant thereto are subject to civil penalty.*

West Virginia therefore has an established legal framework and inherent ability to provide for the enforcement of the emission limitations and other measures described the § 110(a)(2)(A) element of this document, and contained in a permit issued under 45CSR13, 45CSR14, 45CSR19, 45CSR30, or 45CSR33.

Preconstruction NSR Permitting of Minor Sources: West Virginia’s SIP-approved rule 45CSR13 (79 FR 42211, July 21, 2014) governs the minor NSR program for sources with emissions of NO_x and VOC, precursors to ozone, and provides for pre-construction permitting regarding the modification and construction of minor stationary sources and the minor modification of major stationary sources pursuant to 40 CFR §§ 51.160-164.

45CSR13 addresses the impact of permitted sources on the 2015 8-hour ozone NAAQS through permits containing the emission standards, registration, permit, testing, monitoring, recordkeeping and reporting requirements for sources of NO_x and VOC emissions contained in 45CSR21, 45CSR40, and the performance standards for NO_x and VOC emissions promulgated under 40 CFR Part 60 and incorporated by reference in 45CSR16.

Preconstruction PSD Permitting of Major Sources: The PSD program contained in Part C of Title I of the CAA govern preconstruction review and permitting of any new or modified major stationary sources of air pollutants regulated under the CAA as well as any precursors to the formation of that pollutant when identified for regulation by EPA

<p>§ 110(a)(2)(C) (continued)</p>		<p>in areas designated as attainment or unclassifiable. The PSD program will regulate future growth and provide for continued maintenance of the 2015 8-hour ozone NAAQS.</p> <p>West Virginia’s SIP approved PSD permitting program is set forth in 45CSR14 (81 FR 53008, August 11, 2016). 45CSR14 implements a comprehensive PSD permit program as required under Part C of Title I of the CAA for all regulated NSR pollutants (or precursors) that are subject to regulation under the CAA, including greenhouse gases (GHG).</p> <p>Pursuant to CAA § 165(a)(3), the DAQ is authorized to implement the existing PSD permit program to ensure that the construction and modification of major stationary sources will not cause or contribute to a violation of the 2015 8-hour ozone NAAQS (or any NAAQS or increment) in West Virginia or another state, as set forth in the source impact analysis requirements of 45CSR§ 14-9.1 and 40 CFR § 51.166(k).</p> <p>Pursuant to CAA § 165(a)(4), a new or modified PSD source in an attainment area may have a NO_x or VOC emission limitation in a permit under 45CSR14 based upon a best available control technology (BACT) analysis, and application of BACT for each regulated NSR pollutant that has the potential to emit in significant amounts in accordance with the control technology review requirements in 40 CFR § 51.166(j), and as set forth in 45CSR14 § 8.</p> <p>45CSR14 contains a significance level for ozone of 40 tpy of VOC or NO_x. A PSD source in an attainment area may have a NO_x, or VOC emission limitation in a permit under 45CSR14 based upon a BACT analysis in accordance with CAA §§ 165(a)(3) and (4).</p> <p>West Virginia has timely submitted all structural PSD program provisions for which a SIP submission deadline has passed.</p> <p>On June 7, 2017, WV submitted a revision to the SIP that included the grandfathering provisions of 40 CFR § 51.166(i)(11) in subsection 16.11 as part of the 2015 8-hour ozone NAAQS final rule (80 FR 652929). To date, there has not been any action by EPA regarding the 2017 SIP revision submittal.</p>
<p>§ 110(a)(2)(D)</p>	<p><i>contain adequate provisions -</i></p> <p><i>(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any</i></p>	<p>Significant Contribution and Interference with Maintenance of the NAAQS (Prongs 1 and 2): As set forth in 45CSR14-4, ambient air quality increments and ceilings <i>are not confined to a state boundary</i>. Pursuant to the public review procedures set forth in 45CSR14-17.5, <i>West Virginia must provide notice to any state affected by a proposed source or modification</i>. The DAQ must send a copy of the advertisement to the applicant, to the Administrator, and to officials and agencies having cognizance over the location</p>

<p>§ 110(a)(2)(D) (continued)</p>	<p><i>air pollutant in amounts which will-</i></p> <p><i>(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or</i></p> <p><i>(II) 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 or to protect visibility,</i></p> <p><i>(ii) ensuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);</i></p>	<p>where the proposed construction would occur as follows: <i>any other State or local air pollution control agencies</i>, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, any State, and any Federal Land Manager, whose lands may be affected by emissions from the source or modification.</p> <p>As set forth in 45CSR14-9, any person proposing to construct or relocate a major stationary source or to make a major modification must demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emission increases or reductions (including secondary emissions) would not cause or contribute to air pollution in violation of any NAAQS or any applicable maximum allowable increase over the baseline concentration <i>in any area</i>.</p> <p>DAQ will address CAA § 110(a)(2)(D) as it relates to Prongs I and II in a separate action.</p> <p>Interference With Required PSD Measures Under Part C (Prong 3): West Virginia confirms that new major sources and major modifications in the state are subject to a comprehensive PSD permit program as set forth in SIP approved rule 45CSR14 (81 FR 53008, August 11, 2016). This PSD program, required by Part C of Title I of the CAA, governs the preconstruction review and permitting of any new major stationary sources or major modification with respect to all regulated NSR pollutants including greenhouse gases under the CAA, as well as any precursors to the formation of such pollutants when identified for regulation by EPA.</p> <p>45CSR14 regulates future growth and provides for continued maintenance of the 2015 8-hour ozone NAAQS. This rule includes specific federal requirements which ensure that new or modified sources do not interfere with measures to prevent significant deterioration of air quality by providing a mechanism to prevent the development of any new non-attainment problems. 45CSR14 requires the evaluation of sources of air pollutants and to preclude the construction or relocation of any major stationary source or major modification in any area classified as attaining NAAQS or unclassifiable in which the establishment of such source or modification may interfere with the goals of the prevention of significant deterioration of air quality levels.</p> <p>Pursuant to CAA § 165(a)(3), the DAQ is authorized to implement the existing PSD permit program to ensure that the construction and modification of major stationary sources will not cause or contribute to a violation of the 2015 8-hour ozone NAAQS (or any NAAQS or increment) in West Virginia or another state, as set forth in the source impact analysis requirements of 45CSR§ 14-9.1 and 40 CFR § 51.166(k).</p>
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§ 110(a)(2)(D)
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Pursuant to CAA § 165(a)(4), a new or modified PSD source in an attainment area may have a NO_x or VOC emission limitation in a permit under 45CSR14 based upon a BACT analysis, and application of BACT for each regulated NSR pollutant that has the potential to emit in significant amounts in accordance with the control technology review requirements of section 8 of 45CSR14 and 40 CFR § 51.166(j).

