

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, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 28, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(310) and (c)(311) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(310) New and amended rules for the following districts were submitted on May 21, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 4692, adopted on March 21, 2002.

(311) New and amended rules for the following districts were submitted on December 23, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) Rule 1171, adopted on August 2, 1991 and amended on August 2, 2002.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-213-9952(a); FRL-7506-8]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Tennessee Department of Environment and Conservation's definition of Volatile Organic Compounds submitted on February 3, 1999 by the state of Tennessee. These revisions are designed for the State Implementation Plan (SIP) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). The additional compounds HFC43-10mee, HCFC-225ca, and HCFC-225cb are added to the list of exempt compounds on the basis that they have negligible contribution to the tropospheric ozone formation.

DATES: This direct final rule is effective August 4, 2003 without further notice, unless EPA receives adverse comment by July 3, 2003. If adverse comment is received, EPA 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: All comments should be addressed to: Steve Scofield or Nacosta Ward; Regulatory Development Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; U. S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. [Steve Scofield, 404-562-9034 or Nacosta Ward, 404-562-9140]. Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243-1531. 615-532-0554.

FOR FURTHER INFORMATION CONTACT:

Steve Scofield or Nacosta Ward; Regulatory Development Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; U. S. Environmental Protection Agency

Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Mr. Scofield and Ms. Ward can also be reached by telephone at 404-562-9034 and 404-562-9140, or by electronic mail at scofield.steve@epa.gov and ward.nacosta@epa.gov, respectively.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On February 3, 1999, the state of Tennessee through the Tennessee Department of Environment and Conservation submitted a revision to chapter 1200-3-18, Volatile Organic Compounds, which provides SIP definitions. The revision to chapter 1200-3-18 provides greater clarity to the existing definition. The additional compounds HFC43-10mee, HCFC-225ca, and HCFC-225cb are added to the list of exempt compounds on the basis that they have negligible contribution to the tropospheric ozone formation.

II. Final Action

EPA is approving the aforementioned changes to the State of Tennessee's SIP because they are consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this *Federal Register* publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 4, 2003 without further notice unless the Agency receives adverse comments by July 3, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 4, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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 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.*).

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**. 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).

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 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, Intergovernmental relations, Incorporate by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 20, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *Code of Federal Regulations*, 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 RR—Tennessee

■ 2. Section 52.2220(c) is amended by revising the entry for “Section 1200–3–18–.01” to read as follows:

§ 52.2220 Identification of plan.

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(c) * * *

EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
Chapter 1200–3–18 Volatile Organic Compounds				
Section 1200–3–18–.01	Definitions	01/12/98	June 3, 2003, [Insert citation of publication].	
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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[WV050-6029a; FRL-7503-9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation to Prevent and Control Particulate Matter Air Pollution From Manufacturing Processes and Associated Operations**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 particulate matter air pollution from manufacturing processes and associated operations such as storage facilities. EPA is approving these revisions 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, 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 West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304-2943.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814-2173, or by e-mail at anderson.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On March 29, 1996, December 7, 1998 and September 21, 2000, West Virginia submitted revisions to a regulation (45CSR7) to prevent and control particulate matter air pollution from manufacturing operations 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 27, 1994. This SIP revision provides an exemption for ferroalloy electric submerged arc furnaces from visible emissions and fugitive particulate matter standards during blowing taphole, poling and oxygen lancing operations. The second SIP revision went to public hearing on March 27, 1997 and became effective on May 1, 1998. This SIP revision provides alternative stack limits for fiberglass manufacturing operations using the flame attenuation method. The third SIP revision went to public hearing on July 19, 1999. This SIP revision added several exemptions and alternative limitations for visible emission and mass particulate emission standards. Since the most recent of the three SIP revisions incorporates all of the changes from the earlier SIP revisions, EPA will incorporate by reference the version of 45CSR7 submitted to EPA on September 21, 2000 into the SIP.

II. Summary of SIP Revision

(A) The following definitions were revised: (1) Definitions of "Commission," "Ringelmann Smoke Chart," "Chief of Air Quality," "Division of Environmental Protection," were deleted, (2) "Director" was modified to include persons delegated authority by the Director; (3) "Person" was modified to include the State of West Virginia and the United States, and (4) Definitions for "Ferroalloy electric submerged arc furnace," "Furnace charge," "Tapping," "Blowing tap," "Poling," "Oxygen lancing," "Maintenance Operation," "Malfunction," "Potential to Emit" were added.

(B) As a result of a petition by Elkem Metals and American Alloys certain events at ferroalloy electric submerged arc furnaces are exempt from fugitive particulate matter and visible emission standards. These events include blowing taphole, poling and oxygen lance operations. Blowing taphole events have been considered by EPA as uncontrollable, unpredictable events best characterized as malfunctions. This rationale was explained in an EPA development document for the federal rule titled "Supplemental Information

on Standards of Performance for Ferroalloy Production Facilities," issued in March 1976, which states that a blowing tap event is "a process malfunction condition which is not wholly preventable. Periods in which the tapping hood is swung aside for poling/lancing or removal of metal or slag from the spout are failures of the process to operate in a normal or usual manner. As malfunctions, these periods are not subject to the standards." EPA interprets West Virginia's exemption to apply only to the extent that the above operations qualify as malfunctions caused by circumstances beyond the control of the source that could not have been prevented through installation of proper control equipment or proper operation and maintenance.

(C) The SIP revision exempts maintenance operations from particulate matter rate limitations on the condition that such operations are conducted in a manner consistent with good air pollution control practices for minimizing emissions. The State defines maintenance activities as operations having a zero process (input) weight rate. However, process weight rate is defined as the total weight of all materials introduced into a source operation, excluding solid, liquid, and gaseous fuels used solely as fuels and excluding all process and combustion air. This means that sources such as kilns, furnaces and ovens could be exempt from mass emission standards when operated in an idling mode, regardless of the types of fuels being combusted. However, the regulation does not exempt maintenance operations from visible emissions standards. Compliance with a visible emissions standard can be assessed over a broad range of operations, unlike compliance with a weight-based particulate matter limitation which is usually assessed by stack testing during normal and/or peak manufacturing operations. Therefore, a visible emissions standard can be an appropriate means to control emissions during maintenance operations.

(D) Exemptions are provided for insignificant sources, except for particulate matter classified as hazardous air pollutants. EPA believes that these exemptions are for very small sources that have little or no impact on ambient air quality.

All of the above exemptions are predicated on operating and maintaining manufacturing processes in a manner consistent with good air pollution control practices for minimizing emissions. The proposed SIP revision states that the Director may determine whether or not the exemption