

## Regulatory Evaluation

Although the final rule published in 1996 was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget (OMB) does not consider this extension a significant action. As a result, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this extension will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This extension will not have a significant economic impact on a substantial number of small entities because it reflects existing conditions and relieves planholders from certain original requirements. Any future regulatory action on this issue will address any economic impacts, including impacts on small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this extension to a suspension of a final rule will not have a significant economic impact on a substantial number of small entities.

## Assistance for Small Entities

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

## Collection of Information

This action does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## Federalism

We have analyzed this action under E.O. 13132 and have determined that it does not have implications for federalism under that Order. Because

this action extends a suspension of a final rule, it does not preempt any state action.

## Unfunded Mandates Reform Act

This action will not result in an unfunded mandate under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538).

## Taking of Private Property

This action will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## Civil Justice Reform

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

We have analyzed this action under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

## Environment

We considered the environmental impact of this proposed rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available in the docket where indicated under ADDRESSES.

## List of Subjects in 33 CFR Part 155

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 155 as follows:

## PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 1. The authority citation for part 155 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

Sections 155.110-155.130, 155.350-155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110-155.1150 also issued 33 U.S.C. 2735.

**Note:** Additional requirements for vessels carrying oil or hazardous materials appear in 46 CFR parts 30 through 36, 150, 151, and 153.

## § 155.1050 [Amended]

■ 2. In § 155.1050, paragraph (k)(3) is suspended until February 12, 2007.

## § 155.1052 [Amended]

■ 3. In § 155.1052, the last sentence in paragraph (f) is suspended until February 12, 2007.

Dated: January 16, 2004.

**T.H. Gilmour,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.*

[FR Doc. 04-1440 Filed 1-22-04; 8:45 am]

BILLING CODE 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region 2 Docket No. NY65-270, FRL-7610-7]

### Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision; 1-Hour Ozone Control Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to Part 226, "Solvent Metal Cleaning", Part 228, "Surface Coating Processes", Part 235, "Consumer Products" and the adoption of new rule Part 239, "Portable Fuel Container Spillage Control" of Title 6 of the New York Codes, Rules and Regulations. This SIP revision consists of control measures needed to meet the shortfall emissions reduction identified by EPA in New York's 1-hour ozone attainment demonstration SIP. The intended effect of this action is to approve control strategies which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

**EFFECTIVE DATE:** This rule will be effective February 23, 2004.

**ADDRESSES:** A copy of the New York submittals are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air

Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381.

**SUPPLEMENTARY INFORMATION:**

**I. What Is Required by the Clean Air Act and How Does It Apply to New York?**

Section 182 of the Clean Air Act (Act) specifies the required State Implementation Plan (SIP) submissions and requirements for areas classified as nonattainment for ozone and when these submissions and requirements are to be submitted to EPA by the states. The specific requirements vary depending upon the severity of the ozone problem. The New York—Northern New Jersey—Long Island area is classified as a severe ozone nonattainment area. Under section 182, severe ozone nonattainment areas were required to submit demonstrations of how they would attain the 1-hour standard. On December 16, 1999 (64 FR 70364), EPA proposed approval of New York's 1-hour ozone attainment demonstration SIP for the New York—Northern New Jersey—Long Island nonattainment area. In that rulemaking, EPA identified an emission reduction shortfall associated with New York's 1-hour ozone attainment demonstration SIP, and required New York to address the shortfall. In a related matter, the Ozone Transport Commission (OTC) developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by states in developing their own regulations to achieve additional emission reductions to close emission shortfalls.

On February 4, 2002 (67 FR 5170), EPA approved New York's 1-hour ozone attainment demonstration SIP. This approval included an enforceable commitment submitted by New York to adopt additional control measures to close the shortfall identified by EPA for attainment of the 1-hour ozone standard.

**II. What Was Included in New York's Submittal?**

On December 30, 2002, Carl Johnson, Deputy Commissioner, New York State

Department of Environmental Conservation (NYSDEC), submitted to EPA a revision to the SIP which included state adopted revisions to two regulations. The two regulations consist of New York Codes, Rules and Regulations (NYCRR), Part 235, "Consumer Products" and Part 239, "Portable Fuel Container Spillage Control." In addition, on January 17, 2003 and April 30, 2003, Deputy Commissioner Johnson submitted to EPA a revision to the SIP which included state proposed revisions to NYCRR, Part 226, "Solvent Metal Cleaning" and Part 228, "Surface Coating Processes", respectively. All of these revisions will provide volatile organic compound (VOC) emission reductions to address, in part, the shortfall identified by EPA. New York used the OTC model rules as guidelines to develop its rules.

On April 10, 2003 (68 FR 17573), EPA proposed approval of parts 226, 235 and 239, and on July 16, 2003 (68 FR 41987), EPA proposed approval of part 228. For a detailed discussion on the content and requirements of the revisions to New York's regulations, the reader is referred to EPA's proposed rulemaking actions.

In addition, the revisions to part 226, "Solvent Metal Cleaning" and part 228, "Surface Coating Processes" were proposed under a procedure called parallel processing, whereby EPA proposed rulemaking action concurrent with the State's procedures for amending its regulations. On September 17, 2003, and supplemented on October 27, 2003, New York submitted to EPA the adopted revisions to part 226 and part 228 for incorporation into the SIP. Because there were no substantial changes made to the state adopted revisions to part 226, as cited in the April 10, 2003 (68 FR 17573) proposal or part 228, as cited in the April 10, 2003 (68 FR 17573) proposal, EPA is proceeding with a final rulemaking which includes these revisions to part 226 and part 228.

**III. What Comments Did EPA Receive in Response to Its Proposals?**

In response to EPA's April 10, 2003 and July 16, 2003 proposed rulemaking actions, EPA received comments from one interested party. In summary, the commentor raised a concern that EPA is imposing unnecessary administrative impediments by requiring that alternate test methods, variances, innovative products exemptions and alternate compliance plans be approved by EPA on a case-by-case basis.

*A. EPA's Response to Comments*

While the provisions that set forth the requirements for alternate test methods, variances, innovative products and alternate compliance plans required pursuant to part 235, "Consumer Products" or part 239, "Portable Fuel Container Spillage Control" are acceptable, it is EPA policy that these types of provisions (compliance alternatives that are granted or accepted by a state) cannot be recognized, for enforcement purposes, as meeting federal requirements until they are submitted and approved by EPA as a SIP revision. It is not EPA's intention to reevaluate the technical adequacy associated with these applications granted or accepted by the State, but to ensure that the criteria in the regulation has been met. EPA in its oversight role must know exactly what emission limits a source must meet in order to meet EPA's compliance assurance responsibilities. Consequently, if EPA is unaware of an alternate compliance plan, variance or alternate test method a source has been approved to use by the State, then EPA would be holding the source to the existing requirement in the SIP-approved regulation and potentially find the source out of compliance with the applicable SIP. However, having the alternate compliance plan, variance or alternate test method incorporated into the applicable SIP increases the likelihood that the compliance determination for a source or product will be performed correctly.

The commentor is concerned about timeliness in distributing an alternate compliant product in association with EPA's review of a SIP revision for that product. EPA will make every effort to process individual SIP revisions as expeditiously as practicable, *i.e.*, via direct final rulemaking actions. Ideally, federal approval of a SIP revision concerning alternate compliance should occur soon after state approval. Another option that is available to the State, is to request parallel processing of a SIP revision. If a source were to request such processing because of time constraints, the State could request parallel processing if it believes the alternate compliance plan, variance or alternate test method is approvable. This substantially reduces the time for EPA to take rulemaking action. EPA will make efforts to expedite SIP revisions that are in accord with the appropriate criteria for the State's review of the alternate compliance plan, variance or alternate test method, and will apply enforcement discretion where appropriate.

In addition, the purpose of this SIP revision is to establish control measures needed to meet the shortfall emissions reduction identified by EPA in New York's 1-hour ozone attainment demonstration SIP. The intended effect of today's action is to approve control strategies which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone. With the acceptance of alternate control strategies/limits, EPA must be kept informed that the resulting emission reductions from these alternatives will not interfere with the necessary reductions associated with the previous identified shortfall.

#### IV. What Is EPA's Conclusion?

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the revisions made to part 226, part 228, part 235 and new part 239 of Title 6 of the New York Codes, Rules and Regulations, entitled, "Solvent Metal Cleaning", "Surface Coatings Processes", "Consumer Products" and "Portable Fuel Container Spillage Control", respectively, meet the SIP revision requirements of the Act with the following exception. While the provisions related to alternate test methods, variances, innovative products and alternate compliance plans pursuant to part 235, "Consumer Products" or part 239, "Portable Fuel Container Spillage Control" are acceptable, the specific application of those provisions (those that are granted or accepted by the State) cannot be recognized as meeting federal requirements until they are submitted and approved by EPA as a SIP revision. Therefore, EPA is approving the regulations as part of the New York SIP with the exception that specific applications of provisions associated with alternate test methods, variances, innovative products and alternate compliance plans, allowed pursuant to parts 235 and 239, must be submitted to EPA as SIP revisions.

#### V. 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 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 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 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. section 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. section 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 23, 2004. 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 29, 2003.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

■ 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 HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(103) to read as follows:

#### § 52.1670 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(103) Revisions to the State Implementation Plan submitted on

December 30, 2002, January 17, 2003, April 30, 2003, September 17, 2003, and October 27, 2003, by the New York State Department of Environmental Conservation, which consists of control strategies that will achieve volatile organic compound emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

(i) Incorporation by reference:  
 (A) Regulations Part 226, "Solvent Metal Cleaning Processes" of Title 6 of

the New York Code of Rules and Regulations (NYCRR), filed on April 7, 2003, and effective on May 7, 2003, Part 228, "Surface Coating Processes" of Title 6 NYCRR, filed on June 23, 2003, and effective on July 23, 2003, Part 235, "Consumer Products" of Title 6 NYCRR, filed on October 10, 2002, and effective on November 9, 2002, and Part 239, "Portable Fuel Container Spillage Control" of Title 6 NYCRR, filed on

October 4, 2002, and effective on November 4, 2002.

■ 3. In § 52.1679, the table is amended by:

■ a. revising the entries under Title 6 for Parts 226 and 228, and

■ b. adding new entry under Title 6 for Parts 235 and 239, in numerical order to read as follows:

**52.1679 EPA-approved New York State regulations**

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
* Part 226, "Solvent Metal Cleaning Processes".	* 5/7/03	* 1/23/04	* * *
* Part 228, "Surface Coating Processes".	* 8/23/03	* 1/23/04	* * *
* Part 235, "Consumer Products".	* 11/9/02	* 1/23/04	* The specific application of provisions associated with alternate test methods, variances, innovative products and alternate compliance plans, must be submitted to EPA as SIP revisions.
* Part 239, "Portable Fuel Container Spillage Control".	* 11/4/03	* 1/23/04	* The specific application of provisions associated with alternate test methods, variances and innovative products, must be submitted to EPA as SIP revisions.
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[FR Doc. 04-1446 Filed 1-22-04; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-2003-0373; FRL-7342-1]

**Sulfuryl Fluoride; Pesticide Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of sulfuryl fluoride and inorganic fluoride from postharvest fumigation uses of sulfuryl fluoride in or on stored commodities. Dow AgroScience LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). This action reflects the first food use on sulfuryl fluoride in the United States. Sulfuryl fluoride has been registered for fumigation of structures for termites under the brand name Vikane for many years. Sulfuryl

fluoride is considered to be a methyl bromide replacement for some of these post-harvest fumigation uses. Under the Profume product label, grain processing facilities and stored cereal grains, dried fruits and tree nuts will be fumigated at a maximum use rate of 1,500 ounces/hours/1,000 ft<sup>3</sup> (1,500 milligrams/hours/liter (mg/hr/L) or 200 mg-hr/L under vacuum conditions. Commodities treated with Profume must be aerated for at least 24 hours before entering commerce.

**DATES:** This regulation is effective January 23, 2004. Objections and requests for hearings, identified by docket ID number OPP-2003-0373, must be received on or before March 23, 2004.

**ADDRESSES:** Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460-0001; telephone number: (703) 308-6742; e-mail address: [mcneilly.dennis@epa.gov](mailto:mcneilly.dennis@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 282999), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.