(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]

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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

concerning KCAPCD Rule 410.4 from Canam Steel Corporation (CSC). Where KCAPCD Rule 410.4 sets a VOC coating emissions limit of 340 gram/liter for air dried metal parts and products, CSC suggests that Rule 410.4 be changed to allow structural steel fabricators to use a higher VOC content coating. CSC asserts that when dip coating is used to coat large joists and structural steel members, a higher VOC content and less viscous coating may result in less overall VOC emissions than Rule 410.4's 340 gram per liter emissions limit.

EPA Response: KCAPCD Rule 410.4's 340 gram/liter VOC emissions limit is consistent with the relevant California Determination of Reasonably Available Control Technology and exceeds EPA's Control Technique Guideline emissions limit of 420 grams/liter for the air dried coating of miscellaneous metal parts and products. Because KCAPCD's 340 gram/liter VOC emission limit is part of the California SIP, KCAPCD cannot raise and EPA cannot approve a higher VOC emissions limit without considering and addressing the anti-backsliding requirements of Sections 110(l) and 193 of the Clean Air Act. These sections of the Clean Air Act restrict EPA's ability to approve state actions that may weaken the California SIP.

KCAPCD's adoption of the 340 gram/liter emissions limit and EPA's approval of this limit into the California SIP predates the March 7, 1996 adoption described within EPA's August 19, 1999 proposal. EPA approved the 340 grams per liter VOC emissions limit into the California SIP on July 25, 1996 (see 61 FR 38571) after reviewing the April 6, 1995 adopted version of KCAPCD Rule 410.4. Only recently have other states and EPA been able to review CSC's studies and consider revising their SIPs (see 64 FR 32415, June 17, 1999).

If Canam Steel Corp. wishes to pursue changes to KCAPCD Rule 410.4, EPA suggests that CSC present its studies to the KCAPCD and the CARB for consideration. Should California choose to amend the Rule 410.4, it must address Sections 110(l) and 193 of the CAA.

IV. EPA Action

EPA is finalizing action to approve KCAPCD Rule 410.4—Surface Coating of Metal Parts and Products for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate KCAPCD Rule 410.4 into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs according to requirements of the CAA.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from 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 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

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, 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 the mandate is unfunded, EPA must 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. 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 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).

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.

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**. A major rule cannot take effect until 60 days after it is published 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.

The 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 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 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 7, 1999.

David P. Howekamp,

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 paragraph (c) (231)(i)(B)(*6*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(231) * * *

(i) * * *

(B) * * *

(*6*) Rule 410.4, adopted on June 26, 1979 and amended on March 7, 1996.

* * * * *

[FR Doc. 00–624 Filed 1–12–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE–031–1029; FRL–6522–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—Minor New Source Review and Federally Enforceable State Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting limited approval to a State Implementation Plan (SIP) revision submitted by the State of Delaware which amends its minor New Source Review (NSR) permit program. EPA is granting full approval of a second revision which establishes a mechanism for the terms and conditions of a permit to be deemed federally-enforceable for purposes of limiting the potential to emit regulated air contaminants, *i.e.,* a Federally Enforceable State Operating Permits Program (FESOPP). EPA is granting limited approval of changes to the minor NSR program, because it does not fully meet EPA's regulatory requirement for public participation. EPA is granting full approval of the FESOPP because it meets all applicable requirements.

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