

**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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 2018.

**Anne Idsal,**  
*Regional Administrator, Region 6.*

40 CFR part 52 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 SS—Texas**

■ 2. In § 52.2270(e), the second table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding an entry at the end for “Emission Statement Requirements for the 2008 Ozone NAAQS”.

The revision reads as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

| Name of SIP provision                                     | Applicable geographic or non-attainment area | State submittal/ effective date | EPA approval date                                     | Comments  |
|-----------------------------------------------------------|----------------------------------------------|---------------------------------|-------------------------------------------------------|-----------|
| * * * * *                                                 | * * * * *                                    | * * * * *                       | * * * * *                                             | * * * * * |
| Emission Statement Requirements for the 2008 Ozone NAAQS. | Dallas-Fort Worth, TX.                       | 8/21/2018                       | 12/4/2018, [Insert <b>Federal Register</b> citation]. |           |

[FR Doc. 2018–26294 Filed 12–3–18; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2017–0633; FRL–9986–89–Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revisions to Regulation for Control of Ozone Season Nitrogen Oxide Emissions**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving two state implementation plan (SIP) revisions submitted by the State of West Virginia. The revisions pertain to a West Virginia regulation that established the nitrogen oxides (NO<sub>x</sub>) ozone season trading program under the Clean Air Interstate Rule (CAIR), which implemented requirements for NO<sub>x</sub> reductions necessary to reduce interstate transport of pollution. The EPA-administered trading programs under CAIR were discontinued upon the implementation of the Cross-State Air Pollution Rule

(CSAPR), which was promulgated by EPA to replace CAIR. CSAPR established Federal implementation plans (FIPs) for 28 states, including West Virginia, and applied to electric generating units (EGUs). The SIP submittals are comprised of revisions to the West Virginia regulation that implemented the CAIR ozone season NO<sub>x</sub> trading program that had previously been included in the West Virginia SIP. The revised West Virginia regulation removed the CAIR ozone season NO<sub>x</sub> trading program provisions, which also addressed certain large non-electric generating units (non-EGUs), established new requirements for these large non-EGUs, included a state-wide NO<sub>x</sub> emissions cap, and recodified certain other provisions that address the NO<sub>x</sub> emission reductions required for cement kilns and internal combustion engines. EPA is approving these SIP revisions to West Virginia’s ozone season NO<sub>x</sub> regulation in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on January 3, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0633. All documents in the docket are listed on the <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 <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:** Marilyn Powers, (215) 814–2308, or by email at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 28, 2018 (82 FR 43836), EPA published a notice of proposed rulemaking (NPRM) which proposed approval of the SIP revisions submitted by the State of West Virginia for revisions to Regulation 45CSR40. The first formal SIP revision was submitted by West Virginia through the West Virginia Department of Environmental Protection (WVDEP) on July 13, 2016. On October 10, 2017, WVDEP provided a supplemental SIP submission comprised of a demonstration showing that NO<sub>x</sub> emissions from applicable non-EGUs do not exceed the West

Virginia NO<sub>x</sub> budget under EPA's NO<sub>x</sub> SIP Call.<sup>1</sup> The NO<sub>x</sub> SIP Call, issued pursuant to Section 110 of the CAA and codified at 40 CFR 51.121 and 51.122, was designed to mitigate significant transport of NO<sub>x</sub>, one of the precursors of ozone. At the same time, EPA developed the NO<sub>x</sub> Budget Trading Program, an EPA-administered allowance trading program that states could adopt to meet their obligations under the NO<sub>x</sub> SIP Call. The NO<sub>x</sub> Budget Trading Program allowed EGUs greater than 25 megawatts and industrial non-EGUs, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as "large non-EGUs," to participate in a regional NO<sub>x</sub> cap and trade program. West Virginia complied with the NO<sub>x</sub> SIP Call by participation of its large EGUs and large non-EGUs in the NO<sub>x</sub> Budget Trading Program. EPA discontinued administration of the NO<sub>x</sub> Budget Trading Program in 2009 upon the start of the CAIR trading programs (70 FR 25162, May 12, 2005). The NO<sub>x</sub> SIP Call requirements continued to apply, however, and EGUs in most states (including West Virginia) that formerly participated in the NO<sub>x</sub> Budget Trading Program continued to meet their NO<sub>x</sub> SIP Call requirements under the generally more stringent requirements of the CAIR NO<sub>x</sub> Ozone Season Trading Program, either pursuant to CAIR FIPs (71 FR 25328, April 28, 2006) or pursuant to approved CAIR SIP revisions.<sup>2</sup> For the large non-EGUs, states needed to take regulatory action to ensure that their obligations under the NO<sub>x</sub> SIP Call continued to be met, either through an option to submit a CAIR SIP revision that allowed the non-EGUs to participate in the CAIR NO<sub>x</sub> Ozone Season Trading Program or through adoption of other replacement regulations. West Virginia chose to include the large non-EGUs as CAIR trading sources, and submitted, for inclusion in the SIP, Regulation 40CSR40 which implemented the CAIR NO<sub>x</sub> Ozone Season Trading Program and included the non-EGUs as trading sources. EPA approved Regulation 45CSR40 into the West Virginia SIP on August 4, 2009 (74 FR 38536). 45CSR40 also included requirements for stationary internal combustion engines

and cement manufacturing kilns that are subject to the NO<sub>x</sub> SIP Call.

When CSAPR replaced CAIR starting on January 1, 2015,<sup>3</sup> the CSAPR FIP trading programs for annual NO<sub>x</sub>, ozone season NO<sub>x</sub> and annual SO<sub>2</sub> were applicable in West Virginia. Thus, since January 1, 2015, the provisions related to implementation of the CAIR Ozone Season Trading Program in West Virginia regulation 45CSR40 were obsolete. Initially, the CSAPR FIP trading programs applied only to EGUs and, unlike CAIR, did not provide for expansion of the ozone season trading program to include the NO<sub>x</sub> SIP Call large non-EGUs. States, like West Virginia, whose large non-EGUs had previously traded in the CAIR NO<sub>x</sub> Ozone Season Trading Program, were therefore required to address the non-EGU reduction requirements of the NO<sub>x</sub> SIP Call outside of a regional trading program.<sup>4</sup>

The CSAPR FIPs which replaced CAIR only applied to EGUs, and, at the time West Virginia developed its SIP submittal, states did not have an option under CSAPR to bring their non-EGUs into the CSAPR NO<sub>x</sub> Ozone Season Trading Program. So, while EGU compliance with CSAPR satisfied the EGUs' NO<sub>x</sub> SIP Call requirements, West Virginia needed to modify its ozone season NO<sub>x</sub> regulation to address the NO<sub>x</sub> SIP Call requirements for the non-EGUs that were formerly trading in the CAIR NO<sub>x</sub> ozone season trading program. 40 CFR 51.121(f) sets forth alternatives for states to address NO<sub>x</sub> SIP Call reduction obligations for large non-EGUs including (1) imposing a NO<sub>x</sub> mass emissions cap on each source, (2) imposing a NO<sub>x</sub> emissions rate limit on each source and assuming maximum operating capacity for every such source for purposes of estimating NO<sub>x</sub> mass emissions, or (3) imposing other regulatory requirements that the state has demonstrated to EPA provide equivalent or greater assurance that the state will comply with its ozone season NO<sub>x</sub> budget.

