

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 (Public Law 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 standard, 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 December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule approving revisions to West Virginia's ambient air quality standards for nitrogen dioxide does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended 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 XX—West Virginia**

2. Section 52.2520 is amended by adding paragraph (c)(49) to read as follows:

##### **§ 52.2520 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(49) Revisions to West Virginia Rule 45CSR12 submitted on September 21, 2000, by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the West Virginia Division of Environmental Protection transmitting

Regulation 45CSR12—Ambient Air Quality Standard for Nitrogen Dioxide.

(B) Revised Regulation 45CSR12, effective on June 1, 2000.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(49)(i) of this section.

[FR Doc. 02-25294 Filed 10-4-02; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[WV048-6020a; FRL-7381-7]

### **Approval and Promulgation of Air Quality Implementation Plans; West Virginia, Regulation To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The SIP revision is a regulation to prevent and control air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas in West Virginia. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on December 6, 2002 without further notice, unless EPA receives adverse written comment by November 6, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and West Virginia

Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304-2943.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov). Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On September 21, 2000, West Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision is a regulation (45CSR5) to prevent and control air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas in West Virginia.

There are two revisions of 45CSR5 that bring all the of the West Virginia Office of Air Quality coal related rules into one rule. The first revisions of 45CSR5, that set standards for particulate matter weight and visible emissions from coal preparation plants and coal handling operations, went to public hearing on August 12, 1994 and became effective May 1, 1995. The rule also established monitoring, recordkeeping, and reporting requirements and requires that each owner/operator obtain an annual operating permit from the West Virginia Office of Air Quality without which the plant cannot be operated.

The second revisions are to streamline the requirements of 45CSR5 and to incorporate the requirements for coal refuse sites that went to public hearing on July 19, 1999 and became effective August 31, 2000.

*Summary of SIP Revision*

(A) Revisions to modify the definitions of the following: (1) Handling operation—to entail similar activities at facilities less than 200 tons of coal per day, (2) coal preparation plants—to conform to the New Source Performance Standards (NSPS) definition in Subpart Y of 40 CFR part 60, and (3) fugitive dust and fugitive dust control system—to clarify that water or chemical suppression are recognized as emission control measures.

(B) Revisions to incorporate the requirements for coal refuse sites: (1) Definitions of coal refuse, coal refuse disposal area, coal refuse pile, and operation of a coal refuse disposal area, (2) standards for coal refuse disposal areas, and (3) burning coal refuse disposal areas.

(C) Revisions to the operating permit requirements to apply only to coal preparation plants. The revised rule provides that coal preparation plants requiring a Title V operating permit would only have to obtain the Title V permit. For owners or operators of a coal preparation plant and for coal handling operations that choose a general permit under 45CSR13, would only be required to submit the required registration and obtain coverage under the general permit.

(D) Revisions to clarify thermal dryers constructed or modified after October 24, 1974 are subject to the NSPS under 40 CFR part 60.

(E) Revisions to clarify that 45CSR17 (fugitive particulate matter emission requirements) is not applicable to 45CSR5 sources.

(F) Revisions correcting Code citations and modifying definitions to conform 45CSR5 to the 1994 statutory changes which incorporated the West Virginia Office of Air Quality into the West Virginia Division of Environmental Protection, Bureau of Environment.

(G) Revisions to clarify that continuous opacity monitoring data may be used to determine opacity violations or compliance not withstanding Method 9 of 40 CFR part 60, Appendix A.

These revisions strengthen the SIP by providing control strategies of coal plants, and are consistent with the NSPS requirements. The structure of the rule is also consistent with the West Virginia organization.

**II. Final Action**

EPA is approving the revisions of 45CSR5, “To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposable Areas,” submitted by West Virginia Division of Environmental Protection on September 21, 2000. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today’s **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2002 without further notice unless EPA receives adverse comment by November 6, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the

proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**III. Administrative Requirements**

*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 (Public Law 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 standard, 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 December 6, 2002. 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, to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas in West Virginia, may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

**Donald S. Welsh,**  
*Regional Administrator, Region III.*

40 CFR part 52 is amended 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 XX—West Virginia**

2. Section 52.2520 is amended by adding paragraph (c)(47) to read as follows:

##### **§ 52.2520 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(47) Revisions to West Virginia Regulations to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas, submitted on September 21, 2000 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas.

(B) Revisions to Title 45, Series 5, 45CSR5, To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas, effective August 31, 2000.

(ii) Additional Material.

(A) Letter of November 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting materials related to revisions of 45CSR5.

(B) Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(47)(i) of this section.

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[WV052-6023a; FRL-7388-9]

#### **Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standard for Carbon Monoxide and Ozone**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). This revision establishes reference test methods for measuring carbon monoxide concentrations in the ambient air, equivalent to the national primary and secondary ambient air quality standards established by EPA. EPA is approving this revision to the SIP in accordance with the Clean Air Act.

**DATES:** This rule is effective on December 6, 2002 without further notice, unless EPA receives adverse written comment by November 6, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available 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 and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304-2943.

**FOR FURTHER INFORMATION CONTACT:** Janice Lewis, (215) 814-2185, or by e-mail at [Lewis.Janice@epa.gov](mailto:Lewis.Janice@epa.gov). Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to establish reference test methods for measuring ambient air concentrations for carbon monoxide.