West Virginia has timely submitted all structural PSD program provisions for which a SIP submission deadline has passed.

On June 7, 2017, WV submitted a revision to the SIP that included the grandfathering provisions of 40 CFR § 51.166(i)(11) in subsection 16.11 as part of the 2015 8-hour ozone NAAQS final rule (80 FR 65292, 26 Oct 2015). To date, the EPA has not yet taken any action regarding the 2017 SIP revision submittal by WV.

In-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. West Virginia confirms that new major sources and major modifications in non-attainment areas of the state are subject to the nonattainment area new source review (NNSR) permit program under legislative rule 45CSR19. The purpose of this SIP-approved rule (80 FR 29972, May 26, 2015) is to satisfy the nonattainment area NNSR requirements in Part D of the CAA. 45CSR19 contains a significance level for ozone of 40 tpy of VOC or NO_x. The significant impact level (µg/m³) for NO₂ for annual averaging time (hours) of ambient air concentration increase is 1.0. 45CSR19 contains a significant impact level (µg/m³) for NO₂ of 1.0 for annual averaging times. A NNSR permit may be granted if the source meets LAER, emission offset requirements, and additional requirements. West Virginia does not have any non-attainment areas for ozone.

Interference With Measures Required to Protect Visibility (Prong 4): West Virginia received partial approval of its Regional Haze SIP [77 FR 16937, 23 Mar 2012]. The SIP revision did not receive full approval solely because of its reliance on the Clean Air Interstate Rule (CAIR). West Virginia subsequently submitted a SIP Revision for Regional Haze on September 16, 2015. This revision to the SIP ensures that the West Virginia Regional Haze SIP is complete by relying on CSAPR to meet Best Available Retrofit Technology (BART) and reasonable progress for electrical generating units, as well as to support the visibility improvement progress goals for the Class 1 Dolly Sods and Otter Creek Wilderness Areas, in accordance with 40 CFR § 51.308(f). The revised SIP demonstrated that the NO_x and SO₂ reductions mandated by CSAPR for West Virginia, are at least as stringent as CAIR, and CSAPR limitations will be fully

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implemented by 2018, the end of the first Regional Haze implementation period. Relying on CSAPR instead of CAIR for these emission reductions will in no way weaken the protections to visibility and visibility improvements contained within the West Virginia Regional Haze SIP.

On June 14, 2018, the EPA published the proposed rule, *Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regional Haze Plan and Visibility Requirements for the 2010 Sulfur Dioxide and the 2012 Fine Particulate Matter Standards*, at 83 FR 27734, June 14, 2018. In this action, EPA proposed to convert the June 7, 2012 limited approval/ limited disapproval of WV's regional haze SIP to a full approval. The proposed action is supported by the EPA's recent final determination that a state's participation in CSAPR continues to meet EPA's Regional Haze criteria to qualify as an alternative to the application of BART.

The CSAPR FIP requires 27 states including West Virginia to reduce power plant emissions that cross state lines and contribute to ground-level ozone and fine particle pollution in other states. CSAPR includes emission limits of annual SO₂ and NO_x emissions and ozone season NO_x emission limits. NO_x is identified as a precursor to ozone under the PSD permit program.

Interstate and International Pollution Abatement: West Virginia has demonstrated that it met its obligations pursuant to CAA § 126(a) through the adoption of 45CSR14 § 7, Public Review Procedures which requires a new or modified source to notify other states of potential impacts from a source in accordance with 40 CFR § 51.166(q)(2)(iv). The legislative rule 45CSR14 is fully approved under WV's SIP (81 FR 53008, August 11, 2016)

On June 7, 2017, West Virginia submitted a revision to the SIP that included the addition 45CSR14 § 16.11 to address the grandfathering provisions of 40 CFR § 51.166(i)(11) that were added in conjunction with the 2015 8-hour ozone NAAQS final rule (80 FR 65292, 26 Oct 2015). To date, no action has been taken by EPA regarding the June 7, 2017 SIP revision submittal.

No source or sources within West Virginia are the subject of an active finding under section 126 of the CAA with respect to the 2015 8-hour ozone NAAQS.

West Virginia has made the necessary submittals to demonstrate that West Virginia has adequate provisions ensuring future compliance with the requirements of sections 126 and 115 of the CAA as may be necessary.

