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west virginia department of environmental protection

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**Proposed West Virginia  
State Implementation Plan Revision for  
Clean Air Act §110(a)(2)(A)-(M)  
Requirements for Sulfur Dioxide**

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Promoting a healthy environment

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## **Proposed West Virginia State Implementation Plan Revision for Clean Air Act §110(a)(2)(A)-(M) Requirements for Sulfur Dioxide**

A State Implementation Plan (SIP) is a plan for each state that identifies how that state will attain and/or maintain the primary and secondary National Ambient Air Quality Standards (NAAQS). The SIP is a series of complex, fluid documents containing regulations, source-specific requirements, non-regulatory items such as plans and inventories, and in some cases additional requirements promulgated by the U.S. Environmental Protection Agency (EPA). The initial SIPs for states were approved by EPA on May 31, 1972. SIPs can be revised by the state with EPA approval as necessary. The federally enforceable SIP for West Virginia is compiled in 40 CFR Part 52, Subpart XX. In this revision to the SIP, West Virginia is demonstrating that it has adequate resources and authority to implement the 2010 1-hour sulfur dioxide (SO<sub>2</sub>) NAAQS. The 2010 1-hour SO<sub>2</sub> NAAQS are incorporated by reference in West Virginia legislative Rule 45CSR8.

This SIP revision addresses requirements of §(a)(2)(A)-(M) of the Clean Air Act (CAA), many of which have been addressed in other SIP revisions. It is a compilation of elements that demonstrate how the primary or secondary 2010 1-hour SO<sub>2</sub> NAAQS is being implemented, maintained and enforced in West Virginia. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable compilation of how West Virginia will continue to comply with the §110(a)(2) requirements of the CAA.

In 1961, the State Legislature passed the Air Pollution Control Law of West Virginia, making West Virginia the sixteenth state to have a statewide air pollution control law. The law provided for a separate state agency composed of a seven member Commission, a Director and staff. The powers, authorities and funding of the original Commission were subsequently conveyed to the Office of Air Quality and then to the Division of Air Quality (WVDAQ) within the West Virginia Department of Environmental Protection (WVDEP). Staffing, funding and legal authorities now incorporate over 90 full time staff, with a multi-million dollar annual budget and approximately 40 legislative rules. DAQ has a variety of substantial funding sources, including construction/modification permit fees, Title V operating permit fees, non-Title V operating fees, general State revenue and federal grant monies.

The agency has demonstrated the ability to implement state and federal requirements for over fifty years as most recently evidenced by a federally approved revision to the West Virginia hospital/medical/infectious waste incinerator §111(d)/129 plan, limited approval of West Virginia's Regional Haze SIP revision, and approval of revisions to West Virginia's Prevention of Significant Deterioration of Air Quality SIP. Additionally, the entire state of West Virginia has been designated attainment/unclassifiable for the 2008 ozone standard. Legislative authority for the West Virginia air quality program relating to the responsibilities in the Clean Air Act is codified in the West Virginia Air Pollution Control Act, W.Va. Code §22-5, more specifically §22-5-1, which gives West Virginia the primary responsibility for assuring air quality pursuant to the CAA. Many elements of §110(a)(2)(A)-(M) already exist in the approved SIP or recently submitted SIP revisions for other NAAQS. This SIP revision may reiterate and/or reinforce some of these previously submitted and/or approved elements. Some requirements, such as those for intergovernmental consultation, air quality modeling and compliance with Part D of the CAA, are fulfilled during the development and submission to EPA, as a SIP revision, of attainment plans and related requirements due under Subpart 1 and Subpart 5 of the CAA. Based on 2010-2012 monitoring data, West Virginia has recommended that only two partial counties (Brooke & Marshall) be designated as 2010 1-hour SO<sub>2</sub> non-attainment areas. The remainder of West Virginia is identified as attainment/unclassifiable for the 2010 1-hour SO<sub>2</sub> NAAQS.

Section 110(a) element	<i>The implementation plan shall:</i>	West Virginia Implementation
§110(a)(2)(A)	<p><i>include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.</i></p>	<p><b>Enforceable Emission Limitations and Other Control Measures:</b> Pursuant to the W.Va. Code, §22-5-1 declares the state’s public policy “to fulfill its primary responsibility for assuring air quality pursuant to the ‘Federal Clean Air Act’, as amended.” The West Virginia Department of Environmental Protection Cabinet Secretary (Secretary) has the authority under §§22-5-4(a)(1) &amp; (3) “to develop ways and means for the regulation and control of pollution of the air of the state”. The Secretary has the authority under §§22-1-3(a), 22-5-4(a)(4) and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act set forth in W.Va. Code §§29A3-1 et seq. Approximately forty air quality rules implemented under the auspices of the APCA are currently in effect and codified at Title 45 of the West Virginia Code of State Rules (CSR), including the ambient air quality standards for criteria pollutants (including the 2010 1-hour SO<sub>2</sub> NAAQS) contained in legislative rule 45CSR8.</p> <p>Existing, enforceable SIP provisions which WVDAQ has adopted that limit emissions of SO<sub>2</sub> and other control measures for SO<sub>2</sub> may be found in the CSR as necessary or appropriate to meet the applicable requirements of the CAA:</p> <p>45CSR10 - The purpose of this SIP approved rule (68FR33002) is to control air pollution from the emission of sulfur oxides. 45CSR10 contains emission standards for sources of SO<sub>2</sub> emissions in West Virginia.</p> <p>45CSR10A - This rule provides guidance and clarification for complying with the testing, monitoring, recordkeeping and reporting requirements of 45CSR10.</p> <p>45CSR11 - The purpose of this SIP approved rule (58FR34526) is to provide a mechanism to prevent the buildup of air pollutant concentrations during periods of adverse meteorological conditions in which air pollutants may accumulate, thereby preventing the occurrence of an emergency due to the effects of these pollutants on health. To achieve this purpose, three (3) stages of criteria (pollutant concentration levels) have been established and specific emission reduction plans will be developed which will be initiated at each criteria stage to prevent further deterioration of the air supply to any air quality region or substantial portion thereof. 45CSR11 contains episode criteria, methods of measurement, preplanned reduction strategies and emission reduction plan requirements for sources of SO<sub>2</sub> emissions in West Virginia.</p> <p>45CSR13 - The purpose of this SIP approved rule (72FR5932) is to set forth the procedures for stationary source reporting, and the criteria for obtaining a permit to</p>

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construct and operate a new stationary source which is not a major stationary source, to modify a non-major stationary source, to make modifications which are not major modifications to an existing major stationary source, to relocate non-major stationary sources within the state of West Virginia. Such a permit may contain a federally enforceable SO<sub>2</sub> emission limit. SO<sub>2</sub> is a "regulated pollutant" as defined under 45CSR§13-2.20.b. An emissions increase of six (6) pounds per hour and ten (10) tons per year or more, or more than 144 pounds per calendar day of SO<sub>2</sub> triggers a modification under 45CSR13.

45CSR14 - The purpose of this SIP approved rule (77FR63736) is to satisfy the prevention of significant deterioration permit program requirements in Part C of the CAA. 45CSR14 contains a significance level for SO<sub>2</sub> of 40 tpy and significant impact levels of 1.0, 5.0 and 25.0 µg/m<sup>3</sup> for annual, 24 and 3-hour averaging times, respectively. 45CSR14 also contains a de minimis air quality impact concentration of 13 µg/m<sup>3</sup> over a 24 hour averaging time and a maximum allowable pollutant concentration increase over baseline concentration of 20, 91 and 512 µg/m<sup>3</sup> for annual arithmetic mean, 24-hour maximum and 3-hour maximum averaging times, respectively, in Class II areas. A PSD source in an attainment area may have a SO<sub>2</sub> emission limitation in a permit under 45CSR14 based upon a BACT analysis in accordance with CAA §§165(a)(3) and (4).

45CSR16 - The purpose of this rule is to incorporate the federal New Source Performance Standards under Part A of the CAA and 40 CFR Part 60. West Virginia received NSPS program delegation for Part 60 NSPS authority under 45CSR16 on December 14, 1984 at FR48692. West Virginia has received automatic delegation of authority to enforce Part 60 NSPS in accordance with EPA letters of 03/19/01, and 01/08/02 as well as EPA's Notice at 67FR15486. All current emission limitations or standards of performance for SO<sub>2</sub> promulgated under 40 CFR Part 60 are incorporated by reference under 45CSR16, except any limitation or standard that may be included in Subparts B, C, Ca, Cb, Cc, Cd, Ce, Ea, Eb, Ec, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM.

45CSR18 - The purpose of this rule is to adopt standards of performance, and establish emission guidelines and compliance times pursuant to §§111(d) and 129 of the CAA for solid waste combustion sources in West Virginia. EPA recently approved West Virginia's §111(d)/129 Plan for hospital/medical/infectious waste incinerators at 77FR3389. §111(d)/129 solid waste combustion sources in West Virginia are subject to any applicable SO<sub>2</sub> standard of performance or emission guideline promulgated under 40 CFR 60, Subparts Eb, AAAA, Ec, Ce, CCCC, DDDD, EEEE and LLLL.

45CSR19 - The purpose of this SIP approved rule (71FR64468) is to satisfy the nonattainment area new source review permit program requirements in Part D of the CAA. 45CSR19 contains a significance level for SO<sub>2</sub> of 40 tpy and significant impact levels (ambient air concentration increase) of 1.0, 5.0 and 25.0 µg/m<sup>3</sup> for annual, 24

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and 3-hour averaging times, respectively. A NSR source in a SO<sub>2</sub> non-attainment area may have a SO<sub>2</sub> emission limitation in a permit under 45CSR19 based upon a LAER analysis. West Virginia has two partial counties (Brooke & Marshall) identified as potential 1-hour SO<sub>2</sub> non-attainment areas.

45CSR30 - This rule establishes a permitting program pursuant to Title V of the CAA. Any major stationary source subject to federally enforceable SO<sub>2</sub> emission limitations or control measures pursuant to 45CSR10, 45CSR11, 45CSR13, 45CSR14, 45CSR16, 45CSR18, 45CSR19, 45CSR33 or 45CSR41 will be contained in a permit issued by the Secretary under its established Title V permit program. The effective date of interim approval of West Virginia's Title V Program and 45CSR30 was 12/15/95. EPA fully approved the West Virginia Title V program via DFR published on 10/03/01 (66FR50325). EPA approved revisions to 45CSR30 contained in WVDAQ's 07/01/01 rule via a separate DFR published on 10/09/01 (66FR51318). These revisions became federally effective 11/23/01. West Virginia submitted a revision of its approved Operating Permit Program to EPA Region III on June 6, 2012.

45CSR33 - This rule establishes and adopts general provisions and the operating permit program requirements for affected sources and affected units under the Acid Rain Program promulgated by the EPA under Title IV of the CAA. This rule incorporates by reference the following provisions: 40 CFR Part 72, "Permits Regulation"; 40 CFR Part 74, "Sulfur Dioxide Opt-Ins"; 40 CFR Part 75, "Continuous Emissions Monitoring"; 40 CFR Part 76, "Nitrogen Oxides Reduction Program"; and 40 CFR Part 77, "Excess Emissions". The rule was submitted to USEPA on June 23, 1995 as part of the state's Title V requirements and approved effectively on 12/15/95 with interim approval of the West Virginia Title V program.

45CSR41 – This SIP approved rule (74FR38536) establishes general provisions and the designated representative, permitting, allowance and monitoring provisions for the state CAIR SO<sub>2</sub> Trading Program pursuant to the federal Clean Air Interstate Rule under §110 of the CAA, 40 CFR Part 96, Subparts AAA through HHH, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and SO<sub>2</sub>.

West Virginia has two partial counties (Brooke & Marshall) identified as potential 1-hour SO<sub>2</sub> non-attainment areas. Emissions limitations and other control measures needed to attain the NAAQS in areas designated nonattainment for that NAAQS will be due on a different schedule from the §110 infrastructure elements and will be reviewed and acted upon with regard to approvability for the specific purposes of such an attainment plan under CAA Title I part D through a separate process at a later time.

West Virginia has two existing SO<sub>2</sub> maintenance plans that have been approved by EPA; one for the Weirton area (70FR1664) and one for the New Manchester area (70FR33364).

<p><b>§110(a)(2)(B)</b></p>	<p><i>provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the Administrator;</i></p>	<p><b>Establishment of Ambient Air Quality Monitoring System:</b> Pursuant to W.Va. Code, §22-1-1(a)(1), “protecting the environment is fundamental to the health and welfare of individual citizens,” and, the state “has a duty to provide and maintain a healthful environment for our citizens.” Under §22-1-1(a)(2), “the state has the primary responsibility for protecting the environment.” §22-1-1(b) “declares that the establishment of a department of environmental protection is in the public interest” and that “It is the policy of the state .....to use all practical means and measures to prevent or eliminate harm to the environment and biosphere, to create and maintain conditions under which man and nature can exist in productive harmony, .....</p> <p>Additionally, §22-5-1 declares the state’s public policy “to fulfill its primary responsibility for assuring air quality pursuant to the ‘Federal Clean Air Act’, as amended.”</p> <p>As set forth in §22-1-1(b)(5), the WVDEP, “insofar as federal environmental programs require state participation” must “endeavor to obtain and continue state primacy in the administration of such federally-mandated programs,.....and to cooperate with appropriate federal agencies to meet environmental goals.”</p> <p>Under §22-1-6(a), the Secretary “is the chief officer of the department” with the powers, duties and authority pursuant to §§22-5-2(3) and 22-5-4.</p> <p>The Secretary has the authority under W.Va. Code §§22-5-4(a)(1) &amp; (3) “to develop ways and means for the regulation and control of pollution of the air of the state” and “conduct such studies and research relating to air pollution and its control and abatement”.</p> <p>Therefore, under manifold statute authority, West Virginia operates and maintains an established network of fourteen ambient SO<sub>2</sub> monitors in West Virginia for the purpose of assessing compliance with the 2010 1-hour SO<sub>2</sub> NAAQS, which Congress provided for in the CAA.</p> <p><b>Monitoring System Operation:</b> To assess 2010 1-hour SO<sub>2</sub> NAAQS compliance, WVDAQ operates a network of SO<sub>2</sub> monitors in West Virginia that have been designated by EPA as either Federal Reference or Federal Equivalent monitors. This network monitors air quality for the 2010 SO<sub>2</sub> NAAQS at appropriate locations in accordance with the Ambient Air Monitoring Reference and Equivalent Methods under 40 CFR Part 53 and the Ambient Air Quality Surveillance requirements of 40 CFR Part 58. Ambient air monitors are subjected to the Quality Assurance requirements of 40 CFR Part 58 Appendix A. Additionally all monitors have met the minimum siting requirements of Part 58, Appendix E. WVDAQ analyzes collected air quality data to determine attainment status under the 2010 1-hour SO<sub>2</sub> NAAQS.</p> <p>On June 22, 2010, EPA revised the SO<sub>2</sub> NAAQS Amendments to Ambient Monitoring</p>
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<p><b>§110(a)(2)(B)</b> <b>(continued)</b></p>		<p>and Reporting Requirements. As a result, the WVDAQ now collects and reports SO<sub>2</sub> 5-minute average data from all fourteen SO<sub>2</sub> monitoring sites.</p> <p><b>Availability of Data:</b> In order to keep EPA informed of planned modifications to monitoring sites, WVDAQ provides EPA Region III with adequate prior notification. Details of these modifications and anticipated approvals of the modifications are communicated to EPA. On an annual basis, WVDAQ submits to EPA a monitoring site design plan and periodic network assessment required under 40 CFR §58.10 that describes how West Virginia is complying with monitoring requirements and explains any modifications to the monitoring network. This plan also provides for a description of each system modification, the reason for each modification, and any other information relevant to the modification pursuant to 40 CFR §58.14. To demonstrate and assure that West Virginia meets changes in monitoring requirements related to new or revised NAAQS, on June 27, 2012 West Virginia submitted a 2012 Annual Air Quality Monitoring Network Design Plan to EPA. The plan was consequently approved by EPA via letter received by West Virginia on March 4, 2013.</p> <p>As provided in W.Va. Code §§22-5-4(a)(2), 22-5-10 and §110(a)(2)(B) of the CAA, WVDAQ collects and reports in a timely manner to EPA ambient air quality data for SO<sub>2</sub>. The reports comply with the Data Submittal and Archiving Requirements set forth in CFR §58.16. The data is reviewed, edited, validated, and entered into the EPA air quality system (AQS) for updating pursuant to prescribed AQS procedures. The EPA AQS receives each report within 90 days after the end of the quarterly reporting period. Data is certified annually as required under 40 CFR §58.15.</p>
<p><b>§110(a)(2)(C)</b></p>	<p><i>include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;</i></p>	<p><b>Enforcement of Control Measures for the 2010 1-Hour SO<sub>2</sub> NAAQS:</b> Pursuant to W.Va. Code §22-1-6(a), the WVDEP Cabinet Secretary “is the chief officer of the department” with the powers, duties and authority pursuant to §§22-5-2(3) and 22-5-4.</p> <p>The Secretary has the authority under W.Va. Code §§22-1-3(a), 22-5-4(a)(4) and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act (W.Va. Code §§ 29A3-1 et seq.)</p> <p>The Secretary has the authority under W.Va. Code §22-5-4(a)(5) “to enter orders requiring compliance with the provisions of this article and the rules lawfully promulgated hereunder.”</p> <p>The Secretary has the authority under W.Va. Code §22-5-4(a)(9) “to enter and inspect any property, premise or place .... for the purpose of ascertaining the state of compliance with this article and the rules promulgated under the provisions of this article.”</p> <p>The Secretary has the authority under W.Va. Code §22-5-4(a)(16) “to do all things</p>