## II. Summary of SIP Revision and EPA Analysis

Former Regulation 45CSR40 (effective in West Virginia on July 1, 2016), which was approved into the West Virginia

SIP, was originally adopted by WVDEP to implement the ozone season trading program under CAIR and to address NO<sub>x</sub> SIP Call requirements. The July 13, 2016 West Virginia SIP submittal is comprised of a revised 45CSR40 which removed the CAIR Ozone Season Trading Program provisions, retained the definitions, applicability, and other provisions responding to the NO<sub>x</sub> SIP Call (including monitoring under 40 CFR part 75), added new requirements to address its NO<sub>x</sub> SIP Call obligations for sources that were trading under CAIR but are no longer part of a trading program, and retained and recodified the limits on NO<sub>x</sub> emissions that applied to stationary internal combustion engines and cement kilns previously in the former version of 45CSR40 (with a State effective date of May 1, 2008) which EPA had approved into the West Virginia SIP. As the CAIR trading program has been replaced by the trading programs under CSAPR, as described previously, these revisions removing references to CAIR are consistent with the requirements for CAA 110(l) as CAIR was replaced by CSAPR and thus no longer yielded reductions in pollutants nor presently applied to any sources.

On February 8, 2018, WVDEP provided a letter clarifying an applicability exclusion specified in section 4 of 45CSR40 of the July 13, 2016 SIP submittal. The letter clarifies that the West Virginia regulation was intended to refer to current provisions of CSAPR, and thus is intended to refer to updated CSAPR provisions. The letter states that West Virginia will work towards revising 45CSR40 as expeditiously as possible to conform the regulation to refer to currently enforceable CSAPR provisions and will submit the revised 45CSR40 as a SIP revision to EPA for approval once the regulation correctly refers to 40 CFR part 97, subpart EEEEE.

Other specific requirements of revised West Virginia regulation 45CSR40 and the rationale for EPA's proposed approval are explained in the NPRM and will not be restated here. However, EPA provides two clarifications on the NPRM—one pertains to an aspect of EPA's summary of the new sections in 45CSR40 that address ozone season NO<sub>x</sub> emissions, and the second pertains to the date of West Virginia's supplemental SIP submission.

EPA's summary of section 4 (Applicability) explained that any unit that is already subject to the CSAPR NO<sub>x</sub> Ozone Season Trading Program FIP established under 40 CFR part 97, subpart BBBB is exempt from the ozone season NO<sub>x</sub> emission limits,

<sup>1</sup> In October 1998 (63 FR 57356), EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone"—commonly called the NO<sub>x</sub> SIP Call.

<sup>2</sup> EPA approved a CAIR SIP revision replacing the CAIR FIP for West Virginia on August 4, 2009 (74 FR 38536).

<sup>3</sup> See NPRM for this action, page 43837, for details on the remand of CAIR.

<sup>4</sup> Subsequent to West Virginia's July 13, 2016 submission, EPA finalized the CSAPR Update Rule to address transport related to the 2008 ozone NAAQS. It is noted that CSAPR Update included flexibility for states to submit SIPs that expand the CSAPR ozone season trading program to include the large non-EGUs. West Virginia has not submitted a SIP that includes the non-EGUs as participants in the CSAPR trading program.

monitoring, recordkeeping, and reporting requirements established in sections 5 and 6 of 45CSR40.<sup>5</sup> Section 4 of 45CSR40 also exempts from applicability any units subject to a CSAPR-equivalent trading program established under regulations approved as a SIP revision pursuant to 40 CFR 52.38(b)(5).<sup>6</sup> Thus, while West Virginia presently does not have a CSAPR-equivalent program in its SIP, if West Virginia submits a SIP revision for a CSAPR-equivalent trading program in the future, and EPA approves the submittal into the State's SIP, sections 5 and 6 of 45CSR40–4 would not apply to such units. EPA's intent, as stated in the NPRM, is to approve the State submission in full, including the entirety of section 4. Thus, our approval of 45CSR40 is not affected; we are providing this clarification to explain the breadth of 45CSR40.

Also, EPA clarifies that the October 10, 2017 SIP submission, which West Virginia submitted to demonstrate compliance with its NO<sub>x</sub> SIP Call non-EGU NO<sub>x</sub> emissions budget, was the only supplemental submission from West Virginia. The references to an October 11, 2017 and an October 13, 2017 supplemental submission were in error and should have instead referred to the October 10, 2017 submittal, which is included in the docket for this rulemaking action.

### III. Public Comments and EPA's Responses

EPA received three anonymous comments on the NPRM, all of which are in the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov). One of the comments did not concern any of the specific issues raised in the NPRM, nor did they address EPA's rationale for the proposed approval of WVDEP's submittal. Therefore, EPA is not responding to this comment. The remaining two comments are addressed as follows:

*Comment 1:* A commenter noted that the NPRM made reference to an October 11, 2017 and an October 13, 2017 supplemental submission from West Virginia, and asked where these

submissions were as the docket only included a supplemental submission dated October 10, 2017.

*EPA Response:* The references to the October 11, 2017 and October 13, 2017 submittals were in error as EPA intended to refer instead to the October 10, 2017 supplemental submission. There was only one supplemental submission from West Virginia—the October 10, 2017 submittal, which provided the demonstration that West Virginia's NO<sub>x</sub> budget was being met. The docket included this submittal, and the preamble to this final rulemaking notice explains that the NPRM inadvertently cited the two incorrect dates that were both intended to refer to the October 10, 2017 submittal.

*Comment 2:* A commenter made a general comment that, because of the large coal mining industry in West Virginia, air pollution should be taken seriously to ensure good air quality.

*EPA Response:* As explained in this document and in the NPRM, this action establishes new requirements for large non-EGUs to meet West Virginia's obligations under the NO<sub>x</sub> SIP Call. Total NO<sub>x</sub> emissions from all affected units may not exceed West Virginia's statewide NO<sub>x</sub> budget, or cap, established by EPA under the NO<sub>x</sub> SIP Call. Continuous emissions monitoring, recordkeeping, and reporting are required to assure NO<sub>x</sub> emissions do not exceed the State cap. Thus, the 45CSR40 in the West Virginia SIP will not interfere with the air quality or CAA requirements, as EPA explained in the NPRM.

### IV. Final Action

EPA is approving West Virginia's July 13, 2016 SIP revision submittal as supplemented on October 10, 2017 and clarified on February 8, 2018. Amended regulation 45CSR40 removes the obsolete provisions that implemented the CAIR NO<sub>x</sub> Ozone Season Trading Program, establishes new requirements to address the NO<sub>x</sub> SIP Call obligations for large non-EGUs in the State that were trading under CAIR but are no longer part of a trading program, establishes an enforceable statewide cap on ozone season NO<sub>x</sub> emissions for these non-EGUs in accordance with West Virginia's state budget under the NO<sub>x</sub> SIP Call, and recodifies previously SIP-approved provisions that apply to internal combustion engines and cement kilns. The October 10, 2017 supplemental submission demonstrates that the total NO<sub>x</sub> emissions from all affected large non-EGUs in West Virginia do not exceed the State cap previously established for West Virginia under the NO<sub>x</sub> SIP Call. The February

8, 2018 letter clarified West Virginia's intent to refer specifically to provisions of CSAPR presently enforceable and its intent to address the minor citation cross reference expeditiously with a future SIP revision submittal. The revisions are in accordance with section 110 of the CAA as the SIP submittal meets requirements in the CAA and in 40 CFR 51.121 related to the NO<sub>x</sub> SIP Call requirements.

### 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 West Virginia regulation 45CSR40—Control of Ozone Season Nitrogen Oxides Emissions. 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>7</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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because

SIP approvals are exempted under Executive Order 12866.

<sup>5</sup> As noted in section I of this document, West Virginia intends to update the existing reference to 40 CFR part 97, subpart BBBB to cross-reference the currently applicable CFR provisions at 40 CFR part 97, subpart EEEEE, after which West Virginia will submit the updated regulation to EPA for approval into the SIP.

<sup>6</sup> Consistent with the State's clarification that the existing reference to 40 CFR part 97, subpart BBBB, is intended to cross-reference the currently applicable CFR provisions at 40 CFR part 97, subpart EEEEE, the existing reference to 40 CFR 52.38(b)(5) should be understood as referring to the currently applicable CFR provision at 40 CFR 52.38(b)(9).