<p>§ 110(a)(2)(E)(i)</p>	<p><i>provide</i></p> <p><i>(i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof);</i></p>	<p>Personnel: DAQ has demonstrated it has adequate personnel to carry out the implementation plan with respect to the 2015 8-hour ozone NAAQS. There are no other organizations in West Virginia that participate in developing, implementing and enforcing the SIP (40 CFR § 51.240). The Secretary employs adequate personnel and retains specialists under W.Va. Code §22-5-4(a)(8) that are "necessary, incident or convenient" to accomplish the statutory mandate to carry out the implementation plan. DAQ has a staff of approximately 80 full time employees. The DAQ Director supervises the air monitoring, compliance and enforcement, hazardous waste, permitting and planning sections, as well as three regional DAQ offices, and answers to the DEP Deputy Cabinet Secretary. Because of the nature of the national and state economy, DAQ does not anticipate any changes in resources considered necessary during the 5 years following SIP submittal; and projects a similar resource need at 1, 3, and five-year intervals (40 CFR § 51.280).</p> <p>Funding: The APCA provides adequate funding under W.Va. Code §§22-1-10(a) and 22-5-4(a)(17) to carry out the implementation plan. W.Va. Code §22-5-12 sets forth the statutory operating permit requirements for stationary sources under Title V of the CAA. 45CSR30 establishes fees sufficient to cover the direct and indirect costs of administering the Title V operating permit program. The APCA also authorizes the establishment of fees to cover non-Title V permitting costs under 45CSR22. West Virginia's air quality program also receives revenue from fines and enforcement settlements (Air Pollution Control Fund) and federal funds under §§ 105 and 103 of the CAA, and state general fund appropriations.</p> <p>Legal Authority: W.Va. Code §22-5-1, declares the state's policy "to fulfill its primary responsibility for assuring air quality" pursuant to the CAA. The Secretary is authorized under W.Va. Code §§22-1-6(c)(1) and 22-5-4(a)(12) to carry out and represent the state in any and all matters pertaining to the implementation plan, including revising the SIP as necessary. The Secretary has the authority under W.Va. Code §22-5-4(a)(16) "to do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the Federal Clean Air Act ..." The Secretary is not prohibited by any provision of federal or state law from carrying out the implementation plan or portion thereof. The legal authorities specified are available to the Secretary at the time of submission of this SIP revision.</p> <p>West Virginia has adopted emission standards and limitations and other measures necessary for attainment and maintenance of the NAAQS. The Secretary has the authority under W.Va. Code §§22-1-3(a), 22-5-4(a)(4) and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act (W.Va. Code §§29A3-1 et</p>
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**§ 110(a)(2)(E)(i)
(continued)**

seq.). Approximately forty legislative rules promulgated under the auspices of the APCA are currently in effect and codified at Title 45 of the CSR, including the ambient air quality standards for ozone and the other criteria pollutants contained in SIP approved rule 45CSR8 (83 FR 12677, 23 Aug 2018). Statutory permitting requirements are set forth in W.Va. Code §§22-5-11 & 12. West Virginia has an EPA-approved air permitting program for both major and minor facilities, under legislative rules 45CSR13, 45CSR14, 45CSR19 and 45CSR30 (as applicable).

The Secretary is authorized to enforce applicable laws, regulations, and standards under W.Va. Code §§22-1-6(d)(3), 22-05-4(a)(5) and 22-05-4(a)(6), and seek injunctive relief under §22-5-7.

The Secretary is authorized to abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons. W.Va. Code §22-5-5 authorizes the Secretary to issue an order to cease and desist any activity that violates the APCA. The Secretary may also suspend, modify or revoke a source's permit. Under §22-5-6, the Secretary may also institute lawsuits for civil penalties. §22-5-7 authorizes the Secretary to seek applications for injunctive relief. §22-5-8 authorizes the Secretary, with the written authorization of the Governor, to shut down a source of NO_x or VOC emissions, thereby preventing the emission of air pollutants which substantially contributes to an emergency that requires immediate action to protect public health. As provided in §§22-5-4(a)(2) and 22-5-10, the Secretary may consult with EPA to affirm accuracy of any information considered while executing authority under §§22-5-5, -6, -7 or -8.

The Secretary is authorized to prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard. New major sources and major modifications in West Virginia are subject to PSD under legislative rule 45CSR14. The purpose of this West Virginia SIP approved rule (81 FR 53008, 11 Aug 2016) is to satisfy the prevention of significant deterioration permit program requirements in Part C of the CAA. Under 45CSR14, "... all applications filed by any person to construct major new or modified stationary air pollution sources, intending to locate in areas with air quality better than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the pre-construction review procedures and conditions of the Clean Air Act as amended ... ". This rule includes specific federal requirements which ensure that new or modified sources do not interfere with measures to prevent significant deterioration of air quality by providing a mechanism to prevent the development of any new non-attainment problems. 45CSR14 requires the evaluation of

<p>§ 110(a)(2)(E)(i) (continued)</p>		<p>sources of air pollutants and to preclude the construction or relocation of any major stationary source or major modification in any area classified as attaining NAAQS or unclassifiable in which the establishment of such source or modification may interfere with the goals of the prevention of significant deterioration of air quality levels. On June 7, 2017, West Virginia submitted a revision to the SIP which, in addition to other changes, includes a provision adding Subsection 16.11 to 45CSR14 to include the grandfathering provisions of 40 CFR § 51.166(i)(11) added in conjunction with the 2015 8-hour ozone NAAQS final rule (80 FR 65292, 26 Oct 2015). To date, there has been no action taken by EPA regarding the June 7, 2017 SIP revision submittal.</p> <p>Pursuant to W.Va. Code §22-5-4(a)(14), the Secretary is authorized to obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards. Under §§22-5-4(a)(14) and 22-5-4(a)(15), the Secretary is authorized to require recordkeeping. Under §22-5-44(a)(9), the Secretary is authorized to make inspections and conduct tests of air pollution sources.</p> <p>Under W.Va. Code §22-5-4(a)(15), the Secretary is authorized to require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources. Under §22-5-10, the Secretary is authorized to make such data available to the public as reported and as correlated with any applicable emission standards or limitations.</p>
<p>§ 110(a)(2)(E)(ii)</p>	<p><i>(ii) requirements that the state comply with the requirements respecting state boards under section 128, and</i></p>	<p>State Boards Under Section 128: West Virginia submitted a revision to the SIP to satisfy state obligations under CAA §§ 110(a)(2)(E)(ii) and 128 requirements for all criteria pollutants of the NAAQS in relation to State Boards on September 24, 2014. West Virginia received approval of the State Board Requirements from EPA on March 9, 2015 (80 FR 12345).</p> <p>Section 128(a)(1): Because West Virginia does not have a board which approves permits or enforcement orders, this element is not applicable.</p> <p>Air Director: § 128(a)(2) - Any potential conflicts of interest by the head of an executive agency that approves permits or enforcement orders shall be adequately disclosed pursuant to the West Virginia Governmental Ethics Act set forth in in W.Va. Code §§6B-1-3, 6B-2-6 and 6B-2-7, which contains relevant definitions, the requirements for filing of a financial disclosure statement, and the contents of the disclosure.</p>
<p>§ 110(a)(2)(E)(iii)</p>	<p><i>(iii) necessary assurances that, where the state has relied on a</i></p>	<p>Responsibility for Implementation of Assured Local Plan Provision: West Virginia has not relied on any local or regional government, agency, or instrumentality for the</p>

<p>§ 110(a)(2)(E)(iii) (continued)</p>	<p><i>local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;</i></p>	<p>implementation of any SIP provision for the 2015 8-hour ozone NAAQS. West Virginia will retain primacy with respect to any future plan that relies on local or regional governments, agencies or instrumentalities. By statute, West Virginia has prime responsibility for ensuring adequate implementation of such a plan provision. The Secretary has the authority under W.Va. Code §22-5-4(a)(16) “to do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the Federal Clean Air Act ... ”</p> <p>As set forth in W.Va. Code §22-1-1(b)(5), the DEP, “insofar as federal environmental programs require state participation” must “endeavor to obtain and continue state primacy in the administration of such federally-mandated programs... and to cooperate with appropriate federal agencies to meet environmental goals.”</p>
<p>§ 110(a)(2)(F)</p>	<p><i>require, as may be prescribed by the Administrator -</i></p> <p><i>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,</i></p> <p><i>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</i></p> <p><i>(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;</i></p>	<p>Source Monitoring: W.Va. Code §22-5-4(a)(15) authorizes the Secretary to require the installation, maintenance and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor and report emissions of NO_x and VOC from such sources as the Secretary may prescribe. Under this authority, West Virginia requires the installation, maintenance, periodic testing and replacement of monitoring equipment at stationary sources through permits issued under 45CSR13, 45CSR14, 45CSR19, 45CSR30, 45CSR33 and via compliance orders, in accordance with 40 CFR § 51.212(a). The Secretary therefore has statutory authority and promulgated rules to periodically test stationary sources, in accordance with 40 CFR § 51.212(a).</p> <p>W.Va. Code §22-5-4(a)(9) authorizes the Secretary to “<i>enter and inspect</i> any property, premise or place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the <i>purpose of ascertaining the state of compliance</i> with this article and rules promulgated under” The Secretary therefore has statute authority to inspect stationary sources, in accordance with 40 CFR § 51.212(a).</p> <p>The Secretary has the authority under §§22-5-4(a)(1) & (3) “to develop ways and means for the regulation and control of pollution of the air of the state” and “conduct such studies and research relating to air pollution and its control and abatement”. The Secretary has the authority under §§22-1-3(a), 22-5-4(a)(4) and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act (W.Va. Code §§ 29A3-1 et seq.)</p> <p>W.Va. Code §22-5-4(a)(6) authorizes the Secretary to “<i>consider complaints</i>, subpoena witnesses, administer oaths, <i>make investigations</i> and hold hearings” The Secretary</p>

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(continued)**

therefore has statute authority to investigate complaints, in accordance with 40 CFR § 51.212(b).

West Virginia's air quality program contains enforceable test methods for each specified emission limit. As an enforceable test method, West Virginia uses appropriate methods in 40 CFR Part 51, Appendix M, *Recommended Test Methods for State Implementation Plans*; or an alternative method following review and approval of that method by the Administrator, or an appropriate method in Appendix A to 40 CFR Part 60. Such enforceable test methods are contained in permits issued under 45CSR13, 45CSR14, 45CSR19, 45CSR30, 45CSR33, and promulgated legislative rules as follows:

45CSR11 - The purpose of this SIP approved rule (58 FR 34526, 28 Jun 1993) is to provide a mechanism to prevent the buildup of air pollutant concentrations during periods of adverse meteorological conditions in which air pollutants may accumulate, thereby preventing the occurrence of an emergency due to the effects of these pollutants on health. 45CSR11 contains test methods for sources subject to this rule.

45CSR16 - The purpose of this federal delegation rule is to incorporate the federal NSPS's under Part A of the CAA and 40 CFR Part 60. West Virginia received NSPS program delegation for Part 60 NSPS authority under 45CSR16 on December 14, 1984 at FR 48692. West Virginia has received automatic delegation of authority to enforce Part 60 NSPS in accordance with EPA letters of March 19, 2001, and January 8, 2002, as well as EPA's Notice at 67 FR 15486. All current emission limitations or standards of performance for NO_x, and VOC promulgated under 40 CFR Part 60 are incorporated by reference under 45CSR16, with limited exception. The rule also adopts associated reference methods, performance specifications and other test methods which are appended to these standards. On June 5, 2018, the DAQ submitted its most recent delegation letter to the EPA communicating the latest revision of 45CSR16 that became effective June 1, 2018.

45CSR21 - The purpose of this SIP approved rule (60 FR 6022, 1 Feb 1995) is to apply reasonably available control technology (RACT) for sources of VOC located in Putnam County, Kanawha County, Cabell County, Wayne County, and Wood County West Virginia. The rule specifies test methods for sources subject to the rule.

45CSR33 - This rule establishes and adopts general provisions and the operating permit program requirements for affected sources and affected units under the Acid Rain Program promulgated by the EPA under Title IV of the CAA. This rule incorporates by reference the Continuous Emissions Monitoring requirements set forth in 40 CFR Part 75. The rule was submitted to EPA on June 23, 1995 as part of the state's Title V

**§ 110(a)(2)(F)
(continued)**

requirements and approved effectively on December 15, 1995 with interim approval of the West Virginia Title V program. EPA fully approved the West Virginia Title V program (66 FR 50325, 3 Oct 2001).

45CSR40 – This SIP approved rule (74 FR 38536, 4 Aug 2009) rule establishes ozone season NO_x requirements for large industrial boilers and combustion turbines, affected stationary internal combustion engines, and applicable cement manufacturing kilns. The rule requires operation of certified continuous emission monitoring systems to attribute ozone season NO_x mass emissions to each unit in accordance with 40 CFR Part 75, Subpart H. The DAQ submitted a revision to the EPA on July 13, 2016 following the July 1, 2016 revision to 45CSR40 and submitted a demonstration on October 10, 2017. To date, the EPA has not taken action on the July 13, 2016 SIP revision submittal.

West Virginia certifies that the SIP does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed, for the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in the SIP.

Periodic Reporting and Recordkeeping: W.Va. Code §§22-5-4(a)(15) authorizes the Secretary to require periodic reports on the nature and amounts of emissions and emissions-related data from owners or operators of stationary sources (monitoring data) of NO_x and VOC.

Under this authority, the Secretary requires periodic reports on emissions and emissions-related data from stationary sources through permits issued under 45CSR13, 45CSR14, 45CSR19, 45CSR30, 45CSR33, and via compliance orders. The Secretary therefore has statute authority to require periodic reports on the nature and amounts of emissions and emissions-related data. West Virginia's SIP provides for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of and periodically report to the Secretary, in accordance with 40 CFR § 51.211. Such enforceable procedures are contained in permits issued under 45CSR13, 45CSR14, 45CSR19, 45CSR30, 45CSR33, and promulgated legislative rules as follows:

45CSR16 - The purpose of this federally delegated rule is to incorporate the federal NSPS's under Part A of the CAA and 40 CFR Part 60. All current reporting and recordkeeping requirements for NO_x, and VOC promulgated under 40 CFR Part 60 are incorporated by reference under 45CSR16 with limited exception.

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(continued)

45CSR21 - The purpose of this SIP approved rule (60 FR 6022, 1 Feb 1995) is to apply RACT for sources of VOC located in Putnam County, Kanawha County, Cabell County, Wayne County, and Wood County West Virginia. The rule specifies reporting requirements for sources subject to the rule.

45CSR33 - The Acid Rain Program under 45CSR33 requires reporting and recordkeeping of NO_x for electric generating units. This rule establishes and adopts general provisions and the operating permit program requirements for affected sources and affected units subject to the Acid Rain Program under Title IV of the CAA. This rule incorporates by reference the recordkeeping requirements of 40 CFR Part 75, Subpart F, and the reporting requirements under Subpart G. The rule was submitted to EPA on June 23, 1995 as part of the state's Title V requirements and approved effectively on December 15, 1995 with interim approval of the West Virginia Title V program.

45CSR40 – This SIP approved rule (74 FR 38536, 4 Aug 2009) rule establishes ozone season NO_x requirements for large industrial boilers and combustion turbines, affected stationary internal combustion engines, and applicable cement manufacturing kilns. NO_x mass emissions measurements are required to be recorded and reported in accordance with 40 CFR Part 75, Subpart H and shall be used to determine a unit's compliance with the ozone season NO_x emission limitation. WV submitted a SIP revision to the EPA on July 13, 2016 following the July 1, 2016 revision to 45CSR40. On October 10, 2017, WV submitted *West Virginia NO_x SIP Call Non-EGU Budget Demonstration, a Non-Regulatory Supplement to the Revision to the West Virginia State Implementation Plan to Revise the Ozone Season NO_x Rule 45CSR40 - Control of Ozone Season Nitrogen Oxides Emissions - Request for Approval*. To date, the EPA has not yet acted on the July 13, 2016 SIP revision submittal.

Pursuant to W.Va. Code §§22-5-4(a)(14), the Secretary is authorized to require such information as the Secretary may require in a form or manner prescribed by the Secretary (emissions inventory program). West Virginia is subject to the Air Emission Reporting Rule (AERR) set forth in 40 CFR Part 51, Subpart A. DAQ's emissions inventory program provides source-specific emissions data to EPA pursuant to the AERR reporting requirements and the source emissions and state action reporting requirements set forth in 40 CFR §§ 51.321-323. West Virginia assures that it will meet changes in reporting and inventory requirements associated with a new or revised NAAQS.

Correlation of Reports: As set forth in W.Va. Code §22-5-10, the Secretary makes available at reasonable times for public inspection the periodic emissions reported under §§22-5-4(a)(14) & (15). The Secretary has the responsibility of making all records, reports or information obtained by the DEP or referred to at public hearings under the

<p>§ 110(a)(2)(F) (continued)</p>		<p>provisions of the APCA available to the public, except to the extent the records, reports or information are protected by confidentiality pursuant to 45CSR31. The types of records, reports or information that would relate to § 110(a)(2)(F) which DAQ routinely provides access to include notifications, inspection reports, notices of violation, enforcement orders, applications, permit review letters, sample results, monitoring reports, permits, approvals and denials, and detailed data and calculations for SIP revisions. The detailed data and calculations used in the preparation of SIP revisions are not considered part of the SIP. DAQ generally makes information available for public access through its website, but also makes hard copy reports available upon written request. CEMS emissions data are uploaded to AIRS and CAMD, and EPA may make such data available to the public.</p> <p>W.Va. Code §22-1-6(d)(3) authorizes the Secretary to “investigate for violations of statutes or rules which the department is charged with enforcing.” §22-5-4(a)(3) authorizes the Secretary to correlate periodic emissions reports with any NO_x, and VOC emission limitation or standard established pursuant to 45CSR13, 45CSR14, 45CSR16, 45CSR19, 45CSR30, 45CSR33, 45CSR40 or the CAA in such a manner as to show the relationship between measured or estimated amounts and the amounts of such emissions allowable under the applicable emission limitations or other measures, in accordance with 40 CFR § 51.116. Correlation with applicable emissions limitations or standards is relevant only for those reports of source emissions that reflect the test methods and averaging periods specified in applicable emission limitations or standards. Thus, source reports of annual, ozone season, or summer day emissions used by DAQ to create the annual and triennial emission inventory submission to the EPA under 40 CFR Part 51, Subpart A, in general would not need to be correlated with specific emission limitations or standards, as many sources do not have applicable emission limitations defined for those averaging periods.</p>
<p>§ 110(a)(2)(G)</p>	<p><i>provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;</i></p>	<p>Comparable Authority to CAA § 303: W.Va. Code §22-5-5 authorizes the Secretary to issue an order to cease and desist any activity that violates the APCA. The Secretary may also suspend, modify or revoke a source’s permit. Under §22-5-6, the Secretary may also institute lawsuits for civil penalties. §22-5-7 authorizes the Secretary to seek applications for injunctive relief. §22-5-8 authorizes the Secretary, with the written authorization of the Governor, to shut down a source of NO_x and VOC emissions, thereby preventing the emission of air pollutants which substantially contributes to an emergency that requires immediate action to protect public health. As provided in §§22-5-4(a)(2) and 22-5-10, the Secretary may consult with EPA to affirm accuracy of any information considered while executing authority under §§22-5-5, -6, -7 or -8.</p>

<p>§ 110(a)(2)(G) (continued)</p>		<p>Contingency Plans for Emergency Episodes: Pursuant to 40 CFR § 52.2521, West Virginia is classified as a Priority III Region for nitrogen dioxide and photochemical oxidants (hydrocarbons). Nitrogen oxides and volatile organic chemicals are precursors to ozone.</p> <p>Pursuant to 40 CFR § 51.152(c), areas classified as a Priority III Region do not need to develop emergency episode (contingency) plans. However, the purpose of the SIP approved rule 45CSR11 (58 FR 34526) is to provide a mechanism to prevent air pollution emergency episodes in accordance with 40 CFR Part 51, Subpart H by preventing the buildup of air pollutant concentrations during periods of adverse meteorological conditions in which air pollutants may accumulate, thereby preventing the occurrence of an emergency due to effects of these pollutants on health. To achieve this purpose, three stages of criteria (pollutant concentration levels) have been established and specific emission reduction plans will be developed which will be initiated at each criteria stage to prevent further deterioration of the air supply to any air quality region or substantial portion thereof. 45CSR11 contains episode criteria, methods of measurement, preplanned reduction strategies and emission reduction plan requirements for sources of NO_x and VOC emissions in West Virginia.</p>
<p>§ 110(a)(2)(H)</p>	<p><i>provide for revision of such plan-</i></p> <p><i>(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and</i></p> <p><i>(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements, or to otherwise comply with any</i></p>	<p>Revision of the NAAQS: To satisfy the SIP revision provisions set forth in 40 CFR § 51.104, W.Va. Code §22-5-4(a)(16) authorizes the Secretary to do all things necessary and convenient to prepare and submit a plan for the implementation, maintenance and enforcement of the CAA. DAQ has historically revised and will continue to revise its NAAQS rules as necessary to take account of revisions of the national primary or secondary ambient air quality standards or improved or more expeditious methods of attaining the standards. Below are recent examples of how West Virginia has promulgated various versions of the <i>Ambient Air Quality Standards</i> rule 45CSR8 to incorporate revisions to the primary and secondary NAAQS:</p> <p>On April 23, 2018, West Virginia received full SIP approval of 45CSR8 (83 FR 12677, 23 Aug 2018) that incorporated by reference the 2015 ozone NAAQS. This rule contains ambient air quality standards for all criteria pollutants, including the 2015 8-hour ozone NAAQS, equivalent to the national primary and secondary ambient air quality standards established under Section 109 of the CAA, and promulgated by the EPA under 40 CFR Part 50 through June 1, 2016.</p> <p>On June 8, 2018, West Virginia submitted a request to approve a revision to the SIP with the most recent revision of 45CSR8, effective June 1, 2018 to include the incorporation by reference of rules promulgated by EPA under 40 CFR Parts 50 and 53 as of June 1, 2017 including the retention of the lead NAAQS.</p>

<p>§ 110(a)(2)(H) (continued)</p>	<p><i>additional requirements established under this Act;</i></p>	<p>Inadequate Plan: W.Va. Code §22-5-4(a)(16) authorizes the Secretary to do all things necessary and convenient to prepare and submit a plan for the implementation, maintenance and enforcement of the CAA. If the EPA would ever find the SIP to be substantially inadequate to attain the NAAQS or otherwise meet all applicable CAA requirements, West Virginia will revise the plan as necessary for adequacy.</p>
<p>§ 110(a)(2)(J)</p>	<p><i>meet the applicable requirements of section 121 (relating to consultation) and section 127 (relating to public notification) and part C (relating to prevention of significant deterioration of air quality and visibility protection)</i></p>	<p>Consultation: The APCA provides adequate authority under W.Va. Code §22-5-4(a)(2) for West Virginia’s practices of consultation with local governments, organizations and Land Managers regarding implementation plans for air quality maintenance requirements, preconstruction review of direct sources, nonattainment requirements, prevention of significant deterioration and administrative assessment of civil penalties, in accordance with § 121 of the CAA.</p> <p>For the 2015 8-hour ozone NAAQS, West Virginia’s permitting program includes three SIP approved rules: minor NSR rule 45CSR13 (79 FR 42211, 21 Jul 2014), PSD rule 45CSR14 (81 FR 53008, 11 Aug 2016), and major NSR rule 45CSR19 (80 FR 29972, 26 May 2015). West Virginia also has an approved Title V operating permit program rule 45CSR30 (81 FR 7469, 12 Feb 2016). DEP has previously demonstrated a commitment to such consultation through encouragement and support for an Early Action Compact, and through Federal Land Manager consultation for the West Virginia Regional Haze SIP.</p> <p>Public Notification: W.Va. Code §22-1-12 provides authority for the public notification of NAAQS violations and education efforts as required by 40 CFR § 51.285 and CAA § 127. W.Va. Code §22-4-(a)(10) provides authority for the DAQ to advise of the health hazards associated with an exceedance of a primary NAAQS, or a violation which presents an imminent and serious hazard to public health. Each year, DAQ issues a comprehensive West Virginia Air Quality Annual Report. The report provides air quality highlights from the previous year, raises public awareness of criteria pollutants and their effects on health, and tracks the Air Quality Index. The report also compares monitored air quality data with the NAAQS and identifies primary NAAQS exceedances. The report enhances the public’s awareness of measures that prevent such exceedances and provides educational website links to tips that improve air quality, links to technical websites, regulatory and outreach efforts, in accordance with 40 CFR § 51.285 and § 127 of the CAA.</p> <p>Preconstruction PSD Permitting of Major Sources: The PSD program contained in Part C of Title I of the CAA governs the preconstruction review and permitting of any new or modified major stationary sources of air pollutants regulated under the CAA as</p>

<p>§ 110(a)(2)(J) (continued)</p>		<p>well as any precursors to the formation of that pollutant when identified for regulation by EPA in areas designated as attainment or unclassifiable. The PSD program will regulate future growth and provide for continued maintenance of the 2015 8-hour ozone NAAQS. Please refer to § 110(a)(C) of this submittal for additional information relating to West Virginia's SIP approved PSD rule 45CSR14 (81 FR 53009, 11 Aug 2016).</p> <p>Visibility Protection: There are no new applicable visibility protection obligations under § 110(a)(2)(J) resulting from the 2015 8-hour ozone NAAQS. According to EPA's interpretation of the CAA and guidance provided in the September 13, 2013 Memorandum to Regional Air Directors titled <i>Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)</i>, the visibility element of section J does not need to be addressed. Therefore, West Virginia is not addressing the visibility section under Element J.</p>
<p>§ 110(a)(2)(K)</p>	<p><i>provide for:</i></p> <p><i>(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and</i></p> <p><i>(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;</i></p>	<p>Air Quality Modeling: W.Va. Code, §§22-5-4(a)(1)&(3), authorizes the Secretary to “develop ways and means for the regulation and control of pollution of the air of the state” and “conduct such studies and research relating to air pollution and its control and abatement”.</p> <p>Inherent in the Secretary's authority is the ability to conduct new source review modeling required under the CAA set forth in the SIP-approved (81 FR 53008, 11 Aug 2016) PSD source impact and modeling requirements of 45CSR14-§§ 9 and 10, in accordance with 40 CFR §§ 51.166(k) and (l). All applications of air quality modeling, where appropriate, for PSD purposes shall be based on the applicable air quality models, databases, and other requirements specified in the Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models). Pursuant to 45CSR14 § 10.2, where an air quality impact model specified in Appendix W of 40 CFR Part 51 is inappropriate, the model may be modified or another model substituted, provided that the modification or substitution is approved in writing by the Administrator.</p> <p>Also inherent in the Secretary's authority is the ability to conduct modeling to demonstrate attainment of the NAAQS, as required under the Part D of the CAA, and as prescribed by the Administrator. Air quality modeling is an inherent aspect of preparing the attainment plan required for nonattainment areas under Part D of Title I of the CAA. Such plans are not required to be submitted as part of an infrastructure SIP. However, there is an obligation for the infrastructure SIP from any state containing a designated nonattainment area for a new or revised NAAQS to provide for the performance of the air quality modeling that will be needed to prepare an attainment demonstration plan. A source-oriented dispersion model such as AERMOD would be the air quality model used to demonstrate the adequacy of a control strategy to provide for the timely attainment</p>

<p>§ 110(a)(2)(K) (continued)</p>		<p>and maintenance of the NAAQS, pursuant to 40 CFR §§ 51.112 and 51.115(b). West Virginia is designated as attainment/ unclassifiable for the 2015 8-hour ozone NAAQS for each area in the state; therefore, the aforementioned modeling for nonattainment areas is not required.</p> <p>DAQ employs two full time technical employees responsible for air quality modeling. DAQ also participates in regional planning organizations such as the South Eastern Air Resources Manager (SESARM), which has performed NAAQS modeling for member states. West Virginia may perform modeling to demonstrate attainment with the 2015 8-hour ozone NAAQS. Any air quality modeling that may be conducted with respect to the 2015 8-hour ozone NAAQS may utilize regional scale photochemical models such as CMAQ or CAM_x or a model accepted by the EPA. West Virginia is designated as attainment/ unclassifiable for the 2015 8-hour ozone NAAQS for every area in the state.</p> <p>Submission of Data: W.Va. Code §§22-5-4(a)(2), 22-5-10 and 22-5-4(a)(16) authorizes the Secretary to submit, upon request by the Administrator, modeling data predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard. West Virginia will submit to EPA current and future air quality modeling data as part of its relevant SIP submissions and through Federal grant commitments or in other ways that EPA may request. West Virginia can also provide relevant data as part of the NAAQS implementation process.</p>
<p>§ 110(a)(2)(L)</p>	<p><i>require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover-</i></p> <p><i>(i) the reasonable costs of reviewing and acting upon any application for such a permit, and</i></p> <p><i>(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such</i></p>	<p>Permit Fees for Permit Review, Implementation and Enforcement: West Virginia has an approved Title V operating permit program under 45CSR30 (66 FR 50325, 3 Oct 2001). EPA granted final full approval effective on November 19, 2001. The Title V Program permit fees which satisfy the fee determination and certification requirements set forth in 40 CFR § 70.9 are contained in the rule at 45CSR§ 30-8. The collected fees have been sufficient to cover permit review, and implementation and enforcement of permit terms and conditions. On June 17, 2015 DAQ submitted to EPA a revision to the WV State Operating Permits Program under Title V of the Clean Air Act. The revision to the rule implemented an increase in Title V operating fees from \$18/ton to \$28/ton to keep the Title V Operating Permit Program solvent in accordance with the Clean Air Act.</p> <p>Because the fee requirement in § 110(a)(2)(L) has been superseded by the EPA-approved fee program under Title V, infrastructure SIP submissions following promulgation of a new or revised NAAQS do not currently need to contain any new provisions for the fee requirements under this section. Therefore, West Virginia's EPA-approved Title V operating permits program (and its collection of permitting fees</p>