**§110(a)(2)(C)  
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necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and *enforcement* of the Federal Clean Air Act .....

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

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

West Virginia therefore has an established legal framework and inherent ability to provide for the enforcement of the emission limitations and other measures described the §110(a)(2)(A) element of this document, and contained in a permit issued under 45CSR10, 45CSR13, 45CSR14, 45CSR18, 45CSR19, 45CSR30, 45CSR33 or 45CSR41.

**Preconstruction NSR Permitting of Minor Sources:** West Virginia's SIP-approved rule 45CSR13 (72FR5932) governs the minor NSR program for sources of emissions of SO<sub>2</sub> and provides for pre-construction permitting regarding the modification and construction of minor stationary sources and the minor modification of major stationary sources pursuant to 40 CFR §§51.160-164.

45CSR13 addresses the impact of permitted sources on the 2010 1-hour SO<sub>2</sub> NAAQS through permits which contains the emission standards, registration, permit, testing, monitoring, recordkeeping and reporting requirements for sources of SO<sub>2</sub> emissions contained in 45CSR10, and the New Source Performance Standards for SO<sub>2</sub> promulgated under 40 CFR Part 60 and incorporated by reference in 45CSR16.

The EPA issued a general policy statement on the topic of "prominent advertisement" of minor source programs and permits, in a memorandum dated April 17, 2012 from Janet McCabe, Principal Deputy Assistant Administrator, Office of Air and Radiation, entitled "Minor New Source Review Program Public Notice Requirements under 40 CFR §51.161(b)(3)". West Virginia follows this general policy with respect to advertisement of minor source permitting actions under 45CSR13.

**Preconstruction PSD Permitting of Major Sources:** The Prevention of Significant Deterioration (PSD) program contained in Part C of Title I of the CAA govern preconstruction review and permitting of any new or modified major stationary sources of air pollutants regulated under the CAA as well as any precursors to the formation of that pollutant when identified for regulation by EPA. The PSD program will regulate future growth and provide for continued maintenance of the 2010 1-hour SO<sub>2</sub> NAAQS.

West Virginia's PSD program is set forth in SIP approved rule 45CSR14 (77FR63736). 45CSR14 implements a comprehensive PSD permit program as required under Part C

<p><b>§110(a)(2)(C)</b> <b>(continued)</b></p>		<p>of Title I of the CAA for all regulated NSR pollutants (or precursors) that are subject to regulation under the CAA. 45CSR14 limits PSD applicability with respect to greenhouse gas-emitting sources by adopting the applicability thresholds included in EPA’s Tailoring Rule.</p> <p>Pursuant to CAA §165(a)(3), the WVDAQ is authorized to implement the existing PSD permit program in order to ensure that the construction and modification of major stationary sources will not cause or contribute to a violation of the 2010 1-hour SO<sub>2</sub> NAAQS (or any NAAQS or increment) in West Virginia or another state, as set forth in the source impact analysis requirements of 45CSR§14-9.1 and 40 CFR §51.166(k).</p> <p>Pursuant to CAA §165(a)(4), a new or modified PSD source in an attainment area may have a SO<sub>2</sub> emission limitation in a permit under 45CSR14 based upon a best available control technology (BACT) analysis, and application of BACT for each regulated NSR pollutant that has the potential to emit in significant amounts in accordance with the control technology review requirements in 40 CFR §51.166(j), and as set forth in 45CSR14-8.</p> <p>45CSR14 contains a significance level for SO<sub>2</sub> of 40 tpy and significant impact levels of 1.0, 5.0 and 25.0 µg/m<sup>3</sup> for annual, 24 and 3-hour averaging times, respectively. 45CSR14 also contains a de minimis air quality impact concentration of 13 µg/m<sup>3</sup> over a 24 hour averaging time and a maximum allowable pollutant concentration increase over baseline concentration of 20, 91 and 512 µg/m<sup>3</sup> for annual arithmetic mean, 24-hour maximum and 3-hour maximum averaging times, respectively, in Class II areas.</p> <p>West Virginia has timely submitted all structural PSD program provisions for which a SIP submission deadline has passed, with the exception of the requirement for the inclusion of condensable emissions of particulate matter within the definition of “regulated new source review pollutant.” West Virginia will correct this omission when it submits 45CSR14 as a SIP revision in June 2014.</p> <p>EPA has not proposed to amend the PSD regulations with regard to the 2010 1-hour SO<sub>2</sub> NAAQS. However, West Virginia will revise its PSD program to address any applicable EPA amendments of the SO<sub>2</sub> PSD rules within three years from the date of such amendments.</p>
<p><b>§110(a)(2)(D)</b></p>	<p><i>contain adequate provisions -</i></p> <p><i>(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which</i></p>	<p><b>Interference With Required Measures Under Part C:</b> West Virginia confirms that new major sources and major modifications in the state are subject to a comprehensive Prevention of Significant Deterioration (PSD) permit program as set forth in SIP approved rule 45CSR14 (77FR63736). This PSD program required by Part C of Title I of the CAA governs the preconstruction review and permitting of any new major stationary sources or major modification with respect to regulated NSR pollutants under the CAA, as well as any precursors to the formation of such pollutants when</p>