<sup>7</sup> 62 FR 27968 (May 22, 1997).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct

costs on tribal governments or preempt tribal law.

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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 February 4, 2019. 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 West Virginia revised regulation 45CSR40 into the West Virginia SIP 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 13, 2018.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

40 CFR part 52 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 XX—West Virginia**

■ 2. In § 52.2520, the table in paragraph (c) is amended by:

■ a. Revising the heading “[45 CSR] Series 40 Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides” to read “[45 CSR] Series 40 Control of Ozone Season Nitrogen Oxides Emissions”;

■ b. Revising “Section 45–40–1” through “Section 45–40–11”;

■ c. Adding “Section 45–40–9” in numerical order;

■ d. Removing “Section 45–40–12” through “Section 45–40–110”;

The addition and revisions 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 40 Control of Ozone Season Nitrogen Oxides Emissions</b> |               |                      |                                                       |                                                                                                                                                                                                              |
| Section 45–40–1 ....                                                        | General ..... | 7/1/16               | 12/4/2018, [insert <b>Federal Register</b> citation]. | Revising 1.1.a, 1.1.b, and 1.1.c. Removing 1.2 and 1.3. Recodifying 1.4 and 1.5 to 1.2 and 1.3, respectively. Revising 1.7 and recodifying as 1.5. Prior approval of this section was 74 FR 38536 on 8/4/09. |

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

| State citation<br>[chapter 16–20 or<br>45 CSR ] | Title/subject                                                                                                         | State<br>effective<br>date | EPA approval date                                     | Additional explanation/<br>citation at 40 CFR 52.2565                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |   |   |
|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|----------------------------|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| Section 45–40–2 ....                            | Definitions .....                                                                                                     | 7/1/16                     | 12/4/2018, [insert <b>Federal Register</b> citation]. | Removing 2.1, 2.2, 2.3, 2.5–2.8, 2.10–2.28, 2.31–2.34, 2.36–2.39, 2.41, 2.42, 2.46–2.52, 2.54, 2.58, 2.59, 2.62–2.66, 2.68–2.70, 2.72, 2.75, 2.78–2.82, 2.84–2.87, 2.89, 2.90, 2.92, 2.93, 2.95–2.97, and 2.99–2.103.<br>Revising 2.35 and recodifying as 2.5.<br>Revising 2.40 and recodifying as 2.6.<br>Revising 2.43 and recodifying as 2.7.<br>Revising 2.45 and recodifying as 2.8.<br>Revising 2.45 and recodifying as 2.9.<br>Revising 2.60 and recodifying as 2.14.<br>Revising 2.61 and recodifying as 2.15.<br>Revising 2.71 and recodifying as 2.17.<br>Revising 2.88 and recodifying as 2.23.<br>Revising 2.94 and recodifying as 2.25.<br>Revising 2.98 and recodifying as 2.26.<br>Recodifying 2.4 as 2.1, 2.9 as 2.2, 2.29 as 2.3,<br>2.30 as 2.4, 2.40 as 2.6, 2.44 as 2.8, 2.53 as 2.10, 2.55 as 2.11, 2.56 as 2.12, 2.57 as 2.13, 2.60 as 2.14, 2.67 as 2.16, 2.73 as 2.18, 2.74 as 2.19, 2.76 as 2.20, 2.77 as 2.21,<br>2.83 as 2.22, 2.91 as 2.24, and 2.104 as 2.27.<br>Prior approval of this section was 74 FR 38536 on 8/4/09. |   |   |
| Section 45–40–3 ....                            | Measurements, Abbreviations and Acronyms.                                                                             | 7/1/16                     | 12/4/2018, [insert <b>Federal Register</b> citation]. | Removed definitions for Hg, kW, kWh, MW <sub>w</sub> , MWh, O <sub>2</sub> , ppm, lb, scfh, SO <sub>2</sub> , and H <sub>2</sub> O.<br>Prior approval of this section was 74 FR 38536 on 8/4/09.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |   |   |
| Section 45–40–4 ....                            | Applicability .....                                                                                                   | 7/1/16                     | 12/4/2018, [insert <b>Federal Register</b> citation]. | Remove preamble, 4.1, 4.2, 4.3, 4.4, and 4.5.<br>Add new 4.1, 4.2, and 4.3.<br>Prior approval of this section was 74 FR 38536 on 8/4/09.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |   |   |
| Section 45–40–5 ....                            | Ozone Season NO <sub>x</sub> Emission Limitations.                                                                    | 7/1/16                     | 12/4/2018, [insert <b>Federal Register</b> citation]. | Prior approval of this section was 74 FR 38536 on 8/4/09.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |   |   |
| Section 45–40–6 ....                            | Monitoring, Recordkeeping and Reporting Requirements.                                                                 | 7/1/16                     | 12/4/2018, [insert <b>Federal Register</b> citation]. | Prior approval of this section was 74 FR 38536 on 8/4/09.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |   |   |
| Section 45–40–7 ....                            | Violation .....                                                                                                       | 7/1/16                     | 12/4/2018, [insert <b>Federal Register</b> citation]. | Prior approval of this section was 74 FR 38536 on 8/4/09.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |   |   |
| Section 45–40–8 ....                            | Ozone Season NO <sub>x</sub> Budget Demonstration.                                                                    | 7/1/16                     | 12/4/2018, [insert <b>Federal Register</b> citation]. | Prior approval of this section was 74 FR 38536 on 8/4/09.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |   |   |
| Section 45–40–9 ....                            | Ozone Season NO <sub>x</sub> Reduction Requirements for Stationary Internal Combustion Engines.                       | 7/1/16                     | 12/4/2018, [insert <b>Federal Register</b> citation]. | Prior approval of this section was 74 FR 38536 on 8/4/09.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |   |   |
| Section 45–40–10 ..                             | Ozone Season NO <sub>x</sub> Reduction Requirements for Emissions of NO <sub>x</sub> from Cement Manufacturing Kilns. | 7/1/16                     | 12/4/2018, [insert <b>Federal Register</b> citation]. | Prior approval of this section was 74 FR 38536 on 8/4/09.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |   |   |
| Section 45–40–11 ..                             | Inconsistency Between Rules                                                                                           | 7/1/16                     | 12/4/2018, [insert <b>Federal Register</b> citation]. | Prior approval of this section was 74 FR 38536 on 8/4/09.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |   |   |
| *                                               | *                                                                                                                     | *                          | *                                                     | *                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | * | * |

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[EPA-HQ-OPP-2018-0091; FRL-9986-06]

**Calcium Formate; 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 calcium formate (CAS Reg. No. 544-17-2) when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only. ADAMA Agan, Ltd. c/o Makhteshim Agan of North America, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of calcium formate.

**DATES:** This regulation is effective December 4, 2018. Objections and requests for hearings must be received on or before February 4, 2019, 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-2018-0091, 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:** Michael L. Goodis, Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDfrNotices@epa.gov](mailto:RDfrNotices@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).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*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](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl). To access the OCSPP test guidelines referenced in this document electronically, please go to <http://www.epa.gov/ocspp> 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-2018-0091 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 4, 2019. 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-

2018-0091, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**II. Petition for Exemption**

In the **Federal Register** of April 11, 2018 (83 FR 15528) (FRL-9975-57), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN-11075) by ADAMA Agan, Ltd. c/o Makhteshim Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of calcium formate (CAS Reg. No. 544-17-2) when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only. That document referenced a summary of the petition prepared by ADAMA Agan, LTD, the petitioner, which is available in the docket, <http://www.regulations.gov>.

This is based on the Agency's risk assessment which can be found at <http://www.regulations.gov> in document: Calcium Formate; Human Health Risk Assessment in docket ID number EPA-HQ-OPP-2018-0091. No comments were received in response to the notice published by EPA.

**III. Inert Ingredient Definition**

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and