

Dated: October 2, 2018.

**J.R. Buzzella,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2018-22736 Filed 10-17-18; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[WV106-6044; FRL-9983-55-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Update to Materials Incorporated by Reference

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

**ACTION:** Final rule; administrative change.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the West Virginia state implementation plan (SIP). The regulations affected by this update have been previously submitted by the West Virginia Department of Environmental Protection (WV DEP) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

**DATES:** This action is effective October 18, 2018.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>. EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Erin Trouba, (215) 814-2023 or by email at [trouba.erin@epa.gov](mailto:trouba.erin@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such

elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the federally-approved SIP and are identified in part 52 "Approval and Promulgation of Implementation Plans," title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is "incorporated by reference." This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On February 10, 2005 (70 FR 7024), EPA published a **Federal Register** beginning the new IBR procedure for West Virginia. On February 28, 2007 (72 FR 8903), February 10, 2009 (74 FR 6542), December 28, 2010 (75 FR 81474), July 25, 2013 (78 FR 44884), and June 14, 2017 (82 FR 27118) EPA published updates to the IBR material for West Virginia. Since the publication of the last IBR update, EPA has approved into the SIP the following regulatory changes to the following West Virginia regulations:

##### A. Added Regulations

None.

##### B. Revised Regulations

1. 45 CSR 8 (Ambient Air Quality Standards)
2. 45 CSR 14 (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration)

##### C. Removed Regulations

1. 45 CSR 39 (Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides)
2. 45 CSR 41 (Control of Annual Sulfur Dioxides Emissions)
3. In 52.2520 paragraph (d) Source Specific Requirements for West Virginia, there was a removal of source-specific SIP requirements for the following five facilities in West Virginia that had permanently shutdown: Mountaineer Carbon Company; Standard Lafarge; Follansbee Steel Corporation; International Mill Service, Inc.; and Columbian Chemicals Company.

## II. EPA Action

In this action, EPA is announcing the update to the IBR material as of May 1, 2018 and revising the text within 40 CFR 52.2520(b). In addition, notice is provided of correcting **Federal Register** citations listed in the Table (c) paragraph of 40 CFR 52.2520, as described: A. Under the "EPA approval date" EPA is correcting numerous **Federal Register** citation locations to reflect the first page of the preamble opposed to the regulatory text page for West Virginia regulations 45 CSR Series 8 and 45 CSR Series 14.

## III. Good Cause Exemption

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

removing outdated citations and incorrect table entries.

#### IV. Incorporation by Reference

In this rule, 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 previously EPA approved regulations promulgated by the State of West Virginia and federally effective prior to May 1, 2018. 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).

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

Under the Clean Air Act (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.
- 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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### C. Petitions for Judicial Review

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

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

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

Dated: August 27, 2018.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

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

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

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

##### Subpart XX—West Virginia

- 2. Section 52.2520 is amended by:
  - a. Revising paragraph (b).
  - b. Revising paragraph (c) table entries for 45 CSR 8 (Ambient Air Quality Standards) and 45 CSR 14 (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration).

The revisions read as follows:

##### § 52.2520 Identification of plan.

\* \* \* \* \*

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to May 1, 2018, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Entries in paragraphs (c) and (d) of this section with the EPA approval dates after May 1, 2018 for the State of West Virginia have been approved by EPA for inclusion in the State implementation plan and for incorporation by reference into the plan as it is contained in this section, and will be considered by the Director of the Federal Register for approval in the next update to the SIP compilation.

(2) EPA Region III certifies that the materials provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the state implementation plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference into the state implementation plan may be inspected at the Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. To obtain the material, please call the Regional Office at (215) 814-3376. You may also inspect the material with an

EPA approval date prior to May 1, 2018 for the State of West Virginia at the National Archives and Records Administration (NARA). For information on the availability of this

material at NARA, go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.  
(c) EPA-Approved Regulations and Statutes.

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16-20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
* * * * *				
[45 CSR] Series 8 ..	Ambient Air Quality Standards			
Section 45-8-1 .....	General .....	6/1/17	3/23/18, 83 FR 12677.	Filing and effective dates are revised.
Section 45-8-2 .....	Definitions .....	6/1/17	3/23/18, 83 FR 12677.	Previous Approval 9/22/2014.
Section 45-8-3 .....	Adoption of Standards .....	6/1/17	3/23/18, 83 FR 12677.	Effective date is revised.
Section 45-8-4 .....	Inconsistency Between Rules .....	6/1/17	3/23/18, 83 FR 12677.	Replaced "West Virginia Department of Environmental Protection" with "Division of Air Quality."
* * * * *				
[45 CSR] Series 14	Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration			
Section 45-14-1 .....	General .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-2 .....	Definitions .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-3 .....	Applicability .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-4 .....	Ambient Air Quality Increments and Ceilings.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-5 .....	Area Classification .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-6 .....	Prohibition of Dispersion Enhancement Techniques.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-7 .....	Registration, Report and Permit Requirements for Major Stationary Sources and Major Modifications.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-8 .....	Requirements Relating to Control Technology.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-9 .....	Requirements Relating to the Source's Impact on Air Quality.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-10 .....	Modeling Requirements .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-11 .....	Air Quality Monitoring Requirements .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-12 .....	Additional Impacts Analysis Requirements.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-13 .....	Additional Requirements and Variances for Source Impacting Federal Class 1 Areas.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-14 .....	Procedures for Sources Employing Innovative Control Technology.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-15 .....	Exclusions From Increment Consumption.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-16 .....	Specific Exemptions .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-17 .....	Public Review Procedures .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-18 .....	Public Meetings .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-19 .....	Permit Transfer, Cancellation and Responsibility.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-20 .....	Disposition of Permits .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-21 .....	Conflict with Other Permitting Rules .....	06/01/2015	08/11/2016, 81 FR 53008.	

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–14–25 ...	Actual PALs .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45–14–26 ...	Inconsistency Between Rules .....	06/01/2015	08/11/2016,81 FR 53008.	
*	*	*	*	*

\* \* \* \* \*  
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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS–R6–ES–2016–0013;  
FXES11130900000C6–189–FF09E42000]

RIN 1018–BB41

**Endangered and Threatened Wildlife and Plants; Removing Deseret Milkvetch (*Astragalus desereticus*) From the Federal List of Endangered and Threatened Plants**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; document availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are removing Deseret milkvetch (*Astragalus desereticus*) from the Federal List of Endangered and Threatened Plants due to recovery. Based on the best available scientific and commercial data, threats to Deseret milkvetch identified at the time of listing are not as significant as originally anticipated and are being adequately managed, the species’ population is much greater than was known at the time of listing, and threats to this species have been sufficiently minimized such that it no longer meets the definition of an endangered species or threatened species under the Endangered Species Act of 1973, as amended (Act).

**DATES:** This final rule is effective November 19, 2018.

**ADDRESSES:** Comments, materials received and supporting documentation used in the preparation of this final rule are available on the internet at <http://www.regulations.gov> under Docket No. FWS–R6–ES–2016–0013. Additionally, comments, materials received, and supporting documentation are available for public inspection by appointment at

our Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, below). The post-delisting monitoring plan for Deseret milkvetch is available on our Endangered Species Program’s national website (<http://endangered.fws.gov>) and the internet at <http://www.regulations.gov> under Docket No. FWS–R6–ES–2016–0013.

**FOR FURTHER INFORMATION CONTACT:** Larry Crist, Field Supervisor, telephone: 801–975–3330. Direct all questions or requests for additional information to: DESERET MILKVETCH QUESTIONS, U.S. Fish and Wildlife Service; Utah Ecological Services Field Office; 2369 Orton Circle, Suite 50; West Valley City, UT 84119. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Previous Federal Actions**

On October 2, 2017, we published a proposed rule to remove Deseret milkvetch from the List of Endangered and Threatened Plants (*i.e.*, to “delist” the species) (82 FR 45779). Please refer to that proposed rule for a detailed description of the Federal actions concerning this species that occurred prior to October 2, 2017.

**Species Description and Habitat Information**

Deseret milkvetch was first collected in 1893, again in 1909, then not located again until 1981 (Barnaby 1989, p. 126; Franklin 1990, p. 2). The gap in collections may be due to confusion regarding initial records, which were wrongly attributed to Sanpete County, Utah (Franklin 1990, p. 2). The 1964 description and classification of Deseret milkvetch by Barneby is the accepted taxonomic status (Barneby 1989, p. 126; ITIS 2015).

Deseret milkvetch is a perennial, herbaceous plant in the legume family with silvery-gray pubescent leaves that are 2 to 5 inches (4 to 12 centimeters) long and flower petals that are white to pinkish with lilac-colored tips (Barneby 1989, p. 126). The flower structure

indicates an adaptation to pollination primarily by large bees, likely bumblebees (*Bombus* spp.), which are generalist pollinators (Stone 1992, p. 4). The species appears to be tolerant of drought (Stone 1992, p. 3). A more detailed description of the biology and life history of Deseret milkvetch can be found in our 5-year review of the species (U.S. Fish and Wildlife Service 2011, pp. 5–7).

Deseret milkvetch is endemic to Utah County in central Utah, with the only known population near the town of Birdseye (Stone 1992, p. 2). It occurs exclusively on sandy-gravelly soils weathered from the Moroni geological formation, which are limited to an area of approximately 100 square miles (mi<sup>2</sup>) (259 square kilometers (km<sup>2</sup>)) (Franklin 1990, p. 4; Stone 1992, p. 3). The species is known to occur at elevations of 5,400 to 5,700 feet (ft) (1,646 to 1,737 meters (m)) (Stone 1992, p. 2; Anderson 2016, pers. comm.; Fitts 2016, pers. comm.). Based upon the species’ narrow habitat requirements, it has likely always been rare, with little unoccupied suitable habitat (Franklin 1990, p. 6; Stone 1992, p. 6).

Deseret milkvetch is found on steep south- and west-facing slopes with scattered Colorado pinyon pine (*Pinus edulis*) and Utah juniper (*Juniperus osteosperma*) (Franklin 1990, p. 2). It also grows on west-facing road-cuts where plants are typically larger than those found in undisturbed habitat (Franklin 1990, p. 2). The species’ habitat is sparsely vegetated (SWCA Environmental Consultants 2015, p. 7). The species is an associate of the pinyon-juniper plant community. It is not shade-tolerant but is found in open areas between trees (Goodrich *et al.* 1999, p. 265).

Deseret milkvetch is probably a relatively new species on the scale of geologic time. The species’ genus has the ability to colonize disturbed or unstable habitats in dry climates. This ability has likely hastened the evolution of the genus and given rise to many species of *Astragalus* that are sharply differentiated and individually