<p><b>§110(a)(2)(D) (continued)</b></p>	<p>will-</p> <p><i>(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or</i></p> <p><i>(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,</i></p> <p><i>(ii) ensuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);</i></p>	<p>identified for regulation by EPA. 45CSR14 also limits PSD applicability with respect to greenhouse gas-emitting sources by adopting the applicability thresholds included in EPA's Tailoring Rule.</p> <p>45CSR14 regulates future growth and provide for continued maintenance of the 2010 1-hour SO<sub>2</sub> NAAQS. This rule includes specific federal requirements which ensure that new or modified sources do not interfere with measures to prevent significant deterioration of air quality by providing a mechanism to prevent the development of any new non-attainment problems. 45CSR14 requires the evaluation of sources of air pollutants and to preclude the construction or relocation of any major stationary source or major modification in any area classified as attaining NAAQS or unclassifiable in which the establishment of such source or modification may interfere with the goals of the prevention of significant deterioration of air quality levels.</p> <p>Pursuant to CAA §165(a)(3), the WVDAQ is authorized to implement the existing PSD permit program in order to ensure that the construction and modification of major stationary sources will not cause or contribute to a violation of the 2010 1-hour SO<sub>2</sub> NAAQS (or any NAAQS or increment) in West Virginia or another state, as set forth in the source impact analysis requirements of 45CSR§14-9.1 and 40 CFR §51.166(k).</p> <p>Pursuant to CAA §165(a)(4), a new or modified PSD source in an attainment area may have a SO<sub>2</sub> emission limitation in a permit under 45CSR14 based upon a best available control technology (BACT) analysis, and application of BACT for each regulated NSR pollutant that has the potential to emit in significant amounts in accordance with the control technology review requirements of 45CSR§14-8 and 40 CFR §51.166(j).</p> <p>West Virginia has timely submitted all structural PSD program provisions for which a SIP submission deadline has passed, with the exception of the requirement for the inclusion of condensable emissions of particulate matter within the definition of "regulated NSR pollutant." West Virginia will correct this omission when it submits 45CSR14 as a SIP revision in June 2014.</p> <p>EPA has not proposed to amend the PSD regulations with regard to the 2010 1-hour SO<sub>2</sub> NAAQS. However, West Virginia will revise its PSD program to address any applicable EPA amendments of the SO<sub>2</sub> PSD rules within three years from the date of such amendments.</p> <p>In-state sources not subject to PSD for all NAAQS because they are in a nonattainment area also may have the potential to interfere with PSD in an attainment or unclassifiable area of another state. West Virginia confirms that new major sources and major modifications in non-attainment areas of the state are subject to the nonattainment area new source review (NSR) permit program under legislative rule 45CSR19. The purpose of this SIP-approved rule (71FR64468) is to satisfy the</p>
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<p><b>§110(a)(2)(D)</b> <b>(continued)</b></p>		<p>nonattainment area NNSR requirements in Part D of the CAA. 45CSR19 contains a significance level for SO<sub>2</sub> of 40 tpy and significant impact levels (ambient air concentration increase) of 1.0, 5.0 and 25.0 µg/m<sup>3</sup> for annual, 24 and 3-hour averaging times, respectively. A NNSR source in a SO<sub>2</sub> non-attainment area may have a SO<sub>2</sub> emission limitation in a permit under 45CSR19 based upon a LAER analysis. West Virginia has two partial counties (Brooke &amp; Marshall) identified as SO<sub>2</sub> non-attainment areas.</p> <p><b>Interference With Measures Required to Protect Visibility:</b> West Virginia is subject to a RAVI FIP (*45132, [AD-FRL-3282-3], November 24, 1987).</p> <p>West Virginia confirms that new major sources and major modifications in the state are subject to a comprehensive PSD permit program as set forth in SIP approved rule 45CSR14 (77FR63736).</p> <p>West Virginia confirms that new major sources and major modifications in non-attainment areas of the state are subject to the nonattainment area new source review (NNSR) permit program as set forth in SIP-approved rule 45CSR19 (71FR64468).</p> <p>West Virginia received partial approval of its Regional Haze SIP on March 23, 2012 at 77FR16973. The SIP revision did not receive full approval solely because of its reliance on the Clean Air Interstate Rule.</p> <p><b>Interstate and International Pollution Abatement:</b> West Virginia has demonstrated that it has met its obligations pursuant to CAA §126(a) through the adoption of 45CSR§14-7, Public Review Procedures (77FR63736) which requires a new or modified source to notify other states of potential impacts from a source in accordance with 40 CFR §51.166(q)(2)(iv). No source or sources within West Virginia are the subject of an active finding under §126 of the CAA with respect to any air pollutant. There are no final findings under §115 of the CAA against West Virginia with respect to any air pollutant.</p>
<p><b>§110(a)(2)(E)(i)</b></p>	<p><i>provide</i></p> <p><i>(i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose)</i></p>	<p><b>Personnel:</b> WVDAQ has demonstrated adequate personnel to carry out the implementation plan with respect to the 2010 1-hour SO<sub>2</sub> NAAQS. There are no other organizations in West Virginia that participate in developing, implementing and enforcing the SIP (40 CFR §51.240). The Secretary employs adequate personnel and retains specialists under W.Va. Code §22-5-4(a)(8) that are "necessary, incident or convenient" to accomplish the statutory mandate to carry out the implementation plan. WVDAQ has a staff of approximately 90 full time employees. The West Virginia Air Director supervises the air monitoring, compliance and enforcement, hazardous waste, permitting and planning sections, as well as three regional WVDAQ offices, and answers to the WVDEP Cabinet Secretary. Because of the nature of the national and state economy, WVDAQ does not anticipate any changes in resources considered</p>

<p><b>§110(a)(2)(E)(i) (continued)</b></p>	<p><i>will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof);</i></p>	<p>necessary during the 5 years following SIP submittal; and projects a similar resource need at 1, 3, and five year intervals (40 CFR §51.280).</p> <p><b>Funding:</b> The APCA provides adequate funding under W.Va. Code §§22-1-10(a) and 22-5-4(a)(17) to carry out the implementation plan. W.Va. Code §22-5-12 sets forth the statutory operating permit requirements for stationary sources under Title V of the CAA. 45CSR30 establishes fees sufficient to cover the direct and indirect costs of administering the Title V operating permit program. The APCA also authorizes the establishment of fees to cover non-Title V permitting costs under 45CSR22. West Virginia's air quality program also receives revenue from fines and enforcement settlements (Air Pollution Control Fund) and federal funds under §§105 and 103 of the CAA, and state general fund appropriations.</p> <p><b>Legal Authority:</b> W.Va. Code §22-5-1, declares the state's policy "to fulfill its primary responsibility for assuring air quality" pursuant to the CAA. The Secretary is authorized under W.Va. Code §§22-1-6(c)(1) and 22-5-4(a)(12) to carry out and represent the state in any and all matters pertaining to the implementation plan, including revising the SIP as necessary. The Secretary has the authority under W.Va. Code §22-5-4(a)(16) "to do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the Federal Clean Air Act ...." The Secretary is not prohibited by any provision of federal or state law from carrying out the implementation plan or portion thereof. The legal authorities specified are available to the Secretary at the time of submission of this SIP revision.</p> <p>West Virginia has adopted emission standards and limitations and other measures necessary for attainment and maintenance of the NAAQS. The Secretary has the authority under W.Va. Code §§22-1-3(a), 22-5-4(a)(4) and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act (W.Va. Code §§29A3-1 et seq.). Approximately forty legislative rules promulgated under the auspices of the APCA are currently in effect and codified at Title 45 of the CSR, including the 2010 1-hour SO<sub>2</sub> NAAQS and NAAQS for other criteria pollutants contained in SIP approved rule 45CSR8 (77FR65493). Statutory permitting requirements are set forth in W.Va. Code §§22-5-11 &amp; 12. West Virginia has an EPA-approved air permitting program for both major and minor facilities, under legislative rules 45CSR13, 45CSR14, 45CSR19 and 45CSR30 (as applicable).</p> <p>The Secretary is authorized to enforce applicable laws, regulations, and standards under W.Va. Code §§22-1-6(d)(3), 22-05-4(a)(5) and 22-05-4(a)(6), and seek injunctive relief under §22-5-7.</p> <p>The Secretary is authorized to abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons. W.Va. Code §22-5-5 authorizes the Secretary to issue an order to cease and desist any activity that violates the APCA. The Secretary may also suspend, modify or revoke a source's permit.</p>
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**§110(a)(2)(E)(i)  
(continued)**

Under §22-5-6, the Secretary may also institute lawsuits for civil penalties. §22-5-7 authorizes the Secretary to seek applications for injunctive relief. §22-5-8 authorizes the Secretary, with the written authorization of the Governor, to shut down a source of SO<sub>2</sub> emissions, thereby preventing the emission of air pollutants which substantially contributes to an emergency that requires immediate action to protect public health. As provided in §§22-5-4(a)(2) and 22-5-10, the Secretary may consult with EPA to affirm accuracy of any information considered while executing authority under §§22-5-5, -6, -7 or -8.

The Secretary is authorized to prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard. New major sources and major modifications in West Virginia are subject to PSD under legislative rule 45CSR14. The purpose of this West Virginia SIP approved rule (77FR63736) is to satisfy the prevention of significant deterioration permit program requirements in Part C of the CAA. Under 45CSR14, “.....all applications filed by any person to construct major new or modified stationary air pollution sources, intending to locate in areas with air quality better than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the pre-construction review procedures and conditions of the Clean Air Act as amended ....”. This rule includes specific federal requirements which ensure that new or modified sources do not interfere with measures to prevent significant deterioration of air quality by providing a mechanism to prevent the development of any new non-attainment problems. 45CSR14 requires the evaluation of sources of air pollutants and to preclude the construction or relocation of any major stationary source or major modification in any area classified as attaining NAAQS or unclassifiable in which the establishment of such source or modification may interfere with the goals of the prevention of significant deterioration of air quality levels.

Pursuant to W.Va. Code §22-5-4(a)(14), the Secretary is authorized to obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards. Under §§22-5-4(a)(14) and 22-5-4(a)(15), the Secretary is authorized to require recordkeeping. Under §22-5-44(a)(9), the Secretary is authorized to and to make inspections and conduct tests of air pollution sources.

Under W.Va. Code §22-5-4(a)(15), the Secretary is authorized to require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources. Under §22-5-10, the Secretary is authorized to make such data available to the public as reported and as correlated with any applicable emission standards or limitations.

<p><b>§110(a)(2)(E)(ii)</b></p>	<p><i>(ii) requirements that the state comply with the requirements respecting state boards under section 128, and</i></p>	<p><b>State Boards Under Section 128:</b> Because West Virginia does not have a board which approves permits or enforcement orders, this element is not applicable.</p>
<p><b>§110(a)(2)(E)(iii)</b></p>	<p><i>(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;</i></p>	<p><b>Responsibility for Implementation of Assured Local Plan Provision:</b> West Virginia has not relied on any local or regional government, agency, or instrumentality for the implementation of any SIP provision for the 2010 1-hour SO<sub>2</sub> NAAQS. West Virginia will retain primacy with respect to any future plan that relies on local or regional governments, agencies or instrumentalities. By statute, West Virginia has prime responsibility for ensuring adequate implementation of such a plan provision. The Secretary has the authority under W.Va. Code §22-5-4(a)(16) “to do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the Federal Clean Air Act .....</p> <p>As set forth in W.Va. Code §22-1-1(b)(5), the WVDEP, “insofar as federal environmental programs require state participation” must “endeavor to obtain and continue state primacy in the administration of such federally-mandated programs,.....and to cooperate with appropriate federal agencies to meet environmental goals.”</p>
<p><b>§110(a)(2)(F)</b></p>	<p><i>require, as may be prescribed by the Administrator -</i></p> <p><i>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,</i></p> <p><i>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</i></p> <p><i>(iii) correlation of such reports by the state agency with any emission limitations or standards</i></p>	<p><b>Source Monitoring:</b> W.Va. Code §22-5-4(a)(15) authorizes the Secretary to require the installation, maintenance and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor and report emissions of SO<sub>2</sub> from such sources as the Secretary may prescribe. Under this authority, West Virginia requires the installation, maintenance, periodic testing and replacement of monitoring equipment at stationary sources through permits issued under 45CSR13, 45CSR14, 45CSR19, 45CSR30, and via compliance orders, in accordance with 40 CFR §51.212(a). The Secretary therefore has statute authority and promulgated rules to periodically test stationary sources, in accordance with 40 CFR §51.212(a).</p> <p>W.Va. Code §22-5-4(a)(9) authorizes the Secretary to “<i>enter and inspect</i> any property, premise or place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the <i>purpose of ascertaining the state of compliance</i> with this article and rules promulgated under ....” The Secretary therefore has statute authority to inspect stationary sources, in accordance with 40 CFR §51.212(a).</p> <p>W.Va. Code §22-5-4(a)(9) authorizes the Secretary to “<i>enter and inspect</i> any property, premise or place on or at which a source of air pollutants is located or is being</p>

<p><b>§110(a)(2)(F) (continued)</b></p>	<p><i>established pursuant to this Act, which reports shall be available at reasonable times for public inspection;</i></p>	<p>constructed, installed or established at any reasonable time for the <i>purpose of ascertaining the state of compliance</i> with this article and rules promulgated under ....” The Secretary has the authority under §§22-5-4(a)(1) &amp; (3) “to develop ways and means for the regulation and control of pollution of the air of the state” and “conduct such studies and research relating to air pollution and its control and abatement”. The Secretary has the authority under §§22-1-3(a), 22-5-4(a)(4) and 22-5-4(a)(17) to promulgate rules in accordance with the Administrative Procedures Act (W.Va. Code §§ 29A3-1 et seq.) Visible emission limitations for particulate matter are established in SIP-approved rules 45CSR2 (68FR47473) and 45CSR7 (68FR33010). WVDAQ enforcement personnel are certified in the visible emission testing procedures set forth in Method 9 of 40 CFR Part 60. The Secretary therefore has statute authority and visible emission limitations by promulgated rule along with trained enforcement, which establishes a system to detect violations of promulgated rules and regulations through the enforcement of appropriate visible emission limitations, in accordance with 40 CFR §51.212(b).</p> <p>W.Va. Code §22-5-4(a)(6) authorizes the Secretary to “<i>consider complaints</i>, subpoena witnesses, administer oaths, <i>make investigations</i> and hold hearings ....” The Secretary therefore has statute authority to investigate complaints, in accordance with 40 CFR §51.212(b).</p> <p>West Virginia’s SIP contains enforceable test methods for each emission limit specified in the SIP. As an enforceable test method, West Virginia uses appropriate methods in 40 CFR Part 51, Appendix M, <i>Recommended Test Methods for State Implementation Plans</i>; or an alternative method following review and approval of that method by the Administrator, or an appropriate method in Appendix A to 40 CFR Part 60. Such enforceable test methods are contained in permits issued under 45CSR13, 45CSR14, 45CSR30, and promulgated legislative rules as follows:</p> <p>45CSR10 - The purpose of this SIP approved rule (68FR33002) is to control air pollution from the emission of sulfur oxides. 45CSR10 contains test methods for sources of SO<sub>2</sub> emissions in West Virginia.</p> <p>45CSR10A - This rule provides guidance and clarification for complying with the testing, monitoring, recordkeeping and reporting requirements of 45CSR10.</p> <p>45CSR16 - The purpose of this rule is to incorporate the federal New Source Performance Standards under Part A of the Clean Air Act and 40 CFR Part 60. All current test methods for SO<sub>2</sub> promulgated under 40 CFR Part 60 are incorporated by reference under 45CSR16 except any limitation or standard that may be included in Subparts B, C, Ca, Cb, Cc, Cd, Ce, Ea, Eb, Ec, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM.</p> <p>45CSR18 - The purpose of this rule is to adopt standards of performance, and</p>
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**§110(a)(2)(F)  
(continued)**

establish emission guidelines and compliance times pursuant to §§111(d) and 129 of the CAA for solid waste combustion sources in West Virginia. §111(d)/129 solid waste combustion sources in West Virginia are subject to any applicable SO<sub>2</sub> test methods promulgated under 40 CFR 60, Subparts Eb, AAAA, Ec, Ce, CCCC, DDDD, EEEE and LLLL.

45CSR30 - This rule establishes a permitting program pursuant to Title V of the CAA. Any major stationary source subject to test methods pursuant to 45CSR10, 45CSR11, 45CSR13, 45CSR14, 45CSR16, 45CSR18, 45CSR19, 45CSR33 or 45CSR41 will be contained in a permit issued by West Virginia under its established Title V permit program.

45CSR33 - The Acid Rain Program under 45CSR33 requires monitoring of SO<sub>2</sub> for electric generating units. This rule establishes and adopts general provisions and the operating permit program requirements for affected sources and affected units subject to the Acid Rain Program under Title IV of the CAA. This rule incorporates by reference the test methods set forth in 40 CFR §75.22.

45CSR41 - This SIP approved rule (74FR38536) establishes test methods for the CAIR SO<sub>2</sub> Trading Program pursuant to the federal Clean Air Interstate Rule under §110 of the CAA, 40 CFR Part 96, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of SO<sub>2</sub>.

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

**Periodic Reporting and Recordkeeping:** W.Va. Code §§22-5-4(a)(15) authorizes the Secretary to require periodic reports on the nature and amounts of emissions and emissions-related data from owners or operators of stationary sources (monitoring data) of SO<sub>2</sub>. Under this authority, the Secretary requires periodic reports on emissions and emissions-related data from stationary sources through permits issued under 45CSR13, 45CSR14, 45CSR19, 45CSR30, 45CSR33, 45CSR41 and via compliance orders. Therefore, the Secretary therefore has statute authority to require periodic reports on the nature and amounts of emissions and emissions-related data.

West Virginia's SIP provides for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of and periodically report to the Secretary, in accordance with 40 CFR §51.211. Such enforceable procedures are contained in permits issued under 45CSR13, 45CSR14, 45CSR30, and promulgated legislative rules as follows:

**§110(a)(2)(F)  
(continued)**

45CSR10 - The purpose of this SIP approved rule (68FR33002) is to control air pollution from the emission of sulfur oxides. 45CSR10 contains recordkeeping and reporting requirements for sources of SO<sub>2</sub> emissions in West Virginia.

45CSR10A - This rule provides guidance and clarification for complying with the testing, monitoring, recordkeeping and reporting requirements of 45CSR10.

45CSR16 - The purpose of this rule is to incorporate the federal New Source Performance Standards under Part A of the Clean Air Act and 40 CFR Part 60. All current reporting and recordkeeping requirements for SO<sub>2</sub> promulgated under 40 CFR Part 60 are incorporated by reference under 45CSR16 except any limitation or standard that may be included in Subparts B, C, Ca, Cb, Cc, Cd, Ce, Ea, Eb, Ec, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM.

45CSR18 - The purpose of this rule is to adopt standards of performance, and establish emission guidelines and compliance times pursuant to §§111(d) and 129 of the CAA for solid waste combustion sources in West Virginia. §111(d)/129 solid waste combustion sources are subject to any applicable SO<sub>2</sub> reporting and recordkeeping requirement promulgated under 40 CFR 60, Subparts Eb, AAAA, Ec, Ce, CCCC, DDDD, EEEE and LLLL.

45CSR30 – This rule establishes a permitting program pursuant to Title V of the CAA. Any major stationary source subject to enforceable SO<sub>2</sub> reporting and recordkeeping requirement pursuant to 45CSR10, 45CSR11, 45CSR13, 45CSR14, 45CSR16, 45CSR18, 45CSR19, 45CSR33 or 45CSR41 will be contained in a permit issued by West Virginia under its established Title V permit program.

45CSR33 - The Acid Rain Program under 45CSR33 requires reporting and recordkeeping of SO<sub>2</sub> for electric generating units. This rule establishes and adopts general provisions and the operating permit program requirements for affected sources and affected units subject to the Acid Rain Program under Title IV of the CAA. This rule incorporates by reference the recordkeeping requirements of 40 CFR Part 75, Subpart F, and the reporting requirements under Subpart G.

45CSR41 - This SIP approved rule (74FR38536) establishes SO<sub>2</sub> reporting and recordkeeping requirements for the CAIR SO<sub>2</sub> Trading Program pursuant to the federal Clean Air Interstate Rule under §110 of the CAA, 40 CFR Part 96, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of SO<sub>2</sub>.

Pursuant to W.Va. Code §§22-5-4(a)(14), the Secretary is authorized to require such information as the Secretary may require in a form or manner prescribed by the Secretary (emissions inventory program). West Virginia is subject to the Air Emission

<p><b>§110(a)(2)(F)</b> <b>(continued)</b></p>		<p>Reporting Rule (AERR) set forth in 40 CFR Part 51, Subpart A. WVDAQ's emissions inventory program provides source-specific emissions data to EPA pursuant to the AERR reporting requirements and the source emissions and state action reporting requirements set forth in 40 CFR §§51.321-323. West Virginia assures that it will meet changes in reporting and inventory requirements associated with a new or revised NAAQS.</p> <p><b>Correlation of Reports:</b> As set forth in W.Va. Code §22-5-10, the Secretary makes available at reasonable times for public inspection the periodic emissions reported under §§22-5-4(a)(14) &amp; (15). The Secretary has the responsibility of making all records, reports or information obtained by the WVDEP or referred to at public hearings under the provisions of the APCA available to the public, except to the extent the records, reports or information are protected by confidentiality pursuant to 45CSR31. The types of records, reports or information that would relate to §110(a)(2)(F) which WVDAQ routinely provides access to include notifications, inspection reports, notices of violation, enforcement orders, applications, permit review letters, sample results, monitoring reports, permits, approvals and denials, and detailed data and calculations for SIP revisions. The detailed data and calculations used in the preparation of SIP revisions are not considered part of the SIP. WVDAQ generally makes information available for public access through its website, but also makes hard copy reports available upon written request. CEMS emissions data are uploaded to AIRS and CAMD, and EPA may make such data available to the public.</p> <p>W.Va. Code §22-1-6(d)(3) authorizes the Secretary to “investigate for violations of statutes or rules which the department is charged with enforcing.” §22-5-4(a)(3) authorizes the Secretary to correlate periodic emissions reports with any SO<sub>2</sub> emission limitation or standard established pursuant to 45CSR10, 45CSR13, 45CSR14, 45CSR18, 45CSR19, 45CSR30, 45CSR33, 45CSR41 or the CAA in such a manner as to show the relationship between measured or estimated amounts and the amounts of such emissions allowable under the applicable emission limitations or other measures, in accordance with 40 CFR §51.116. Correlation with applicable emissions limitations or standards is relevant only for those reports of source emissions that reflect the test methods and averaging periods specified in applicable emission limitations or standards. Thus, source reports of annual, ozone season, or summer day emissions used by WVDAQ to create the annual and triennial emission inventory submission to the EPA under 40 CFR Part 51, Subpart A, in general would not need to be correlated with specific emission limitations or standards, as many sources do not have applicable emission limitations defined for those averaging periods.</p>
<p><b>§110(a)(2)(G)</b></p>	<p><i>provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;</i></p>	<p><b>Comparable Authority to CAA §303:</b> W.Va. Code §22-5-5 authorizes the Secretary to issue an order to cease and desist any activity that violates the Air Pollution Control Act. The Secretary may also suspend, modify or revoke a source's permit. Under §22-5-6, the Secretary may also institute lawsuits for civil penalties. §22-5-7 authorizes the</p>

<p><b>§110(a)(2)(G) (continued)</b></p>		<p>Secretary to seek applications for injunctive relief. §22-5-8 authorizes the Secretary, with the written authorization of the Governor, to shut down a source of SO<sub>2</sub> emissions, thereby preventing the emission of air pollutants which substantially contributes to an emergency that requires immediate action to protect public health. As provided in §§22-5-4(a)(2) and 22-5-10, the Secretary may consult with EPA to affirm accuracy of any information considered while executing authority under §§22-5-5, -6, -7 or -8.</p> <p><b>Contingency Plans for Emergency Episodes:</b> West Virginia satisfies the criteria to be classified a Priority III Region under 40 CFR §51.150(f) for SO<sub>2</sub>, as it does not meet the criteria set forth in 40 CFR §§51.150(a)-(e). Pursuant to 40 CFR §51.152(c), areas classified as Priority III do not need to develop emergency episode (contingency) plans.</p> <p>However, the purpose of West Virginia SIP approved rule 45CSR11 (58FR34526) is to prevent air pollution emergency episodes in accordance with 40 CFR Part 51, Subpart H by providing a mechanism to prevent the buildup of air pollutant concentrations during periods of adverse meteorological conditions in which air pollutants may accumulate, thereby preventing the occurrence of an emergency due to the effects of these pollutants on health. To achieve this purpose, three (3) stages of criteria (pollutant concentration levels) have been established and specific emission reduction plans will be developed which will be initiated at each criteria stage to prevent further deterioration of the air supply to any air quality region or substantial portion thereof. 45CSR11 contains episode criteria, methods of measurement, preplanned reduction strategies and emission reduction plan requirements for sources of SO<sub>2</sub> emissions in West Virginia.</p>
<p><b>§110(a)(2)(H)</b></p>	<p><i>provide for revision of such plan-</i></p> <p><i>(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and</i></p> <p><i>(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain</i></p>	<p><b>Revision of the NAAQS:</b> To satisfy the SIP revision provisions set forth in 40 CFR §51.104, W.Va. Code §22-5-4(a)(16) authorizes the Secretary to do all things necessary and convenient to prepare and submit a plan for the implementation, maintenance and enforcement of the CAA. WVDAQ has historically revised, and will continue to revise its NAAQS rules as necessary to take account of revisions of the national primary or secondary ambient air quality standards or improved or more expeditious methods of attaining the standards. Below are brief recent history examples of how West Virginia has promulgated various versions of NAAQS rule 45CSR8 to incorporate revisions to the primary and secondary NAAQS:</p> <p>On February 10, 2009, West Virginia received full SIP approval of its 2008 NAAQS rule 45CSR8 (74FR6552). This rule contains ambient air quality standards for all criteria pollutants, including the 2006 PM<sub>2.5</sub> NAAQS, equivalent to the national primary and secondary ambient air quality standards established under §109 of the CAA, and promulgated by EPA under 40 CFR Part 50 through June 1, 2007.</p> <p>The 2009 version of 45CSR8 includes the revised the 8-hour primary and secondary</p>

<p><b>§110(a)(2)(H) (continued)</b></p>	<p><i>the national ambient air quality standard which it implements, or to otherwise comply with any additional requirements established under this Act;</i></p>	<p>ozone NAAQS. Revisions to the rule also include deletion of references to the obsolete one-hour ozone NAAQS. EPA announced reconsideration of the 2008 primary and secondary ozone standards on September 16, 2009. Subsequently, EPA Region III advised the WV DAQ that 45CSR8 may not be approvable into the SIP because the ozone standard was under reconsideration. At the request of EPA Region III, 45CSR8 was withdrawn as a revision to the SIP on November 16, 2009.</p> <p>The 2010 version of 45CSR8 included the revised national primary and secondary lead NAAQS and deletion of redundant methods of measurement language in 45CSR§8-4. EPA Region III advised the WV DAQ that the 2010 version of 45CSR8 may not be approvable into the SIP because the ozone standard was under reconsideration. At the request of EPA Region III, 45CSR8 was not submitted as a revision to the SIP.</p> <p>West Virginia submitted a NAAQS SIP revision to EPA on July 8, 2011. Revisions to the 2011 version of NAAQS rule 45CSR8 provide for incorporation by reference of the NAAQS as promulgated by the EPA as of June 1, 2010, rather than reiterating the NAAQS in the rule. EPA has revised the primary nitrogen dioxide NAAQS, and 45CSR8 incorporates by reference the 2010 1-hour NO<sub>2</sub> NAAQS. On September 12, 2012, West Virginia received full SIP approval of 2011 rule 45CSR8 (77FR56125).</p> <p>West Virginia submitted a NAAQS SIP revision to EPA on June 6, 2012. Revisions to the 2012 version of the rule incorporate by reference the 2010 1-hour SO<sub>2</sub> NAAQS. Specifically, EPA established a new 1-hour SO<sub>2</sub> standard at a level of 75 parts per billion (ppb), based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. West Virginia received full SIP approval of 2012 rule 45CSR8 (77FR65493).</p> <p><b>Inadequate Plan:</b> W.Va. Code §22-5-4(a)(16) authorizes the Secretary to do all things necessary and convenient to prepare and submit a plan for the implementation, <i>maintenance</i> and enforcement of the CAA. When, if ever, EPA finds the SIP is substantially inadequate to attain the NAAQS which it implements or otherwise to comply with the CAA, West Virginia will revise the plan as necessary for adequacy.</p>
<p><b>§110(a)(2)(J)</b></p>	<p><i>meet the applicable requirements of section 121 (relating to consultation) and section 127 (relating to public notification) and part C (relating to prevention of significant deterioration of air quality and visibility protection)</i></p>	<p><b>Consultation:</b> The Air Pollution Control Act provides adequate authority under W.Va. Code §22-5-4(a)(2) for West Virginia's practices of consultation with local governments, organizations and Land Managers regarding implementation plans for air quality maintenance requirements, preconstruction review of direct sources, nonattainment requirements, prevention of significant deterioration and administrative assessment of civil penalties, in accordance with §121 of the CAA. For the 2010 1-hour SO<sub>2</sub> NAAQS, West Virginia's permitting program includes three SIP approved rules: minor NSR rule 45CSR13 (68FR9559), PSD rule 45CSR14 (77FR63736), and major NSR rule 45CSR19 (71FR64468). West Virginia also has an approved Title V operating permit program (66FR50325). WVDEP has previously demonstrated a</p>

<p><b>§110(a)(2)(J) (continued)</b></p>	<p>commitment to such consultation through encouragement and support for an Early Action Compact, and through Federal Land Manager consultation for the West Virginia Haze SIP.</p> <p><b>Public Notification:</b> W.Va. Code §22-1-12 provides authority for the public notification of primary NAAQS exceedances and education efforts as required by 40 CFR §51.285 and §127 of the CAA. §22-4-(a)(10) provides authority for the WVDAQ to advise of the health hazards associated with an exceedance of a primary NAAQS, or a violation which presents an imminent and serious hazard to public health.</p> <p>Each year, WVDAQ issues a comprehensive West Virginia Air Quality Annual Report. The report provides air quality highlights from the previous year, public awareness of criteria pollutants and their effects on health, and tracks the Air Quality Index. The report also compares monitored air quality data with the NAAQS and identifies primary NAAQS exceedances. The report enhances the public's awareness of measures that prevent such exceedances, and provides educational website links to tips that improve air quality, links to technical websites, regulatory and outreach efforts, in accordance with 40 CFR §51.285 and §127 of the CAA.</p> <p><b>Preconstruction PSD Permitting of Major Sources:</b> The Prevention of Significant Deterioration program contained in Part C of Title I of the CAA govern preconstruction review and permitting of any new or modified major stationary sources of air pollutants regulated under the CAA as well as any precursors to the formation of that pollutant when identified for regulation by EPA. The PSD program will regulate future growth and provide for continued maintenance of the 2010 1-hour SO<sub>2</sub> NAAQS.</p> <p>West Virginia's PSD program is set forth in SIP approved rule 45CSR14 (77FR63736). 45CSR14 implements a comprehensive PSD permit program as required under Part C of Title I of the CAA for all regulated NSR pollutants (or precursors) that are subject to regulation under the CAA. 45CSR14 limits PSD applicability with respect to greenhouse gas-emitting sources by adopting the applicability thresholds included in EPA's Tailoring Rule.</p> <p>Pursuant to CAA §165(a)(3), the WVDAQ is authorized to implement the existing PSD permit program in order to ensure that the construction and modification of major stationary sources will not cause or contribute to a violation of the 2010 1-hour SO<sub>2</sub> NAAQS (or any NAAQS or increment) in West Virginia or another state, as set forth in the source impact analysis requirements of 45CSR§14-9.1 and 40 CFR §51.166(k).</p> <p>Pursuant to CAA §165(a)(4), a new or modified PSD source in an attainment area may have a SO<sub>2</sub> emission limitation in a permit under 45CSR14 based upon a best available control technology (BACT) analysis, and application of BACT for each regulated NSR pollutant that has the potential to emit in significant amounts in accordance with the control technology review requirements in 40 CFR §51.166(j),</p>
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<p><b>§110(a)(2)(J) (continued)</b></p>		<p>and as set forth in 45CSR§14-8.</p> <p>45CSR14 contains a significance level for SO<sub>2</sub> of 40 tpy and significant impact levels of 1.0, 5.0 and 25.0 µg/m<sup>3</sup> for annual, 24 and 3-hour averaging times, respectively. 45CSR14 also contains a de minimis air quality impact concentration of 13 µg/m<sup>3</sup> over a 24 hour averaging time and a maximum allowable pollutant concentration increase over baseline concentration of 20, 91 and 512 µg/m<sup>3</sup> for annual arithmetic mean, 24-hour maximum and 3-hour maximum averaging times, respectively, in Class II areas.</p> <p>West Virginia has timely submitted all structural PSD program provisions for which a SIP submission deadline has passed, with the exception of the requirement for the inclusion of condensable emissions of particulate matter within the definition of “regulated new source review pollutant.” West Virginia will correct this omission when it submits 45CSR14 as a SIP revision in June 2014.</p> <p>EPA has not proposed to amend the PSD regulations with regard to the 2010 1-hour SO<sub>2</sub> NAAQS. However, West Virginia will revise its PSD program to address any applicable EPA amendments of the SO<sub>2</sub> PSD rules within three years from the date of such amendments.</p> <p><b>Visibility Protection:</b> There are no new applicable visibility protection obligations under §110(a)(2)(J) as a result of the 2010 1-hour SO<sub>2</sub> NAAQS. According to EPA’s interpretation of the CAA, the visibility element of section J does not need to be addressed.</p>
<p><b>§110(a)(2)(K)</b></p>	<p><i>provide for:</i></p> <p><i>(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and</i></p> <p><i>(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;</i></p>	<p><b>Air Quality Modeling:</b> W.Va. Code, §§22-5-4(a)(1)&amp;(3), authorizes the Secretary to “develop ways and means for the regulation and control of pollution of the air of the state” and “conduct such studies and research relating to air pollution and its control and abatement”.</p> <p>Inherent in Secretary’s authority is the capability to conduct new source review modeling required under the CAA set forth in the SIP-approved (77FR63736) PSD source impact and modeling requirements of 45CSR14-§§9 and 10, in accordance with 40 CFR §§51.166(k) and (l). All applications of air quality modeling, where appropriate, for PSD purposes shall be based on the applicable air quality models, databases, and other requirements specified in the Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models). Pursuant to 45CSR14-§10.2, where an air quality impact model specified in Appendix W of 40 CFR Part 51 is inappropriate, the model may be modified or another model substituted, provided that the modification or substitution is approved in writing by the Administrator.</p> <p>Also inherent in The Secretary’s authority is the capability to conduct modeling to demonstrate attainment of the NAAQS, as required under the Part D of the CAA, and</p>

<p><b>§110(a)(2)(K)</b> <b>(continued)</b></p>		<p>as prescribed by the Administrator. Air quality modeling is an inherent aspect of preparing the attainment plan required for nonattainment areas under Part D of Title I of the CAA. Such plans are not required to be submitted as part of an infrastructure SIP. However, there is an obligation for the infrastructure SIP from any state containing a designated nonattainment area for a new or revised NAAQS to provide for the performance of the air quality modeling that will be needed to prepare an attainment demonstration plan. A source-oriented dispersion model such as AERMOD will be the air quality model that will be used to demonstrate the adequacy of a control strategy to provide for the timely attainment and maintenance of the NAAQS, pursuant to 40 CFR §§51.112 and 51.115(b).</p> <p>WVDAQ employs one full time technical employee who is responsible for air quality modeling. WVDAQ also participates in regional planning organizations such as the Southeastern Modeling Analysis and Planning project, which performs NAAQS modeling for member states. West Virginia will perform modeling, as required under the CAA to demonstrate attainment of the 2010 1-hour SO<sub>2</sub> NAAQS.</p> <p><b>Submission of Data:</b> W.Va. Code §§22-5-4(a)(2), 22-5-10 and 22-5-4(a)(16) authorizes the Secretary to submit, upon request by the Administrator, modeling data predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard. West Virginia will submit to EPA current and future air quality modeling data as part of its relevant SIP submissions and through Federal grant commitments or in other ways that EPA may request. West Virginia can also provide relevant data as part of the NAAQS implementation process.</p>
<p><b>§110(a)(2)(L)</b></p>	<p><i>require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover-</i></p> <p><i>(i) the reasonable costs of reviewing and acting upon any application for such a permit, and</i></p> <p><i>(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such</i></p>	<p><b>Permit Fees for Permit Review, Implementation and Enforcement:</b> West Virginia has an approved Title V operating permit program under 45CSR30 (66FR50325). EPA granted final full approval effective on November 19, 2001. The Title V Program permit fees which satisfy the fee determination and certification requirements set forth in 40 CFR §70.9 are contained in the rule at 45CSR§30-8. The collected fees have been sufficient to cover permit review, and implementation and enforcement of permit terms and conditions.</p> <p>Because the fee requirement in §110(a)(2)(L) has been superseded by the EPA-approved fee program under Title V, infrastructure SIP submissions following promulgation of a new or revised NAAQS do not currently need to contain any new provisions for the fee requirements under this section. Therefore, West Virginia's EPA-approved Title V operating permits program (and its collection of permitting fees pursuant to 40 CFR §70.9) demonstrates that the Element L fees are no longer required.</p>

	<p><i>permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V;</i></p>	
<p><b>§110(a)(2)(M)</b></p>	<p><i>provide for consultation and participation by local political subdivisions affected by the plan;</i></p>	<p><b>Consultation:</b> The Secretary has the authority under W.Va. Code §22-5-4(a)(16) “to do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the Federal Clean Air Act ....” Under this statute, and pursuant to the General Plan Requirements set forth in 40 CFR §51.240, the WVDAQ is the organization authorized to develop, implement and enforce the SIP. §22-5-4(a)(2), authorizes the Secretary to advise, consult and cooperate with local political subdivisions affected by the implementation plan. WVDAQ consults with local governments, organizations and Land Managers with respect to SIP development.</p> <p>WVDAQ also consults with such entities regarding implementation plans for air quality maintenance requirements, preconstruction review of direct sources, nonattainment requirements, and prevention of significant deterioration.</p> <p><b>Notice and Opportunity for Public Hearing:</b> In accordance with the federal procedural requirements at 40 CFR §51.102, any plan or plan revision, or individual compliance schedule, prepared by WVDAQ is subject to a 30 day public notice period with public hearing, or in cases where there is little anticipated public interest, the opportunity for a public hearing. West Virginia legislative rules which contain such public notice procedures include permitting rules 45CSR13, 45CSR14, 45CSR19 and 45CSR30.</p>