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Attorney, Federal Compliance.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0413; FRL-9971-40-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; 2015 Ozone National Ambient Air Quality Standards; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of adverse comment, the Environmental Protection Agency (EPA) is withdrawing the direct final rule published on Monday, October 16, 2017, to approve revisions to the West Virginia state implementation plan (SIP). The revisions updated the effective date by which the West Virginia regulations incorporate by reference the national ambient air quality standards (NAAQS), additional monitoring methods, and additional equivalent monitoring methods.

DATES: The direct final rule published at 82 FR 47981, on October 16, 2017, is withdrawn as of December 5, 2017.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, (215) 814-2021, or by email at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: On June 13, 2017, West Virginia submitted a SIP revision to update the State's incorporation by reference of federal standards, ambient air monitoring reference methods, and equivalent monitoring reference methods. The SIP revisions updated the effective date by which the West Virginia regulations incorporate by reference the national ambient air quality standards (NAAQS), additional monitoring methods, and additional equivalent monitoring methods. This update was intended to add effectively the following to the West Virginia SIP: The 2015 ozone NAAQS; monitoring reference and equivalent methods pertaining to fine particulate matter (PM_{2.5}), carbon monoxide (CO), and coarse particulate matter (PM₁₀); a revised ozone monitoring season; the

Federal Reference Method (FRM); the Federal Equivalent Method (FEM); and the Photochemical Assessment Monitoring Stations (PAMS) network. The effective date of the incorporation by reference changed from June 1, 2013 to June 1, 2017. The SIP revision also sought to change a reference from the "West Virginia Department of Environmental Protection," to the "Division of Air Quality."

In the direct final rule published on Monday, October 16, 2017 (82 FR 47981), EPA stated that if we received adverse comment by November 15, 2017, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comments received in a subsequent final rulemaking action based upon the proposed action, also published on Monday, October 16, 2017 (82 FR 48033). EPA will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 17, 2017.

Cosmo Servidio,

Regional Administrator, Region III.

■ Accordingly, the amendments to 40 CFR 52.2520(c) published on October 16, 2017 (82 FR 47981) are withdrawn as of December 5, 2017.

[FR Doc. 2017-26077 Filed 12-4-17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2017-0425, FRL-9971-25-Region 2]

Approval of Air Quality Implementation Plans; New York; Cross-State Air Pollution Rule; NO_x Annual and SO₂ Group 1 Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is conditionally approving a revision to the New York State Implementation Plan (SIP) addressing requirements of the Cross-State Air Pollution Rule (CSAPR). Under the CSAPR, large electricity generating units in New York are subject to Federal Implementation Plans (FIPs)

requiring the units to participate in CSAPR federal trading programs for annual emissions of nitrogen oxides (NO_x), ozone season emissions of NO_x, and annual emissions of sulfur dioxide (SO₂). This action conditionally approves into New York's SIP the State's regulations that replace the default allowance allocation provisions of the CSAPR federal trading programs for annual NO_x and SO₂ emissions. EPA is conditionally approving New York's regulations for annual NO_x and SO₂ emissions because, while the submitted rules do not fully conform to CSAPR, New York is in the process of making further revisions to its rules and has provided a commitment to finalize and submit them by December 29, 2017. Upon timely meeting of this commitment, EPA will propose to convert the conditional approval of the SIP revision to a full approval.

DATES: This rule is effective December 5, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID number EPA-R02-OAR-2017-0425. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information 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, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3702, or by email at fradkin.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What action is EPA taking?
- II. Background on CSAPR and CSAPR-Related SIP Revisions
- III. What comments were received in response to EPA's proposed action?
- IV. What is EPA's conclusion?
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is conditionally approving portions of New York's December 1,

2015 SIP submittal concerning CSAPR¹ trading programs for annual emissions of NO_x and SO₂.

Large Electric Generating Units (EGUs) in New York are subject to CSAPR FIPs that require the units to participate in the federal CSAPR NO_x Annual Trading Program and the federal CSAPR SO₂ Group 1 Trading Program. CSAPR provides a process for the submission and approval of SIP revisions to replace certain provisions of the CSAPR FIPs while the remaining FIP provisions continue to apply. This type of CSAPR SIP is termed an abbreviated SIP. EPA proposed to conditionally approve New York's submittal on August 29, 2017 (82 FR 40963).

