

a counterclaimant asserting a counterclaim arising under an agreement shall consist of information pertaining to:

(1) Identification and a description of the specific terms or provisions of the agreement the counterclaim respondent is alleged to have violated;

(2) The basis for the counterclaimant's belief that the agreement was valid;

(3) The basis for the counterclaimant's belief that the agreement was violated;

(4) The basis for the counterclaimant's belief that the agreement could affect the relief that might be awarded to the claimant;

(5) A description of the counterclaimant's performance under the agreement, as relevant to the counterclaim;

(6) Identification and a description of any inadequacies in performance under the agreement by the counterclaim respondent; and

(7) If the agreement at issue in the counterclaim is oral, a description of the terms and provisions of the agreement.

(g) *For a counterclaim respondent responding to a counterclaim arising under an agreement.* In addition to the information in paragraph (a) of this section, the *standard interrogatories* for a counterclaim respondent responding to a counterclaim arising under an agreement shall consist of information pertaining to:

(1) All defenses asserted to the counterclaim arising under an agreement and the basis for those assertions. Defenses listed in timely answers and timely updated answers to the *standard interrogatories* shall be considered by the Board and will not require an amendment of the counterclaim response;

(2) The basis for any other reasons the counterclaim respondent believes that it did not violate the agreement or that the agreement was not valid;

(3) The basis for any belief by the counterclaim respondent that the agreement does not affect the relief that might be awarded to the claimant;

(4) A description of the counterclaim respondent's performance under the agreement, as relevant to the counterclaim; and

(5) Identification and a description of any inadequacies in performance under the agreement by the counterclaimant.

\* \* \* \* \*

■ 6. Amend § 225.3 as follows:

■ a. Redesignate paragraphs (f) and (g) as paragraph (h) and (i), respectively.

■ b. Add paragraphs (f) and (g), as follows:

### § 225.3 Standard requests for the production of documents.

\* \* \* \* \*

(f) *For a counterclaimant asserting a counterclaim arising under an agreement.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a party asserting a counterclaim arising under an agreement shall include copies of:

(1) The agreement at issue in the counterclaim arising under an agreement, including any amendments or revisions;

(2) Documents related to the agreement at issue, including any amendments or revisions and documents related to the validity of and the parties' performance under the agreement; and

(3) Documents relevant to damages arising out of the counterclaim, including documents sufficient to show the damages suffered by the counterclaimant related to violation of the agreement in question.

(g) *For a counterclaim respondent responding to a counterclaim arising under an agreement.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a counterclaim respondent responding to a counterclaim arising under an agreement shall include copies of:

(1) The agreement at issue in the counterclaim arising under an agreement, including any amendments or revisions;

(2) Documents related to the agreement at issue, including any amendments or revisions and documents related to the validity of and the parties' performance under the agreement; and

(3) Documents relevant to damages, including documents sufficient to show the lack of damages suffered by the counterclaimant related to the counterclaim respondent's alleged violation of the agreement in question.

\* \* \* \* \*

Dated: July 19, 2023.

**Shira Perlmutter,**

*Register of Copyrights and Director of the U.S. Copyright Office.*

Approved by:

**Carla D. Hayden,**

*Librarian of Congress.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2022-0656; FRL-10083-02-R3]

### Air Plan Approval; West Virginia; 2022 Amendments to West Virginia's Ambient Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of West Virginia. The revision updates West Virginia's incorporation by reference (IBR) of EPA's national ambient air quality standards (NAAQS) and the associated monitoring reference and equivalent methods. EPA is approving these revisions to the West Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on August 28, 2023.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2022-0656. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov), or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Om P. Devkota, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2172. Mr. Devkota can also be reached via electronic mail at [devkota.om@epa.gov](mailto:devkota.om@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

On May 8, 2023 (88 FR 29616), EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the NPRM, EPA proposed approval of a formal SIP

revision submitted on July 1, 2022. The formal SIP revision updates West Virginia's IBR of the NAAQS promulgated by EPA and found at 40 Code of Federal Regulations (CFR) part 50 and ambient air monitoring reference methods and equivalent methods promulgated by EPA found at 40 CFR part 53 into West Virginia's legislative rules.

## II. Summary of SIP Revision and EPA Analysis

West Virginia Department of Environmental Protection (WVDEP) has historically chosen to incorporate by reference the NAAQS, found at 40 CFR part 50, and the associated Federal ambient air monitoring reference methods and equivalent methods for these NAAQS found at 40 CFR part 53. When incorporating by reference these Federal regulations, WVDEP has specified that it is incorporating by reference these regulations as they existed on a certain date. The IBR of the NAAQS that is currently approved in the West Virginia SIP incorporates by reference 40 CFR parts 50 and 53 as they existed on June 1, 2020. West Virginia's July 1, 2022 SIP revision updates the State's IBR of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods, found in 40 CFR parts 50 and 53, respectively, as of June 1, 2021.

Since the last West Virginia IBR of June 1, 2020, EPA: (1) updated method 201A of Appendix M of Part 51; (2) completed the review of the NAAQS for particulate matter; (3) completed the review of the NAAQS for ozone; and (4) designated one new reference method for measuring concentrations of sulfur dioxide and one new equivalent method for measuring concentrations of particulate matter (PM<sub>10</sub>) in ambient air. See 85 FR 63394 (October 7, 2020—corrected in 86 FR 9470 (February 16, 2021)), 85 FR 82684 (December 18, 2020), 85 FR 87256 (December 31, 2020), and 86 FR 12682 (March 4, 2021).

The amendments to the legislative rule include changes to sections 45–8–1 (General) and 45–8–3 (Adoption of Standards). The amendments alphabetize the criteria pollutants list in the scope (1.1), update the filing and effective dates (1.3, 1.4) and update West Virginia's IBR of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods from June 1, 2020, to June 1, 2021 (1.6, 3.1, 3.2). West Virginia is incorporating the Federal rules in 40 CFR parts 50 and 53 as they existed on June 1, 2021, into sections 45–8–1 and 45–8–3.

## III. EPA's Response to Comments Received

EPA received one comment in response to the NPRM, which is available in the docket for this action. The comment was outside of the scope of this rulemaking. As such, the comment does not require a response by EPA.

## IV. Final Action

EPA is approving the West Virginia SIP revision of July 1, 2022, updating the IBR of EPA's NAAQS and associated ambient air monitoring reference methods and equivalent methods.

## V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of 45CSR8, as effective April 1, 2022, as discussed in section II. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

## VI. Statutory and Executive Order Reviews

### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and

<sup>1</sup> 62 FR 27968 (May 22, 1997).

commercial operations or programs and policies.”

The WVDEP did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 25, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving the West Virginia SIP revision updating its incorporation by reference of EPA’s NAAQS and associated ambient air monitoring reference methods and equivalent methods, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference,

Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Adam Ortiz,**

*Regional Administrator, Region III.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart XX—West Virginia**

■ 2. In § 52.2520, the table in paragraph (c) entitled “EPA-Approved Regulations in the West Virginia SIP” is amended by revising the entries for “Section 45–8–1”, “Section 45–8–2”, “Section 45–8–3”, and “Section 45–8–4” under the heading “[45 CSR] Series 8 Ambient Air Quality Standards” to read as follows:

**§ 52.2520 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP**

State citation [chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
*	*	*	*	*
<b>[45 CSR] Series 8 Ambient Air Quality Standards</b>				
Section 45–8–1 .....	General .....	4/1/22	7/27/23 [INSERT FEDERAL REGISTER CITATION]	Docket #2022–0656.
Section 45–8–2 .....	Definitions .....	4/1/22	7/27/23 [INSERT FEDERAL REGISTER CITATION]	Docket #2022–0656.
Section 45–8–3 .....	Adoption of Standards .....	4/1/22	7/27/23, [INSERT FEDERAL REGISTER CITATION]	Docket #2022–0656.
Section 45–8–4 .....	Inconsistency Between Rules .....	4/1/22	7/27/23, [INSERT FEDERAL REGISTER CITATION]	Docket #2022–0656.
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2022–0361; FRL–11130–01–OCSPP]

**Sodium Salt of Acifluorfen; Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of sodium salt of acifluorfen in or on berry, low growing, subgroup 13–07G; soybean, vegetable, edible podded; and soybean, vegetable, succulent shelled. The Interregional Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective July 27, 2023. Objections and requests for hearings must be received on or before September 25, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0361, is available online at <https://www.regulations.gov> or in-person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services,