<p>§ 110(a)(2)(L) (continued)</p>	<p><i>permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V;</i></p>	<p>pursuant to 40 CFR § 70.9) demonstrates that the Element L fees are no longer required.</p>
<p>§ 110(a)(2)(M)</p>	<p><i>provide for consultation and participation by local political subdivisions affected by the plan;</i></p>	<p>Consultation: The Secretary has the authority under W.Va. Code §22-5-4(a)(16) “to do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the Federal Clean Air Act” Under this statute, and pursuant to the General Plan Requirements set forth in 40 CFR § 51.240, the DAQ is the organization authorized to develop, implement and enforce the SIP. §22-5-4(a)(2), authorizes the Secretary to advise, consult and cooperate with local political subdivisions affected by the implementation plan. DAQ consults with local governments, organizations and Land Managers with respect to SIP development.</p> <p>DAQ also consults with such entities regarding implementation plans for air quality maintenance requirements, preconstruction review of direct sources, nonattainment requirements, and prevention of significant deterioration.</p> <p>Notice and Opportunity for Public Hearing: In accordance with the federal procedural requirements at 40 CFR § 51.102, any plan or plan revision, or individual compliance schedule under 40 CFR §51.260, prepared by DAQ is subject to a 30-day public notice period with public hearing, or in cases where there is little anticipated public interest, the opportunity for a public hearing. West Virginia legislative rules which contain such public notice procedures include permitting rules 45CSR13, 45CSR14, 45CSR19 and 45CSR30.</p>

APPENDICIES

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NOTICE OF PUBLIC COMMENT PERIOD

The West Virginia Department of Environmental Protection (DEP) is announcing an opportunity for public comment on a proposed *West Virginia State Implementation Plan Revision for Clean Air Act § 110(a)(2)(A)-(M) Requirements for 2015 8-Hour Ozone NAAQS* with regard to the 2015 primary and secondary 8-hour ozone national ambient air quality standards (NAAQS). The proposed revision does not address Clean Air Act (CAA) § 110(a)(2)(D)(i)(I). The state implementation plan (SIP) is the plan developed by West Virginia to fulfill its responsibilities under the CAA to attain and maintain the NAAQS promulgated by the U.S. Environmental Protection Agency (EPA). A public hearing will take place beginning at 6:00 p.m. on August 28, 2018 in the Dolly Sods Conference Room at the DEP headquarters located at 601 57th Street SE, Charleston, WV 25304. The public comment period commences July 27, 2018 and ends at the conclusion of the public hearing on August 28, 2018.

On October 1, 2015, the EPA revised the primary and secondary NAAQS for ozone to an 8-hour standard of 0.070 part per million (ppm) or 70 parts per billion (ppb) [80 FR 65292, 26 Oct 2015]. Within three years of the promulgation of any new or revised NAAQS, CAA §§ 110(a)(1) and (2) require all states to adopt and submit to the EPA a plan which provides for the implementation, maintenance, and enforcement of a new or revised NAAQS. Such revisions are commonly referred to as “infrastructure SIPs.” CAA §§ 110(a)(2)(A) through (M), lists the required SIP elements. This proposed SIP revision demonstrates that West Virginia has adequate resources and authority to implement the 2015 Ozone NAAQS, and details how the state meets these requirements through authorities granted under state laws and regulations, as well as implementation of existing air programs. DEP is seeking comment on whether the proposed SIP revision adequately demonstrates West Virginia’s compliance with the pertinent federal CAA mandates related to these infrastructure SIP elements.

Upon completion of the public notice period, and after addressing any written or verbal comments, the DEP will submit the final documentation to the U.S. EPA as a revision to its SIP.

Copies of the proposed CAA § 110(a)(2)(A)-(M) SIP revision will be available for public review on or before August 28, 2018, at the DEP, Division of Air Quality’s Charleston office at the above address, or on the website at <https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx>.

Send written comments to be included in the formal record to the attention of William F. Durham, Director, Division of Air Quality at the above address. Please identify the document to which the comments apply, the commenter’s name and organization, if applicable, address, and telephone number. Comments will also be accepted by e-mail at Laura.M.Jennings@wv.gov if received by 5:00 p.m. on August 28, 2018.



west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304

Austin Caperton, Cabinet Secretary
dep.wv.gov

July 25 2018

Ms. Cristina Fernandez, Director
Air Protection Division
U.S. EPA, Region 3
1650 Arch Street (3AP00)
Philadelphia, PA 19103-2029

Re: Proposed West Virginia State Implementation Plan Revision for Clean Air Act Section 110(a)(2)(A)-(M) Requirements for 2015 8-Hour Ozone NAAQS - Request for Comments

Dear Ms. Fernandez:

Enclosed for your agency's review and comment is the above-referenced proposed revision to the West Virginia State Implementation Plan (SIP) for Clean Air Act (CAA) § 110(a)(2)(A)-(M) Requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS), commonly referred to as the infrastructure SIP. In this proposed SIP revision, West Virginia demonstrates that it has adequate resources and authority to implement the 2015 primary and secondary 8-hour ozone NAAQS.

This SIP revision addresses the applicable requirements of Section 110 (a)(2)(A)-(M) of the Clean Air Act (CAA); however, this action does not address section 110(a)(2)(D)(i)(I) which will be addressed in a later, separate action.

The public comment period begins on July 27, 2018. The DAQ will accept written comments on the proposed SIP revision until August 28, 2018. In addition, the agency will receive oral and written comments at a public hearing to be held on August 28, 2018 at 6:00 p.m. as detailed in the attached public notice. Please submit any written comments to my attention at the above address, or feel free to call me with any questions regarding this matter at (304) 926-0462.

Sincerely,

A handwritten signature in blue ink, appearing to read "William F. Durham", is written over a white background.

William F. Durham
Director

WFD/lmj
Enclosures

cc: Joseph Schulingkamp, USEPA/3AP30
Laura Jennings, DAQ