The New York State Department of Environmental Conservation (DEC) amended portions of Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) in order to incorporate CSAPR requirements into the State's rules and allow the DEC to allocate CSAPR allowances to regulated entities in New York. 6 NYCRR Part 244, "CAIR NO_x Annual Trading Program," has been repealed and replaced in its entirety with a new rule, 6 NYCRR Part 244, "Transport Rule NO_x Annual Trading Program." 6 NYCRR Part 245, "CAIR SO₂ Trading Program," has also been repealed and replaced in its entirety with a new rule, 6 NYCRR Part 245, "Transport Rule SO₂ Group 1 Trading Program." Attendant revisions were made to 6 NYCRR Part 200, "General Provisions," to update the list of referenced materials that are cited in the amended New York regulations. EPA is conditionally approving into the SIP the revised versions of 6 NYCRR Parts 200, 244 and 245.

EPA is conditionally approving this SIP revision, as opposed to fully approving it, because of several deficiencies that New York must address. The conditional approval of portions of New York's SIP submittal is conditioned on New York meeting the commitment, articulated in its letters to EPA dated July 14, 2016, March 4, 2017, and July 6, 2017, to make the necessary changes to 6 NYCRR Parts 200, 244, and 245 to meet the requirements of the Clean Air Act (CAA) and EPA's regulations for approval of an abbreviated SIP revision to replace EPA's default allocations of CSAPR emission allowances with state-determined allocations. In a July 6, 2017 letter to EPA, the DEC committed to

submitting a SIP revision that addresses EPA identified deficiencies by December 29, 2017.² Once EPA determines that the DEC has satisfied these conditions and EPA approves the revisions (after EPA notice and comment), EPA shall remove the conditional approval and this SIP revision will at that time receive full approval status. The conditionally approved SIP submission will remain part of the SIP until EPA takes further action. If New York fails to meet its commitment to submit a revised SIP by December 29, 2017 [*i.e.*, the date of commitment from the state's July 6, 2017 letter], the conditional approval will revert to a disapproval.

This action conditionally approves into New York's SIP state-determined allowance allocation procedures for annual NO_x and SO₂ allowances that would replace EPA's default allocation procedures for the control periods in 2017 and beyond. The conditional approval of this SIP revision does not alter any provision of either the CSAPR NO_x Annual Trading Program or the CSAPR SO₂ Group 1 Trading Program as applied to New York units other than the allowance allocation provisions, and the FIP provisions requiring those units to participate in the programs (as modified by this SIP revision) remain in place.

New York also repealed 6 NYCRR Part 243, "CAIR NO_x Ozone Season Trading Program," and replaced it in its entirety with a new rule, 6 NYCRR Part 243, "Transport Rule NO_x Ozone Season Trading Program," which was included in New York's December 1, 2015 SIP submittal. EPA is not acting at this time on the portion of New York's SIP submittal addressing 6 NYCRR Part 243. Since New York's December 1, 2015 submission, EPA has finalized the CSAPR Update rule³ to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 Ozone National Ambient Air Quality Standard (NAAQS). Among other things, starting in 2017 the CSAPR Update requires New York EGUs to participate in the new CSAPR NO_x Ozone Season Group 2 Trading Program instead of the earlier CSAPR NO_x Ozone Season Trading Program (now renamed the "Group 1" program) and replaces the ozone season budget for New York with a lower budget developed to address the revised and more stringent 2008 Ozone NAAQS. In DEC's July 14, 2016 commitment letter to EPA, New York indicated that the State would

revise 6 NYCRR Part 243 to conform with the final CSAPR Update. For this reason, EPA is acting at this time only on 6 NYCRR Parts 200, 244 and 245.

This conditional final rule is effective immediately upon publication in the **Federal Register**. Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), which generally provides that final rules may not take effect earlier than 30 days after publication in the **Federal Register** but allows exceptions where an agency finds good cause and publishes its finding with the rule, applies to this action. Ordinarily, a 30-day transition period before a new rule takes effect would give affected parties an opportunity to adjust their behavior and prepare for compliance. However, in this instance no transition period is necessary because this rule does not impose new requirements. Under CSAPR's existing requirements, on March 1 of each year affected sources must hold quantities of emissions allowances not less than their emissions during the prior year's control period. The CSAPR regulations provide for default allocations to affected sources of allowances eligible for use in meeting this requirement. In this rule, in accordance with options CSAPR makes available to States, EPA is conditionally approving into New York's SIP the State's allocation rules to replace the default federally-established allocations. The sooner this rule is effective, the sooner allowances eligible for use for the 2017 control period can be issued to affected sources in New York in the amounts determined under New York's rules, which will assist the sources in planning to meet their March 1, 2018, compliance requirement. EPA therefore finds good cause to make this conditional final rule effective immediately upon publication in the **Federal Register**.

II. Background on CSAPR and CSAPR-Related SIP Revisions

EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended (including the 2016 CSAPR Update), CSAPR requires 27 Eastern states to limit their statewide emissions of SO₂ and/or NO_x in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, the 1997 Ozone NAAQS, and the 2008 Ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO₂, annual NO_x, and/or ozone-season NO_x

¹ Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and 40 CFR part 97).

² The date supersedes the dates identified in the July 14, 2016, and March 24, 2017 letters.

³ 81 FR 74504 (October 26, 2016).

by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 (and CSAPR Update) budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: A program for annual NO_x emissions, two geographically separate programs for annual SO₂ emissions, and two geographically separate programs for ozone-season NO_x emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state. The CSAPR FIP provisions require each state's EGUs to participate in up to three of the five CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs.⁴ Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing criteria and limits on overall allowance quantities. In the case of CSAPR's federal trading programs for ozone-season NO_x emissions (or integrated state trading programs), a state may also expand trading program applicability to include certain smaller EGUs.⁵ If a state wants to replace CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR FIPs and federal trading

programs may submit SIP revisions to modify or replace either some or all of those FIP requirements.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.⁶ Specific criteria for approval of each form of SIP revision are set forth in the CSAPR regulations. Under the first alternative—an “abbreviated” SIP revision—a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.⁷ Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant federal trading program in place for the state's units.

Under the second alternative—a “full” SIP revision—a state may submit a SIP revision that upon approval replaces a CSAPR federal trading program for the state with a state trading program integrated with the federal trading program, so long as the state trading program is substantively identical to the federal trading program or does not substantively differ from the federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.⁸ For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's SIP that was the basis for a particular set of CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP is full and unconditional.⁹ Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR federal trading

program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.¹⁰ Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.¹¹

On December 1, 2015, New York submitted to EPA an abbreviated SIP revision that, if approved, would replace the default allowance allocation provisions of the CSAPR SO₂ Group 1, CSAPR NO_x Annual, and CSAPR NO_x Ozone Season Trading Programs for the state's EGUs for the control periods in 2017 and beyond with provisions establishing state-determined allocations for those control periods but would leave the corresponding CSAPR FIPs and all other provisions of the trading programs in place.

The SIP submittal includes the following adopted state rules: 6 NYCRR Part 243, “Transport Rule NO_x Ozone Season Trading Program,” 6 NYCRR Part 244, “Transport Rule NO_x Annual Trading Program,” and 6 NYCRR Part 245, “Transport Rule SO₂ Trading Program.” Previous versions of the rules developed for state participation in the Clean Air Interstate Rule¹² (CAIR), *i.e.*, 6 NYCRR Part 243, “CAIR NO_x Ozone Season Trading Program,” 6 NYCRR Part 244, “CAIR NO_x Annual Trading Program,” and 6 NYCRR Part 245, “CAIR SO₂ Trading Program,” have been repealed and replaced in their entirety with the new rules. Attendant revisions were made to 6 NYCRR Part 200, “General Provisions,” to update the list of referenced material that are cited in the amended New York regulations. The regulations were adopted on November 10, 2015, and effective on December 12, 2015.

As discussed in section I, EPA is not acting at this time on the portion of New York's SIP submittal addressing 6

⁴ See 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

⁵ States covered by both the CSAPR Update and the NO_x SIP Call have the additional option to expand applicability under the CSAPR NO_x Ozone Season Group 2 Trading Program to include non-EGUs that would have participated in the former NO_x Budget Trading Program.

⁶ CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 and is not relevant here. See § 52.38(a)(3), (b)(3), (b)(7); § 52.39(d), (g).

⁷ § 52.38(a)(4), (b)(4), (b)(8); § 52.39(e), (h).

⁸ § 52.38(a)(5), (b)(5), (b)(9); § 52.39(f), (i).

⁹ § 52.38(a)(6), (b)(10)(i); § 52.39(j).

