

Dated: October 3, 2006.
Kerrigan G. Clough,
Acting Regional Administrator, Region 8.
 ■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:
 Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(108) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(108) Revisions to the Long-Term Strategy of Colorado’s State Implementation Plan for Class I Visibility Protection (Visibility SIP), as submitted by the Governor on March 24, 2005. The revisions update strategies, activities, and monitoring plans that constitute reasonable progress toward the National visibility goal.

(i) *Incorporation by reference.* (A) “Revision of the Long-Term Strategy,” Part II of the November 18, 2004 document entitled “Long-Term Strategy Review and Revision of Colorado’s State Implementation Plan for Class I Visibility Protection,” effective November 18, 2004.

(B) Colorado Air Quality Control Commission Regulation No. 3, “Stationary Source Permitting and Air Pollutant Emission Notice Requirements,” 5 CCR 1001–5, Part D, Section XIV, Visibility, Subsections A through F, effective April 16, 2004.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0528; FRL–8236–6]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Amendments to Nonattainment New Source Review (NSR) Air Quality Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia.

This revision consists of amendments to West Virginia’s existing Nonattainment New Source Review (NSR) preconstruction air quality permit program regulation. The intended effect of this action is to approve a State Implementation Plan (SIP) revision submitted by West Virginia Department of Environmental Quality.

DATES: *Effective Date:* This final rule is effective on December 4, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2006–0528. All documents in the docket are listed in the www.regulations.gov Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection 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, WV 25304.

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

SUPPLEMENTARY INFORMATION:

I. Background

On August 9, 2006 (71 FR 45482), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of amendments to West Virginia’s nonattainment new source review (NSR) air quality permit program. The formal SIP revision was submitted by West Virginia Department of Environmental Protection (WVDEP) on December 1, 2005. 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 19, as set forth in the attached table, that pertain to “Clean Unit” 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 in *New York v. EPA*, 413

F.3d 3 (D.C. Cir. 2005). In a separate action, EPA will act on changes made by West Virginia to its prevention of significant deterioration (PSD) construction permit program, also submitted on December 1, 2005.

The Clean Air Act requires that all states including the District of Columbia to submit revisions to their State Implementation Plans that requires State and local permitting agencies to adopt and submit revisions to their part 51 permitting programs, implementing the minimum program elements of the December 31, 2002 “NSR Reform” rulemaking no later than January 2, 2006 (67 FR 80240). West Virginia amended its regulation to satisfy this requirement.

II. Summary of SIP Revision

West Virginia amended its regulation (45 CSR 19) to meet the minimum requirements of 40 CFR 51.165 and the Clean Air Act. This approval action will effectively replace the previously approved version of 45 CSR 19 as approved in WV SIP on July 2, 1985 (50 FR 27247).

Other specific requirements of West Virginia’s existing Nonattainment New Source Review (NSR) preconstruction air quality permit program as 45 CSR 19 and the rationale for EPA’s proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving West Virginia’s Nonattainment New Source Review (NSR) preconstruction air quality permit program regulation (45 CSR 19) as a revision to the West Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not 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). This action merely approves 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 rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 2, 2007.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) This final rule approves West Virginia's Nonattainment New Source Review (NSR) Permit Program.

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.

Dated: October 16, 2006.

William T. Wisniewski,
Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (c) is amended by removing the entry for (Ch. 16–20) Series XIX and replacing it with an entry for 45 CSR 19 to read as follows:

§ 52.2520 Identification of plan.

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(c) * * *				

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
*	*	*	*	*
45 CSR 19	Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment			
Section 45–19–1	General	6/2/05	11/2/06 [Insert page number where the document begins].	
Section 45–19–2	Definitions	6/2/05	11/2/06 [Insert page number where the document begins].	
Section 45–19–3	Applicability	6/2/05	11/2/06 [Insert page number where the document begins].	
Section 45–19–4	Conditions for a Permit Approval for Proposed Major Sources that Would Contribute to a Violation of NAAQS.	6/2/05	11/2/06 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–19–5	Conditions for Permit Approval for Sources Locating In Attainment or Unclassifiable Areas that Would Cause a New Violation of a NAAQS.	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–7	Baseline for Determining Credit for Emission Offsets.	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–8	Location of Emissions Offsets	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–9	Administrative Procedures for Emission Offset Proposals.	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–12	Reasonable Further Progress	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–13	Source Impact Analysis	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–14	Permit Requirements for Major Stationary Sources and Major Modifications.	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–15	Public Review Procedures	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–16	Public Meetings	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–17	Permit Transfer, Cancellation and Responsibility	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–18	Disposition of Permits	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–19	Requirements for Air Quality Models	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–23	Actual PAL	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–24	Conflict with Other Permitting Rules	6/2/05	11/2/06	[Insert page number where the document begins].
Section 45–19–25	Inconsistency Between Rules	6/2/05	11/2/06	[Insert page number where the document begins].

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ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52
[EPA–R03–OAR–2006–0527; FRL–8236–5]
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: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision establishes amendments to the State’s prevention of significant deterioration (PSD) preconstruction air quality permit program regulation. The intended effect of this action is the approval of a State Implementation Plan (SIP) revisions submitted by West Virginia Department of Environmental Protection.

DATES: *Effective Date:* This final rule is effective on December 4, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID