requirements are not applicable to today's rule.

J. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

For the reasons discussed in the May 25, 1999 final rule, the Administrator determined that final action regarding the section 126 petitions is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of final actions regarding the section 126 rulemaking must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

K. Congressional Review Act

The Congressional Review Act (CRA), 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. The 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 this rule going into effect. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Emissions trading, Nitrogen oxides, Ozone, Ozone transport, Reporting and recordkeeping requirements.

Dated: January 7, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52 of chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

2. Section 52.34 is amended by revising paragraph (l) to read as follows:

§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.

* * * * *

(l) *Temporary stay of rules.* Notwithstanding any other provisions of this subpart, the effectiveness of this section is stayed from July 26, 1999 until February 17, 2000.

[FR Doc. 00–849 Filed 1–10–00; 4:02 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV026–6012; FRL–6505–1]

Approval and Promulgation of Air Quality Implementation Plans; Approval Under Section 112(l) of the Clean Air Act; West Virginia; Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving in part, and disapproving in part, a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This SIP revision changes portions of West Virginia's minor new source review permit program and establishes new provisions for permitting existing stationary sources. Specifically, this action approves in part, and disapproves in part, changes to West Virginia's minor new source review permit program; and approves West Virginia's minor new source review and existing stationary source operating permit program as meeting federal criteria for permit programs that can limit a source's potential to emit criteria pollutants and hazardous air pollutants (HAPs).

EFFECTIVE DATE: This final rule is effective on February 14, 2000.

ADDRESSES: 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, 401 M Street, SW, Washington, DC 20460; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 2531.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Abramson, (215) 814–2066 or by e-mail at Abramson.Jennifer@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 3, 1998 (63 FR 5484), EPA published a notice of proposed rulemaking (NPR) regarding West Virginia's minor new source review and existing stationary source operating permit program. The NPR proposed approval in part, and disapproval in part, of changes to West Virginia's minor new source review permit program. Specifically, the NPR proposed to disapprove a new exemption from minor new source review for sources that have been issued permits under the State's federally approved major source operating permit program (developed pursuant to Title V of the Clean Air Act) as such exemption does not comport with the federal requirements for scope of 40 CFR 51.160. The NPR also proposed to disapprove new provisions governing the issuance of temporary construction or modification permits with only a fifteen day public comment period as such provisions do not satisfy the federal requirements for public participation of 40 CFR 51.161(b). The NPR proposed to approve all other provisions of West Virginia's minor new source review program under section 110 of the Clean Air Act (the Act) as a revision to the West Virginia SIP. The formal SIP revision, submitted by West Virginia on August 26, 1994 applies statewide.

The NPR also proposed to approve West Virginia's minor new source review and existing stationary source operating permit program under section 110 of the Act as meeting the criteria set forth in a June 28, 1989 **Federal Register** document (54 FR 27274) for state permit programs that can limit a source's potential to emit criteria pollutants. The NPR also proposed to approve West Virginia's minor new source review and stationary existing source operating permit program under section 112(l) of the Act as meeting the statutory criteria

for state permit programs that can limit a source's potential to emissions HAPs.

Other specific requirements of West Virginia's SIP submittal and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

II. Public Comments Received and EPA's Responses

EPA received comments on the NPR from the West Virginia Office of Air Quality (WVOAQ) and from the National Environmental Development Association's Clean Air Regulatory Project (NEDA/CARP), an industry coalition. These comments and EPA's responses are discussed below. All comments are contained in the docket at the **ADDRESSES** section above.

Comment: West Virginia's minor new source review provisions authorize discretionary issuance by the WVOAQ Chief of temporary permits for experimental production test runs under an expedited review and public participation process (a fifteen (15) day public comment period). WVOAQ believes that such a fast-track process may be appropriate where a company's vital business interests warrant such an approval process and where only small emissions increases or very small emissions of new substances for limited periods of time are involved. WVOAQ recognizes, however, that some clear, restrictive boundaries and safeguards need to be adhered to in establishing eligibility and conditions for such permits and intends to set forth such boundaries and safeguards via written policy or interpretive rule at some point in the near future.

EPA Response: EPA agrees that a 30-day public comment period for some minor new source review permitting actions may be impracticable and/or unnecessarily burdensome.[1] However, as discussed in the NPR, limitations on the full public participation requirements of 40 CFR 51.161 should be applied consistent with the environmental significance of the activity. WVOAQ's plan to define restrictive boundaries and safeguards so that only less environmentally significant changes are eligible for fast-track processing is one way to link permit process levels with environmental significance. However, such criteria must be submitted and approved as a revision to the West Virginia SIP before the fast-track procedure can be recognized as an enforceable part of West Virginia's SIP approved minor new source review program. The WVOAQ has not submitted any such criteria to EPA for consideration to date. Without a correlation to the environmental significance of the activity, EPA cannot consider the minimum public process afforded, fifteen (15) days, to be adequate in all instances.

Comment: NEDA/CARP commented that it is inappropriate and legally objectionable for EPA to take action on any SIP revision or Clean Air Act section 112(l) submission on the basis that limits on a source's potential to emit (PTE) must be federally enforceable. NEDA/CARP commented that the United States Court of Appeals for the District of Columbia Circuit vacated the requirement of federal enforceability as part of the PTE definition for both the new source review rules and the federal operating permit rules, 40 CFR parts 51, 52, and 70. *See Chemical Manufacturers Association* v. *EPA,* No. 89–1514 (Sept 15, 1995) (''*CMA*'') and *Clean Air Implementation Project, et. al* v. *Browner,* Civ. No. 92–1303 (June 28, 1996) (''*CAIP*''). While the definition was not vacated as it pertains to sources of hazardous air pollutants (40 CFR 63.2), it nonetheless was remanded to the Environmental Protection Agency for further rulemaking consistent with the court's directives. *See National Mining Association, et al.* v. *EPA,* 59 F.3d 1351 (D.C. Cir. 1995). As of this date, EPA has not proposed further rulemaking on the PTE definition for any Clean Air Act programs. NEDA/CARP also believes that reliance on EPA's June 28, 1989 guidance (54 FR 27274) is inappropriate after the D.C. Circuit decisions cited above. NEDA/CARP also commented that it is not clear whether EPA's proposed approval of West Virginia's submission under section 112(l) of the Act is part of the SIP action. NEDA/CARP commented that such an action would be inappropriate.

EPA response: EPA need not interpret the definition of ''potential to emit'' as requiring federal enforceability in order to approve West Virginia's minor new source review and existing stationary source operating permit program under sections 110 and 112(l) of the Act. EPA recognizes that there may be instances where PTE limits need not be federally enforceable under federal new source review and federal operating permit rules in light of the court decisions cited above. Moreover, although the *NMA* decision did not vacate the federal enforceability requirement of the PTE definition under part 63, even prior to *NMA,* EPA had indicated in guidance that certain state-enforceable PTE limits on HAPs may be recognized.[2] Nevertheless, EPA policy encourages States to use federally enforceable mechanisms, such as SIP-approved minor NSR programs, federally enforceable state operating permit programs (FESOPs) meeting the requirements of the June 28, 1989 guidance (54 FR 27274), and programs approved under section 112(l) for the purpose of establishing PTE limits.[3] Accordingly, West Virginia requested EPA approval of its minor new source review and existing stationary source operating permit program under sections 110 and 112 of the Act in order to be able to establish federally enforceable limits on a source's potential to emit criteria pollutants and HAPs.[4] For the reasons discussed in the NPR, EPA has found that West Virginia's program meets federal requirements and is now making such approvals.

Until EPA promulgates rules establishing otherwise, states may be able to establish permit programs or other mechanisms that limit potential to emit and thereby avoid applicability of certain requirements even if such limits are not federally enforceable, if those limits are shown to be effective. *See NMA,* 59 F.3d at 1363. Given the uncertainty of the final outcome of the requirement for federal enforceability, however, EPA does not recommend that states postpone submitting state permit programs for section 110 or 112(l) approval, or withdraw programs previously approved under such authorities. Sources with federally enforceable limits on potential emissions will be less likely to have to apply for revised permits or be subject to major source requirements should the requirement for federal enforceability be reinstated or the section 112 transition policy be revoked.

Moreover, it is important to recognize that West Virginia's regulated

[1] In the past, EPA has explained that section 51.160(e) allows state programs to vary procedures for, and timing of, public review in light of the environmental significance of the activity. See 60 FR 45564 (August 31, 1995).

[2] *See* Memorandum from John Seitz re Options for Limiting the Potential to Emit (PTE) of a Stationary Source under section 112 and Title V of the Clean Air Act (January 25, 1995); Memorandum from John Seitz re Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit (January 22, 1996); Memorandum from John Seitz re Second Extension of January 25, 1995 Potential to Emit Transition Policy and Clarification of Interim Policy (July 10, 1998).

[3] *See* Memorandum from John Seitz re Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit (January 22, 1996).

[4] West Virginia already had a minor new source review permitting program approved into its SIP. While permits issued pursuant to such program are federally enforceable, they are not specifically recognized as being federally enforceable for purposes of limiting a source's potential to emit.

community may benefit from being able to take limits on potential to emit that are federally enforceable. Currently, West Virginia's SIP-approved major non-attainment new source review program requires that limitations on potential to emit be federally enforceable. Approval of West Virginia's minor new source review and existing stationary source operating permit program into the SIP under 110 will allow sources to continue to rely on minor new source review permits to ''net out'' of major nonattainment new source review requirements.

With respect to NEDA/CARP's comment that it would be inappropriate for EPA to approve West Virginia's 112(l) program into the SIP, EPA wishes to make clear that its approval of West Virginia's submission under section 112(l) of the Act is separate from EPA's concurrent approval of the submission under section 110 of the Act as a SIP revision. The Agency is not approving the 112(l) program into the SIP.

III. Final Action

EPA is approving in part, and disapproving in part, changes to West Virginia's minor new source review program as a revision to the West Virginia SIP under section 110 of the Act. EPA is disapproving West Virginia's exemption of sources with Title V permits from minor new source review. EPA is also disapproving West Virginia's temporary permitting procedure. Such provisions do not comport with federal requirements for state minor new source review programs. At the same time, EPA is approving all other portions of West Virginia's minor new source review program as a revision to the West Virginia SIP. This action approves and makes federally enforceable many of the updates and improvements from the SIP approved version of West Virginia's minor new source review program, and at the same time prevents serious relaxations related to the program's scope and public participation requirements.

EPA is also approving West Virginia's minor new source review and existing stationary source operating permit program under sections 110 and 112(l) as meeting federal requirements for limiting a source's potential to emit criteria pollutants and HAPs. Approval under sections 110 and 112(l) of the Clean Air Act will recognize West Virginia's minor new source review and existing stationary source operating permit program as capable of establishing federally enforceable limitations on criteria pollutants and hazardous air pollutants, respectively. Such approval will confer federal enforceability status to PTE limitations in permits issued pursuant to West Virginia's minor new source review and existing stationary source operating permit program which meet applicable June 28, 1989 and section 112(l) criteria, including permits which have been issued prior to EPA's final action.

Accordingly, EPA is revising 40 CFR 52.2520 (Identification of plan) to reflect EPA's approval action. At the same time, EPA is revising 40 CFR 52.2522 (Approval status) to announce EPA's disapproval of the provisions which exempt sources with Title V permits from minor new source review and which govern the issuance of temporary construction and modification permits as revisions to the West Virginia SIP.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will 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), because it 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.'' Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines: (1) Is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to

develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This final rule will not have a significant impact on a substantial number of small entities because EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. This Federal disapproval action maintains pre-existing Federal requirements that have been in effect since November 10, 1975. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector result from this action.

G. 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).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action on West Virginia's minor new source review and existing stationary source operating permit program must be filed in the United States Court of Appeals for the appropriate circuit by March 13, 2000. 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 approving in part and disapproving in part revisions to West Virginia's changes to West Virginia's minor new source review program under section 110, and approving West Virginia's minor new source review and existing stationary source operating permit program under sections 110 and 112(l) of the Clean Air Act for purposes of limiting potential to emit 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.

Dated: November 30, 1999.

Thomas C. Voltaggio,

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)(43) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(43) Revisions to West Virginia Regulation 45 CSR 13 submitted on August 26, 1994 by the West Virginia Department of Environmental Protection.

(I) Incorporation by reference.

(A) Letter of August 26, 1994 from the West Virginia Department of Environmental Protection transmitting 45 CSR 13 ''Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation''.

(B) Revised version of 45 CSR 13 ''Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation'', sections: 1 except for the reference in subsection 1.1 to major stationary sources which have not been issued a permit pursuant to 45 CSR 30, 2–8, 10, 11 except for subsection 11.2, and Tables 45–13A and 45–13B, effective April 27, 1994.

(ii) Additional Material.

(A) Remainder of August 26, 1994 State submittal pertaining to 45 CSR 13, ''Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation''.

(B) Letter of September 5, 1996 from the West Virginia Office of Air Quality requesting EPA approval of 45 CSR 13 under 112(l) of the Clean Air Act, and clarifying that the definition of ''major stationary source'' in 45 CSR 13 will be interpreted consistently with the 45 CSR 14 and 45 CSR 19 programs as to the types of source categories which need to include fugitive emissions.

3. Section 52.2522 is amended by adding paragraph (h) to read as follows:

§ 52.2522 Approval status.

* * * * *

(h) EPA disapproves the portion of 45 CSR 13 subsection 1 referencing major stationary sources which have not been issued a permit pursuant to 45 CSR 30 and section 11.2, submitted by the West Virginia Department of Environmental Protection on August 26, 1994, as revisions to the West Virginia SIP. These provisions do not meet the requirements of 40 CFR 51.160 for scope. EPA also disapproves 45 CSR 13 section 9, submitted by the West Virginia Department of Environmental Protection on August 26, 1994, as a revision to the West Virginia SIP. These provisions do not meet the requirements of 40 CFR 51.161 for public participation.

[FR Doc. 00–490 Filed 1–12–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA172–0203; FRL–6513–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on August 10, 1999. This revision concerns Kern County Air Pollution Control District (KCAPCD)—Rule 410.4, Surface Coating of Metal Parts and Products. This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). This revised rule controls VOC emissions from the surface coating of miscellaneous metal parts and products. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on February 14, 2000.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for this rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812; and,

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

EPA is approving Kern County Air Pollution Control District (KCAPCD) Rule 410.4, Surface Coating of Metal Parts and Products for inclusion within the California SIP. This rule was submitted by the California Air Resources Board (CARB) to EPA on May 10, 1996.

II. Background

On August 19, 1999 (see 64 FR 45216), EPA proposed to approve KCAPCD Rule 410.4, Surface Coating of Metal Parts and Products. KCAPCD Rule 410.4 was adopted and revised on March 7, 1996. In turn, the California Air Resources Board submitted this rule to EPA on May 10, 1996. CARB submitted this rule in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone according to EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for KCAPCD Rule 410.4 and nonattainment areas is provided in the August 19, 1999 Notice Direct Final Rulemaking (NDFRM) (see 64 FR 45178).

Having received a public comment on its August 19, 1999 direct final action to approve KCAPCD Rule 410.4, EPA removed this revision to the California SIP on November 8, 1999 (see 64 FR 60688). EPA will address this comment within this rulemaking.

EPA evaluated KCAPCD Rule 410.4 for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NDFRM cited above. EPA has found that this rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and EPA's evaluation has been provided in the August 19, 1999 NDFRM (see 64 FR 45178) and in the technical support document (TSD) available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in the NPRM (see 64 FR 45216). EPA received one comment