¹⁰ § 52.38(a)(5)(iv)–(v), (a)(6), (b)(5)(v)–(vi), (b)(9)(vi)–(vii), (b)(10)(i); § 52.39(f)(4)–(5), (i)(4)–(5), (j).

¹¹ § 52.38(a)(7), (b)(11)(i); § 52.39(k).

¹² 70 FR 25162 (May 12, 2005).

NYCRR Part 243, which will be addressed in another rulemaking at a later date. In this rulemaking, EPA is addressing NYCRR Parts 244, 245, and 200.

In a notice of proposed rulemaking (NPRM) published on August 29, 2017 (82 FR 40963), EPA proposed to conditionally approve the portion of New York's submittal designed to replace the federal CSAPR SO₂ Group 1, and CSAPR NO_x Annual Trading Programs. The NPRM provides additional detail regarding the background and rationale for EPA's conditional approval.

III. What comments were received in response to EPA's proposed action?

Comments on the NPRM were due on September 28, 2017. EPA received no comments on the proposed action.

IV. What is EPA's conclusion?

The EPA is conditionally approving the New York SIP revision submitted on December 1, 2015 concerning allocations to New York units of CSAPR NO_x Annual allowances and CSAPR SO₂ Group 1 allowances for the control periods in 2017 and 2018, and future control periods beyond 2018. This rule conditionally approves into the New York SIP amendments to 6 NYCRR Parts 244 and 245 that incorporate CSAPR requirements into the State rules, and allows the DEC to allocate CSAPR allowances to regulated entities in New York. EPA is also conditionally approving the attendant revisions to 6 NYCRR Part 200 to update the list of referenced materials cited in the amended New York regulations.

The conditional approval of Parts 200, 244, and 245 is based upon DEC's commitment to make the necessary changes, identified in the July 14, 2016, March 4, 2017, and July 6, 2017 commitment letters, to New York's 6 NYCRR Part 244, "Transport Rule NO_x Annual Trading Program," Part 245, "Transport Rule SO₂ Group 1 Trading Program," and Part 200, "General Provisions." See section IV B. of the NPRM published on August 29, 2017 (82 FR 40967) concerning EPA's analysis of New York's budget, allowance allocation methodology, timing of submission of allocations, replaceable provisions of a CSAPR federal trading program under an abbreviated SIP, applicability determinations, and other substantive changes to the CSAPR federal trading program regulations.

Following the conditional approval of Part 200, Part 244, and Part 245, allocations of CSAPR NO_x Annual allowances and CSAPR SO₂ Group 1

allowances will be made according to the provisions of New York's SIP (as modified by the DEC's July 14, 2016, March 24, 2017, and July 6, 2017 commitment letters to EPA) instead of 40 CFR 97.411(a), 97.411(b)(1), 97.412(a), 97.611(a), 97.611(b)(1), and 97.612(a). EPA's action on this SIP revision does not alter any provisions of the federal CSAPR NO_x Annual Trading Program and the federal CSAPR SO₂ Group 1 Trading Program as applied to New York units other than the allowance allocation provisions, and the FIPs requiring the units to participate in the programs (as modified by this SIP revision) remain in place. EPA is finalizing the conditional approval of Part 200, Part 244 and Part 245 because New York's rules (when modified by the DEC as indicated in its July 14, 2016, March 24, 2017, and July 6, 2017 commitment letters to EPA) will meet the requirements of the CAA and EPA's regulations for an abbreviated SIP revision and will replace EPA's default allocations of CSAPR emission allowances with state-determined allocations, as discussed in section IV.B of the NPRM.

Under CAA section 110(k)(4), the EPA may approve a SIP revision based on a commitment by a state to adopt specific enforceable measures by a date certain, but not later than one year after the date of final conditional approval. If the state fails to meet its commitment to submit a revised SIP by December 29, 2017 [i.e., the date of commitment from the state's July 6, 2017 letter], or if the EPA finds the state's revisions to be incomplete, or the EPA disapproves the state's revisions, the conditional approval will, by operation of law, become a disapproval. EPA would notify the state by letter that such action has occurred. At that time, the SIP revisions in question would not be part of the approved SIP. If that were to occur, EPA would subsequently publish a document in the **Federal Register** notifying the public that the conditional approval automatically converts to a disapproval.¹³ If, however, the state meets its commitment within the applicable timeframe, EPA would subsequently publish in the **Federal Register** a document notifying the public that EPA intends to convert the conditional approval to a full approval.

