

(4) S.R. 74 Bridge, mile 283.1, at Wrightsville Beach, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour; except that from 7 a.m. to 11 a.m. on the third and fourth Saturday in September of every year and between 7 a.m. and 10:30 a.m. on the last Saturday of October each year or the first or second Saturday of November of every year the draw need not open for vessels due to annual triathlon events.

\* \* \* \* \*

■ 3. Revise § 117.823 to read as follows:

**§ 117.823 Cape Fear River.**

The draw of the Cape Fear Memorial Bridge, mile 26.8, at Wilmington need not open for the passage of vessels from 8 a.m. to 10 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year to accommodate annual marathon races.

■ 4. Revise § 117.829(a)(4) to read as follows:

**§ 117.829 Northeast Cape Fear River.**

(a) \* \* \*

(4) From 8 a.m. to 10 a.m. on the second Saturday of July of every year, from 12 p.m. to 11:59 p.m. on the last Saturday of October or the first or second Saturday of November of every year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year, the draw need not open for vessels to accommodate annual marathon and triathlon races.

\* \* \* \* \*

Dated: May 16, 2011.

**William D. Lee,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 2011-13169 Filed 5-26-11; 8:45 am]

BILLING CODE 9110-04-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2009-0876; FRL-9311-9]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration**

**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. The intended effect of this action is to

approve the inclusion of nitrogen oxides (NO<sub>x</sub>) as a precursor to ozone in the State of West Virginia for permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration (PSD) areas in West Virginia. This action will also add the Federally equivalent provisions to the rules for the PSD program as they pertain to “reasonable possibility” and delete certain references to pollution control projects (PCPs) and clean units (CUs) to make the West Virginia PSD program consistent with the Federal PSD program. This action is being taken under the Clean Air Act (CAA).

**DATES:** *Effective Date.* This final rule is effective on June 27, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2009-0876. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website.

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](http://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, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, (215) 814-3376, or by e-mail at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On December 17, 2010 (75 FR 78949), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of the inclusion of NO<sub>x</sub> as a precursor to ozone for permits for construction and major modification of major stationary sources of air pollution for PSD. This action will replace the current SIP-approved version of 45CSR14, entitled, Permits for Construction and Major Modification of Major Stationary Sources of Air

Pollution for the Prevention of Significant Deterioration. The formal SIP revision was submitted by West Virginia on July 20, 2009.

**II. Summary of SIP Revision**

This SIP revision consists of replacing the current version of 45CSR14 approved by EPA on December 4, 2006 (71 FR 64470) with the regulations which were made effective as a legislative rule in West Virginia on June 1, 2009 and submitted to EPA on July 20, 2009. This revision governs the permitting for the construction of new major stationary sources and the significant modification of existing major stationary sources of air pollutants in areas designated attainment or non-classifiable for the National Ambient Air Quality Standards (NAAQS).

This approval of West Virginia’s SIP submission addresses changes needed to ensure consistency with the CAA’s part C PSD permit program. This SIP submission also corrects deficiencies identified by EPA in the March 27, 2008 **Federal Register** action entitled, “Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone National Ambient Air Quality Standards (1997 Ozone NAAQS)” (73 FR 16205). EPA’s approval of this SIP submission addresses West Virginia’s compliance with the portion of CAA Section 110(a)(2)(C) & (J) relating to the Part C permit program for the 1997 Ozone NAAQS, because this action would approve regulating NO<sub>x</sub> as a precursor to ozone in West Virginia’s SIP in accordance with the **Federal Register** action dated November 29, 2005 (70 FR 71612) that finalized NO<sub>x</sub> as a precursor for ozone regulations set forth at 40 CFR 51.166 and in 40 CFR 52.21.

Additionally, in the course of taking action upon the previously approved NSR Reform SIP revision dated December 4, 2006 (71 FR 64470), West Virginia had requested that EPA not act upon certain provisions of 45CSR14.19.8 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. Based upon revisions to 45CSR14.19.8, EPA is now approving 45CSR14.19.8 in its entirety into the West Virginia SIP with this action as regulatory corrections have been made to the State’s regulations.

The references to pollution control projects (PCPs) and clean units (CUs) were deleted in the West Virginia

regulations in accordance with the Federal rulemaking action dated June 13, 2007 (72 FR 32526). These State references to PCPs and CUs are not a part of the currently approved SIP and are, therefore, just being corrected in West Virginia's regulations; as a result of correctly deleting their references, West Virginia's regulations will be consistent with the Federally enforceable provisions.

EPA has determined that the current amendments to West Virginia's PSD permit program at 45CSR14, as submitted on July 20, 2009, meet the minimum requirements of 40 CFR 51.166 and the Clean Air Act. This action will approve these revisions to the West Virginia SIP.

### III. Final Action

EPA is approving the West Virginia SIP revision submitted on July 20, 2009 which amends 45CSR14 as a revision to the West Virginia SIP. EPA is also making a determination that West Virginia's SIP meets the requirements of CAA Sections 110(a)(2)(C) and (J) relating to the part C permit program for the 1997 Ozone NAAQS. EPA had solicited public comments on these issues discussed in this document in the prior proposed **Federal Register** action dated December 17, 2010 (75 FR 78949). No adverse comments were received.

### IV. Statutory and Executive Order Reviews

#### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This action 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 July 26, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 include NO<sub>x</sub> as a precursor to ozone and the provisions for "reasonable possibility" in West Virginia for permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 9, 2011.

**W.C. Early,**

*Acting Regional Administrator, EPA 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. In § 52.2520, the table in paragraph (c) is amended by revising the entries for [45 CSR] Series 14 to read as follows:

#### § 52.2520 Identification of plan.

|     |   |   |   |   |
|-----|---|---|---|---|
| *   | * | * | * | * |
| (c) | * | * | * | * |

## EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

| State citation [Chapter<br>16–20 or 45 CSR]  | Title/subject   | State<br>effective<br>date | EPA approval date  | Additional explanation/citation at<br>40 CFR 52.2565   |
|--|---|----------------------------|--|--|
| <p style="text-align: center;">* * * * *</p> <p style="text-align: center;"><b>[45 CSR] Series 14 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration</b></p> |   |                            |  |  |
| Section 45–14–1 .....  | General .....   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–2 .....  | Definitions .....   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. | This action incorporates all of this<br>Section into SIP.  |
| Section 45–14–3 .....  | Applicability .....   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–4 .....  | Ambient Air Quality Increments<br>and Ceilings.   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. | This action incorporates all of this<br>Section into SIP.  |
| Section 45–14–5 .....  | Area Classification .....   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–6 .....  | Prohibition of Dispersion En-<br>hancement Techniques.  | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–7 .....  | Registration, Report and Permit<br>Requirements for Major Sta-<br>tionary Sources and Major<br>Modifications. | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–8 .....  | Requirements Relating to Control<br>Technology.   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–9 .....  | Requirements Relating to the<br>Source's Impact on Air Quality.   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–10 .....   | Modeling Requirements .....   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–11 .....   | Air Quality Monitoring Require-<br>ments.   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–12 .....   | Additional Impacts Analysis Re-<br>quirements.  | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–13 .....   | Additional Requirements and<br>Variances for Source Impacting<br>Federal Class 1 Areas.                       | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–14 .....   | Procedures for Sources Employ-<br>ing Innovative Control Tech-<br>nology.                                     | 6/01/08                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–15 .....   | Exclusions From Increment Con-<br>sumption.   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–16 .....   | Specific Exemptions .....   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–17 .....   | Public Review Procedures .....  | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–18 .....   | Public Meetings .....   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–19 .....   | Permit Transfer, Cancellation and<br>Responsibility.  | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. | This action incorporates all of this<br>Section into SIP, amended text<br>added for clarification. |
| Section 45–14–20 .....   | Disposition of Permits .....  | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–21 .....   | Conflict with Other Permitting<br>Rules.  | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–25 .....   | Actual PALs .....   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| Section 45–14–26 .....   | Inconsistency Between Rules .....   | 6/01/09                    | 5/27/11 [Insert page number<br>where the document begins]. |  |
| <p style="text-align: center;">* * * * *</p>   |   |                            |  |  |

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[FR Doc. 2011-13067 Filed 5-26-11; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 721**

[EPA-HQ-OPPT-2008-0296; FRL-8858-1]

RIN 2070-AJ41

**Requests for Modification or  
Revocation of Toxic Substances  
Control Act Section 5 Significant New  
Use Notice Requirements; Revision to  
Notification Regulations****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule amends the procedures for requests for modification or revocation of Toxic Substances Control Act (TSCA) section 5 significant new use notification (SNUN) requirements by establishing electronic submission requirements. EPA issued a final rule in the **Federal Register** of January 6, 2010, introducing electronic reporting requirements for TSCA section 5 submissions and supporting documents. However, the regulatory text inadvertently did not include amendments to the reporting requirements for submissions of requests for modifications or revocations of SNUN requirements. This direct final rule includes the amendment that was originally intended by EPA.

**DATES:** This direct final rule is effective July 26, 2011 without further notice, unless EPA receives adverse comment on or before June 27, 2011. If EPA receives adverse comments on this action, EPA will withdraw the direct final rule before its effective date. EPA will then issue a proposed rule, providing a 30-day period for public comment.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2008-0296. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8469; e-mail address: [schweer.greg@epa.gov](mailto:schweer.greg@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Does this action apply to me?**

You may be affected by this action if you manufacture, import, or process chemicals for commercial purposes. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, and processors of chemical substances or mixtures, e.g., chemical manufacturing and processing and petroleum refineries (NAICS codes 325 and 324110).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR part 721 for TSCA section 5-related obligations. If you have any questions regarding the applicability of

this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

**II. Background****A. What action is the agency taking?**

This action amends 40 CFR 721.185(b)(1), which sets forth requirements for requesting modification or revocation of SNUN requirements. This provision requires persons who request modification of SNUN requirements for a particular chemical substance to send the request in writing to EPA. When developing the TSCA section 5 electronic reporting requirements published in the **Federal Register** issue of January 6, 2010 (75 FR 773) (FRL-8794-5), EPA had intended to include these modification requests. In the document proposing electronic reporting of TSCA section 5 submissions published in the **Federal Register** issue of December 22, 2008 (73 FR 78261) (FRL-8395-8), EPA included regulatory text to require electronic reporting for modification and revocation requests regarding significant new use reporting requirements for microorganisms under 40 CFR 725.984(b)(1), containing language almost identical to the regulatory language included in this direct final rule. Discussion in the preamble of the final rule regarding types of submissions that would continue to be required in hard copy did not include modification and revocation requests under § 721.185(b)(1). No comments were received regarding 40 CFR 725.984(b)(1), and EPA finalized this change. However, the corresponding change to the analogous provision in § 721.185(b)(1) was inadvertently omitted from both the proposed and final rule. This direct final rule includes this change.

**B. What is the agency's authority for taking this action?**

Section 5(a)(1)(A) of TSCA requires persons to notify EPA at least 90 days before manufacturing a new chemical substance for commercial purposes (under TSCA manufacture includes import). Section 3(9) of TSCA defines a "new chemical substance" as any substance that is not on the TSCA Inventory of Chemical Substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical