

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 August 4, 2003. 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 pertains to Maryland's amendments to VOC requirements from chemical production and PTFE installations and 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 20, 2003.

#### Abraham Ferdas,

Acting 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 V—Maryland

■ 2. Section 52.1070 is amended by adding paragraph (c)(176) to read as follows:

#### § 52.1070 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(176) Revisions to the Maryland State Implementation Plan submitted by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of December 6, 2001 from the Maryland Department of the Environment transmitting revisions to Maryland's State Implementation Plan concerning VOC requirements for facilities that produce inorganic chemicals and polytetrafluoroethylene (PTFE) products.

(B) The following revisions to Code of Maryland Administrative Regulation (COMAR) 26.11.19.30 (Control of Volatile Organic Compounds from Chemical Production and Polytetrafluoroethylene Installations), effective December 10, 2001:

(1) Revised title for COMAR 26.11.19.30.

(2) Addition of paragraphs .30B(3–1), .30B(3–2), .30B(4–1), .30B(4–2), .30B(5)(b), and .30E(1) through (5) inclusive.

(3) Renumbering of former paragraphs .30B(5), .30C(3), and .30E(1) as paragraphs .30B(5)(a), .30C(2) and .30F respectively.

(4) Revisions to paragraphs .30C(1), renumbered .30C(2), .30D. (paragraph title), .30D(1), .30D(2), .30D(3), .30D(4) (introductory paragraph) and .30F.

(5) Removal of former paragraphs .30C(2) and .30E(2).

(C) Letter of November 6, 2002 from the Maryland Department of the Environment transmitting revisions to Maryland's State Implementation Plan concerning VOC requirements for facilities that produce inorganic chemicals and polytetrafluoroethylene (PTFE) products.

(D) The following revisions to Code of Maryland Administrative Regulation (COMAR) 26.11.19.30 (Control of Volatile Organic Compounds from Chemical Production and Polytetrafluoroethylene Installations), effective November 11, 2002:

(1) Revisions to paragraphs .30B(4–1), .30B(4–2), .30C(2), .30C(3), and .30E(1).

(2) Addition of paragraphs .30B(4–3), .30B(4–4), and .30E(6).

(ii) Additional Material.—Remainder of the State submittal pertaining to the revision listed in paragraph (c)(176)(i) of this section.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[WV038/053–6026a; FRL–7500–2]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Air Pollution From the Emission of Sulfur Oxides

**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 emission of sulfur oxides. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on August 4, 2003, without further notice, unless EPA receives adverse written comment by July 3, 2003. 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 Makeba Morris, Branch Chief, Air Quality Planning and Information Services Branch, 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 the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304-2943.

**FOR FURTHER INFORMATION CONTACT:** Jill Webster (215) 814-2033 or Ellen Wentworth (215) 814-2034, or by e-mail at [webster.jill@epa.gov](mailto:webster.jill@epa.gov) or [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On April 29, 1996 and September 21, 2000, West Virginia submitted revisions to a regulation (45CSR10) to prevent and control air pollution from the emission of sulfur oxides as formal revisions to its State Implementation Plan (SIP). The first SIP revision went to public hearing on July 6, 1993 and became effective on April 26, 1994. This SIP revision proposes approval of a temporary sulfur dioxide emissions control and mitigation plan which would be used during periods when maintenance of coke oven desulfurization equipment is being carried out. The second SIP revision went to public hearing on July 19, 1999 and became effective on August 31, 2000. This SIP revision includes additional and revised definitions; new provisions for the establishment of alternative individual stack sulfur dioxide limits; a manufacturing process compliance test averaging time change; additions and revisions to compliance testing, monitoring, and recordkeeping provisions; exemptions from compliance determination requirements for gas, oil, and wood-fired fuel burning units; deletion of outdated compliance schedule provisions; and the addition of a circumvention section. Since the most recent of the SIP revisions incorporates all of the changes from the earlier SIP revisions, EPA will incorporate by reference the version of 45CSR10 submitted to EPA on September 21, 2000 into the SIP.

**II. Summary and Evaluation of SIP Revision**

(A) The following definitions were added: "Continuous Emission

Monitoring System," "Distillate Oil," "Indirect Heat Exchanger," "Malfunction," "Natural Gas," "Potential to Emit," and "Process Heater." The following definition was deleted: "Division of Environmental Protection." The following definitions were revised: "Director;" and "Person."

(B) The SIP revision provides that no person may permit the combustion of any refinery process gas stream or any other process gas stream that contains hydrogen sulfide in a concentration greater than 50 grains per 100 cubic feet except in the case of a person operating in compliance with an emission control and mitigation plan approved by the Director and EPA. The SIP revision also establishes the conditions for approval for such a plan.

(C) The SIP revision adds provisions allowing the operator of a source subject to sulfur dioxide weight emission standards for fuel burning units which have more than one stack to petition the Director for individual stack allowable emission rates different from those calculated under subdivision 3.4.a of the regulation. These alternative stack emissions cannot be used where stack emission changes are a result of a physical change or a change in method of operation that would otherwise require pre-construction permitting. The West Virginia Department of Environmental Protection (WVDEP) submitted a letter to EPA on March 19, 2003, clarifying that 45CSR10 requires that alternative standards be embodied in a federally enforceable permit issued under the authority of 45CSR13. The letter also states that prior to issuing the permit, WVDEP will submit the permit establishing alternative emission limitations to EPA for review and approval. The letter further clarifies that a petition for alternative emission limitations in no way supercedes any provisions regarding pre-construction review (45CSR14) or new or modified sources (45CSR19). This letter has been included in the administrative record for the rulemaking action on this SIP revision.

A revision to compliance requirements for fuel burning units clarifies that a continuous twenty-four (24) hour period is defined as one (1) calendar day.

(D) An exemption is provided for the owner or operator of a manufacturing process source operation which has the potential to emit less than 500 pounds per year of sulfur oxides from the provisions of the emission standards for manufacturing source operations. The SIP revision also revises the compliance determination for the allowable sulfur dioxide concentration limitations from

manufacturing process source operations to be based on a block three (3) hour averaging time rather than the previous averaging time of two (2) hours.

(E) A provision has been added requiring that compliance with the allowable hydrogen sulfide concentration limitations for combustion sources be based on a block three (3) hour averaging time.

(F) Specific permit time filing and review requirements have been deleted and revisions include references to the permit requirements of 45CSR13, 14, 19, and 20.

(G) Testing provisions have been revised to define the requirements applicable to any fuel burning unit(s), manufacturing process source(s) or combustion source(s) and requires those sources to comply with the emission limitations for such sources (subsections 3, 4, or 5). The provisions also require that testing be conducted in accordance with the appropriate test method set forth in 40 CFR part 60, appendix A, Method 6, Method 15, or another equivalent EPA testing method approved by the Director. The Director or his duly authorized representative, may conduct other tests deemed necessary to evaluate air pollution emissions other than sulfur dioxide. As noted previously, WVDEP submitted a letter, which is part of the administrative record for this rulemaking action, to EPA on March 19, 2003, clarifying the interpretation and implementation of certain regulations on air pollution control. In that letter, WVDEP clarified that these tests are for pollutants in addition to sulfur dioxide.

The SIP revision allows the owner or operator of fuel burning unit(s), manufacturing process source(s) or combustion source(s) to demonstrate compliance with the requirements for such sources (sections 3, 4 and 5) by testing and/or monitoring in accordance with one or more of the following: 40 CFR part 60, appendix A, Method 6, Method 15, continuous emissions monitoring systems (CEMS) or fuel sampling and analysis as set forth in an approved monitoring plan for each emission unit. In their letter dated March 19, 2003, WVDEP clarified that fuel sampling and analysis are required to be conducted in accordance with any applicable method or procedure formally established by EPA or otherwise in accordance with methods established by the American Society for Testing and Materials (ASTM).

(H) This SIP revision provides for excursions of operating parameters in an approved monitoring plan which are not necessarily violations. In their letter

dated March 19, 2003, WVDEP clarified that WVDEP enforcement staff evaluate excursions where parametric monitoring is an element of or the primary component of a monitoring plan, on a case-specific basis. In some instances, deviations in an operating parameter would very strongly indicate a probable violation of sulfur dioxide limits or of 45CSR10-3, 4, or 5. The letter also affirms that in a situation involving a likely emission exceedance, the burden of proof would be placed on the source to demonstrate that the parametric excursion did not cause an exceedance of the sulfur dioxide limit. West Virginia has clarified that in such an instance, emissions testing under conditions identical to or very similar to the excursion situation and subsequent analysis would be required to conclude whether a violation actually occurred. It should also be noted that larger sources of sulfur dioxide are now required to use CEMs or ASTM-based fuel monitoring and analysis or periodic emissions tests (EPA Method 6), as the primary compliance determination method.

(I) A section has been added to the SIP for recordkeeping and reporting, requiring the owners or operators of fuel burning unit(s), manufacturing process source(s) or combustion source(s) subject to the regulation requirements for those sources to maintain on-site records of all required monitoring data, pursuant to monitoring plans established in the monitoring provisions of this regulation (subsection 8.2c). These records are required to be available to the Director or his duly authorized representative and are to be retained on-site for a minimum of five years. Periodic exception reports are due to the Director, and are required to detail any excursions outside the range of measured emissions or monitored parameters established in the source's approved monitoring plan. In addition, operators of fuel burning unit(s) or combustion(s) source(s) are required to maintain records of the operating schedule and the quantity and quality of fuel consumed in each unit. Fuel burning sources utilizing CEMs are exempt from this requirement.

(J) An exemption has been revised for any fuel burning unit having a design heat input under 10 million BTUs per hour to include an exemption from the registration, permitting, testing, monitoring, recordkeeping and reporting requirements for such sources (sections 6-8), as well as from the sulfur dioxide emission standards for fuel burning units (section 3). An exemption has been added for fuel burning unit(s) which combust natural gas, wood, or

distillate oil, alone or in combination, exempting these units from the testing, monitoring, recordkeeping and reporting requirements for fuel burning units, manufacturing process sources or combustion sources (section 8).

(K) A section entitled, "Circumvention" has been added to this regulation which prohibits any owner or operator subject to the provisions of this regulation to build, erect, install, modify or use any article, machine, equipment or process which purposely conceals an emission which would constitute a violation of an applicable standard.

(L) A section entitled, "Inconsistency Between Rules" has been added to this regulation which provides that any inconsistencies between 45CSR10 and any other WVDEP regulation be resolved by the application of the more stringent requirement.

Additional details pertaining to these revisions are included in the Technical Support Document for this rulemaking.

These revisions strengthen the SIP by clarifying and updating definitions, and revising and streamlining monitoring, recordkeeping and reporting requirements for sulfur dioxide fuel burning units, manufacturing process source operations, and combustion sources. The revision also adds requirements for the registration of alternative emission limits for multiple stacks at a single source.

### III. Final Action

EPA is approving the revisions to 45CSR10, "To Prevent and Control Air Pollution from the Emission of Sulphur Oxides," submitted by West Virginia on April 29, 1996, and 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 August 4, 2003, without further notice unless EPA receives adverse comment by July 3, 2003. 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.

## 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 (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 August 4, 2003. 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 emission of sulfur oxides 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 8, 2003.

James W. Newsom,

Acting 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)(53) to read as follows:

#### § 52.2520 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(53) Revisions to West Virginia's Regulations to prevent and control air pollution from the emission of sulfur oxides, 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 emission of sulfur oxides.

(B) Revisions to Title 45, Series 10, 45CSR10, To Prevent and Control Air Pollution from the Emission of Sulfur Oxides, effective August 31, 2000.

(ii) Additional Material.

(A) Letter of April 29, 1996 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control air pollution from the emission of sulfur oxides.

(B) Letter of March 19, 2003 from the West Virginia Department of Environmental Protection to EPA providing clarification on the interpretation and implementation of certain regulations on air pollution control.

(C) Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(53)(i) of this section.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 267-0394a; FRL-7495-4]

#### Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) and particulate matter (PM-10) emissions from commercial charbroiling and VOC emissions from solvent cleaning. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on August 4, 2003 without further notice, unless EPA receives adverse comments by July 3, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

A copy of the rules may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>.