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[FR Doc. 03–13707 Filed 6–2–03; 8:45 am]

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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

should be applied based on ''information available to the Director.'' EPA interprets this subsection to place the burden of proof on the owner or operator to document, as appropriate, that the exemption applies. In other words, failure of the source to provide documentation that it has conducted maintenance operations in a manner consistent with good air pollution control practices should not prevent either the State or EPA from exercising its enforcement authority.

(E) Revisions to 45CSR7 include provisions for alternative emission limitations. As a result of a petition by Schuller International, Inc., West Virginia set alternative particulate matter limits for fiberglass production facilities using flame attenuation in the manufacturing process in lieu of limits that would otherwise be set by the duplicate source provisions in Table 45–7A of 45CSR7. The Schuller facility, now known as John Mansville International, Inc. (JM), is located in Vienna, West Virginia. Under the duplicate source provisions in 45CSR7, the allowable emission rate for each individual source would be established using the ratio of process input weight for the individual stack to the total process input weight, times the allowable emission rate for the combined sources. Since the relationship between the allowable emission rate and the process input rate is less than linear, the duplicate source provisions become more stringent as multiple sources are added. Abatement equipment and techniques to reduce particulate matter emissions were determined by West Virginia to be economically and technically infeasible to meet the duplicate source emission limitations at the John Mansville facility. Therefore, alternative particulate emission rate limits have been set that are based on best actual limits achieved in practice.

These alternative emission limitations are framed such that they generically apply to all fiberglass production facilities that use the flame attenuation process. The John Mansville facility is the only such manufacturing facility in the state and the rule names and applies limits to the specific stacks at this facility. EPA believes that the rule is inconsistent in applying a site-specific set of emission limitations as generic standards for all flame attenuation plants, regardless of whether other plants exist. To resolve this inconsistency, EPA interprets the regulation to apply only to the Johns Mansville facility. Should other flame attenuation plants locate in the State, they will be subject to the duplicate source provisions of 45CSR7.

(F) An owner or operator may petition the Director for alternative visible emission standards during periods of start-up and shut-down. The petitioner must: (1) Demonstrate that it cannot comply with existing standards, (2) document the need for an alternative standard based on monitoring results and inspections, (3) demonstrate that mass emission standards are being met, and (4) maintain and operate manufacturing processes and air pollution control equipment in a manner consistent with good air pollution control practices. Section 110(a)(2)(A) of the Clean Air Act requires SIPs to include federally enforceable emission limitations. The West Virginia Department of Environmental Protection (WVDEP) submitted a letter to EPA on March 19, 2003, clarifying how the State intends to interpret and implement its air control regulations. This letter states that all alternative visible emission standards will be established as specific conditions of permits issued in accordance with federally enforceable permitting programs. The letter also states that prior to issuing such permits, the WVDEP shall submit them to EPA for review. This letter has been included in the administrative record for the rulemaking action on this SIP revision.

(G) A new section titled ''Alternative Emission Limits for Duplicate Source Operations'' provides a process for owners or operators to apply for alternative mass particulate emission rates. These alternative limits will not allow the overall site limit determined by Tables 45–7A and B in the regulation to be relaxed but will provide some flexibility on what may be emitted from individual stacks. The regulation requires the petitioner to conduct an air quality impact analysis to demonstrate that the alternative standard(s) will not interfere with attainment or maintenance of any federal air quality standard or cause an unacceptable increase over the baseline concentration of particulate matter. In addition, the alternative standard is required to be implemented through 45CSR13, which is a federally enforceable permit program. As noted previously, WVDEP submitted a letter to EPA on March 19, 2003, which is part of the administrative record for this rulemaking action, stating that alternative mass emission limits issued under the authority of 45CSR13 will be established and implemented as conditions of permits issued in accordance with federally approved and enforceable programs and, that prior to issuance such permits shall be submitted to EPA for review. The letter also affirms that a successful petition for alternative emission limits under this subsection may in no way supercede any provisions in 45CSR14 or 45CSR19 regarding pre-construction review of new or modified sources.

(H) The SIP revision removes the restriction that the Director may only require a stack test when there is evidence of a violation. EPA believes that this revision substantially enhances West Virginia's ability to determine compliance with the particulate matter standard.

(I) A section on delayed compliance orders was deleted and a section titled ''Inconsistency Between Rules'' allows the Director to determine applicability of conflicting rules based on imposing the more stringent provisions.

Additional details and a description of minor revisions are included in the Technical Support Document for this rulemaking.

These revisions strengthen the SIP by clarifying and updating definitions and updating opacity standards. The revisions also require EPA review of alternative emission limits and establish acceptable periods when emission standards do not apply.

III. Final Action

EPA is approving the revisions to 45CSR7, ''To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations'', submitted by West Virginia 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 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. Regulatory Assessment 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 (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.*).

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 approve West Virginia's Regulation 45CSR7, 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: 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 XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph (c)(55) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(55) Revisions to West Virginia's Regulations to prevent and control particulate matter air pollution from manufacturing processes and associated operations, 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.

(B) Revisions to Title 45, Series 7, 45 CSR7, To Prevent and Control Particulate Matter Air Pollution from Manufacturing Processes and Associated Operations, effective August 31, 2000.

(ii) Additional Material.

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

(B) Letter of March 29, 1996 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control particulate matter air pollution from manufacturing processes and associated operations.

(C) Letter of December 7, 1998 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control particulate matter air pollution from manufacturing processes and associated operations.

(D) Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(55)(i) of this section.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA158–4206a; FRL–7504–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Removal of Alternative Emission Reduction Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.