Because a FIP already in place satisfies New York's obligations to mitigate interstate transport air pollution, should a disapproval become

¹³ In the event the conditional approval automatically reverts to a disapproval, the validity of allocations made pursuant to the SIP revision before the date of such reversion would not be affected.

finalized as noted above, the EPA will not be required to take further action. Additionally, since the SIP submission is not required in response to a SIP call under CAA section 110(k)(5), mandatory sanctions under CAA section 179 would not apply because the deficiencies are not with respect to a submission that is required under CAA title I part D.

V. Incorporation by Reference

In this rule, with our conditional approval, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing, with our conditional approval, the incorporation by reference revisions to 6 NYCRR Parts 200, entitled "General Provisions", adopted November 10, 2015, 6 NYCRR Part 244, entitled "Transport Rule NO_x Annual Trading Program", adopted November 10, 2015, and NYCRR Part 245, entitled "Transport Rule SO₂ Group 1 Trading Program, adopted November 10, 2015. EPA has made, and will continue to make, these materials generally available through www.regulations.gov, and/or at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been conditionally approved by EPA for inclusion in the SIP, have been incorporated 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 by the Director of the Federal Register in the next update of the SIP compilation.¹⁴

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

¹⁴ 62 FR 27968 (May 22, 1997)

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.

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

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

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

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

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

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

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

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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, the 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).

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action 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,
Administrative practice and procedure,

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: November 20, 2017.

Peter D. Lopez,
Regional Administrator, Region 2.

Part 52 chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

§ 52.38 [Amended]

■ 2. In § 52.38, paragraph (a)(8)(ii) is amended by removing “Kansas and Missouri” and adding in its place “Kansas, Missouri, and New York”.

§ 52.39 [Amended]

■ 3. In § 52.39, paragraph (l)(2) is amended by adding “and New York” after “Missouri”.

Subpart HH—New York

■ 4. In § 52.1670, paragraph (c) is amended by revising the table entries “Title 6, Part 200, Subpart 200.9”, “Title 6, Part 244”, and “Title 6, Part 245” to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * * Title 6, Part 200, Subpart 200.9	* * * * * General Provisions, Referenced Material.	* * * * * 12/17/15	* * * * * 12/5/17	* * * * * • EPA is approving reference documents that are not Federally enforceable. • EPA approval finalized at [insert Federal Register citation]. • Conditional Approval.
* * * * * Title 6, Part 244	* * * * * Transport Rule NO _x Annual Trading Program.	* * * * * 12/17/15	* * * * * 12/5/17	* * * * * • EPA approval finalized at [insert Federal Register citation]. • Conditional Approval.

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Title 6, Part 245	Transport Rule SO ₂ Group 1 Trading Program.	12/17/15	12/5/17	<ul style="list-style-type: none"> • EPA approval finalized at [insert Federal Register citation]. • Conditional Approval.
*	*	*	*	*

* * * * *
 [FR Doc. 2017-26079 Filed 12-4-17; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2011-1033; FRL-9968-30]

1,3-dibromo-5,5-dimethylhydantoin; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 1,3-dibromo-5,5-dimethylhydantoin in or on food when used in antimicrobial pesticide formulations applied to food contact surfaces in public eating places, dairy processing equipment, and/or food processing equipment and utensils. In addition, this regulation establishes an exemption from the requirement of a tolerance for residues of 1,3-dibromo-5,5-dimethylhydantoin when used as an antimicrobial pesticide treatment solution. Albemarle Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting exemptions from the requirement of a tolerance for residues of 1,3-dibromo-5,5-dimethylhydantoin in end-use products applied to food contact surfaces and used for washing raw agricultural commodities. This regulation eliminates the need to establish a maximum permissible level of residues of 1,3-dibromo-5,5-dimethylhydantoin resulting from uses consistent with the terms of these exemptions.

DATES: This regulation is effective December 5, 2017. Objections and requests for hearings must be received on or before February 5, 2018, 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-2011-1033, is available at <http://www.regulations.gov> or 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 is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Steven H. Weiss, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 308-6411; email address: ADFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl. To access the OSCPP test guidelines referenced in this document electronically, please go to <http://www.epa.gov/ocsp> and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2011-1033 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 5, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2011-1033, by one of the following methods: