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

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

Dated: July 24, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–12969 Filed 8–8–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0527; FRL–8206–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Amendments to Prevention of Significant Deterioration (PSD) Air Quality Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the West Virginia State Implementation Plan (SIP). The revision consists of amendments to West Virginia's existing prevention of significant deterioration (PSD) preconstruction air quality permit program. This action is being taken under the Clean Air Act (CAA or the Act). In a separate action, EPA will address changes made by West Virginia to its nonattainment new source review (NSR) permit program, also submitted on December 1, 2005.

DATES: Written comments must be received on or before September 8, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0527 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: campbell.dave@epa.gov*.

C. *Mail:* EPA–R03–OAR–2006–0527, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2006–0527. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Rosemarie Nino, (215) 814–3377, or by e-mail at *nino.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: The supplementary information is arranged as follows:

I. Background
II. Program Review
A. What is being addressed in this document?
B. What are the program changes that EPA is approving?
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background

On December 31, 2002, the U.S. Environmental Protection Agency (EPA) published revisions to the Federal prevention of significant deterioration (PSD) and nonattainment new source review (NSR) regulations (67 FR 80186). These revisions are commonly referred to as EPA's ''NSR Reform'' regulations and became effective on March 3, 2003. These regulatory revisions included provisions for baseline emissions determinations, actual-to-future actual methodology, Plantwide Applicability Limits (PALs), Clean Units, and Pollution Control Projects (PCPs). The December 2002 rulemaking action required State and local permitting authorities to include the NSR Reform measures as minimum program elements in their State implementation plans (SIP) and to submit these revisions to EPA by January 2, 2006.

The United States Court of Appeals for the District of Columbia Circuit ruled in *New York* v. *EPA*, 413 F.3d 3 (D.C. Cir. June 24, 2005) that EPA lacked the authority to promulgate the Clean Unit provisions, and the Court requested that EPA vacate that portion of the 2002 Federal regulation, codified at 40 CFR 52.21(x), as contrary to the statute. Also, the Court determined EPA lacked the authority to create PCP exceptions from NSR and vacated those parts of the 1991 and 2002 rules, codified at 40 CFR 52.21(b)(32) and 52.21(z), as contrary to the statute.

On December 1, 2005, EPA Region III received a revision to the West Virginia State Implementation Plan (SIP) from the West Virginia Department of Environmental Protection (WVDEP). This SIP revision consists of Legislative Rule 45 CSR 14—Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration adopted by the State of West Virginia on April 8, 2005 and effective June 1, 2005. The State adopted the regulation in order to meet the relevant plan requirements of 40 CFR 51.166. On December 22, 2005, WVDEP provided supplemental materials consisting of a letter and an attached one-page table requesting that EPA exclude from its December 1, 2005 request for SIP approval the provisions of 45 CSR 14, as set forth in the attached table, that pertain to ''Clean Units'' and

''Pollution Control Project'' in order to ensure that their federally-approved regulations are consistent with the United States Court of Appeals for the District of Columbia Circuit's June 24, 2005 ruling.

The WVDEP is seeking approval of amendments to 45 CSR 14 in order to meet the minimum requirements of 40 CFR 51.166 and the Clean Air Act. It should be noted that West Virginia also submitted amendments to its nonattainment new source review (NSR) regulations on December 1, 2005. The EPA will address those amendments in a separate rulemaking action.

II Program Review

A. What Is Being Addressed in This Document?

1. As stated in the December 31, 2002 ''NSR Reform'' rulemaking, State and local permitting agencies were required to adopt and submit revisions to their part 51 permitting programs, implementing the minimum program elements of that rulemaking no later then January 2, 2006 (67 FR 80240). With this submittal, West Virginia requests approval of program revisions to satisfy this requirement.

2. On December 1, 2005, WVDEP submitted regulatory revisions to EPA for approval. The submitted West Virginia Rule was entitled, ''45 CSR 14—Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (PSD)'' and was adopted April 8, 2005 and effective June 1, 2005.

3. By letter dated December 22, 2005, WVDEP requested that EPA exclude from its December 1, 2005 request for approval into the SIP those provisions of 45 CSR 14 that pertain to the Clean Unit and Pollution Control Project (PCP) provisions of 40 CFR 51.166. The specific provisions to be excluded were set forth in a table attached to the letter. The WVDEP made this request in order for its SIP to be consistent with the United States Court of Appeals for the District of Columbia Circuit June 24, 2005 ruling which vacated those provisions of the Federal rules. West Virginia also asked that EPA not act upon the provisions of 45 CSR 14.19.8 pertaining to the recordkeeping and reporting requirements for sources that elect to use the actual-to-projected actual emission test and where there is a ''reasonable possibility'' that a project may result in a significant net emissions increase. The ''reasonable possibility'' clause of the corresponding provisions of the Federal rules (51.166(r)(6)) were remanded to EPA in the June 24, 2005 ruling mentioned above. West Virginia has instructed EPA to not consider this clause as part of this SIP revision request. In its December 22, 2005 letter, WVDEP stated its intent to make any revisions to 45 CSR 14 necessary to incorporate and implement Federal program revisions once EPA takes further action on the remand of 40 CFR 51.166(r)(6).

B. What Are the Program Changes That EPA Is Approving?

In its December 2002 regulatory action, EPA dramatically changed many aspects of the regulations governing the PSD and nonattainment NSR programs (together, as ''NSR''). These changes affected the NSR applicability requirements to allow sources more flexibility to pursue modifications of their facilities in order to respond to changes in the marketplace and to plan for plant improvements. The goals of the changes were to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection, or more, from the existing program.

West Virginia has fully embraced EPA's NSR reform regulatory revisions and sought to develop a regulatory program that closely reflects the Federal NSR regulations and conforms to the minimum requirements of 40 CFR 51.166. As such, West Virginia has translated the Federal NSR requirements into the regulatory text of 45 CSR 14 in a manner that is consistent with State regulatory development procedures. Since West Virginia has sought to incorporate the majority of the Federal regulatory language into its regulations, the following is an examination of only those few areas in which the State altered the Federal regulatory text or approach. A more detailed comparison of 45 CSR 14 to the Federal requirements of 40 CFR 51.166 can be found in the technical support document (TSD) prepared for this rulemaking.

Notable Differences in 45 CSR 14—Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (PSD)

1. West Virginia's definition for ''Actual Emissions'' at 45 CSR 14–2.1 does not identify all of the defined NSR pollutants. However, West Virginia did incorporate a definition for ''Regulated NSR Pollutants,'' which, when read together with the definition for ''Actual Emissions'', makes the regulation consistent with 40 CFR 51.166(b)(21). Therefore, EPA finds the definition acceptable.

2. The provisions for the general requirements for establishing PALs at 45 CSR 14–25.4(a)(2) indicates that all PAL permits shall meet the general public review procedures established at 45 CSR 14–17. Section 25 also identifies public participation procedures expressly for PALs at 45 CSR 25.5. While the identification of two public participation procedures for PALs may be confusing, the two procedures are not in conflict and satisfaction of either of the procedures meets the minimum requirements of 40 CFR 51.166(w)(5).

3. In a change unrelated to the Federal NSR Reform efforts and to be consistent with 40 CFR 51.166(s)(2)(v), West Virginia added language to 45 CSR 14–14.d.3 that requires all modifications seeking to rely upon innovative technology as best available control technology to meet minimum public participation requirements. This change was necessary because public participation is a condition for using innovative technology, therefore, EPA finds the provision acceptable.

III. Proposed Action

Based on the above analysis, EPA has determined that the amendments to West Virginia's prevention of significant deterioration (PSD) permit program at 45 CSR 14, as submitted on December 1, 2005 and supplemented on December 22, 2005, meet the minimum requirements of 40 CFR 51.166 and the Clean Air Act. This amendment is approvable as a revision to the West Virginia SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable

duty beyond that required by state law, it 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). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule, approving amendment to West Virginia's Prevention of Significant Deterioration (PSD) Construction Permit Program, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 24, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–12970 Filed 8–8–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[EPA–HQ–OAR–2006–0085; FRL–8207–1]

Revisions to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and National Emission Standards for Hazardous Air Pollutants for Source Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise the General Provisions for Standards of Performance for New Stationary Sources, for National Emission Standards for Hazardous Air Pollutants, and for National Emission Standards for Hazardous Air Pollutants for Source Categories to allow extensions to the deadline imposed for source owners and operators to conduct initial or other required performance tests in certain specified circumstances. The General Provisions do not currently provide for extensions of the deadlines for conducting performance tests.

DATES: Comments must be received on or before November 7, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0085, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Revisions to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and National Emission Standards for Hazardous Air Pollutants for Source Categories, Docket ID No. EPA–HQ–OAR–2006–0085, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0085. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov*