

that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a safety zone and is categorically excluded under figure 2-1, paragraph (34)(g), of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11-284 to read as follows:

#### § 165.T11-284 Safety Zone, AVI May Fireworks Display, Colorado River, Laughlin, NV.

(a) *Location.* The limits of the safety zone are as follows: All navigable waters within 800 feet of the firing location adjacent to the AVI Resort and Casino centered in the channel between Laughlin Bridge and the northwest point of AVI Resort and Casino Cove in position: 35°00'93"N, 114°38'28"W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 9:45 p.m. on May 30, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry

into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF-FM Channel 16.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: February 3, 2010.

T.H. Farris,

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2010-4204 Filed 3-1-10; 8:45 am]

**BILLING CODE 9110-04-P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA-R02-OAR-2010-0131, FRL-9120-9]

#### Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a proposed revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The proposed SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations Part 235, "Consumer Products" and Part 239, "Portable Fuel Container Spillage Control." The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help achieve attainment of the national ambient air quality standards for ozone. **DATES:** Comments must be received on or before *April 1, 2010*.

**ADDRESSES:** Submit your comments, identified by Docket Number EPA-R02-OAR-2010-0131, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).

- *Fax:* 212-637-3901

- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

*Instructions:* Direct your comments to Docket No. EPA-R02-OAR-2010-0131. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is

not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://*

*www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. What is Required by the Clean Air Act (Act) and How Does it Apply to New York?
  - A. What is the History and Time Frame for State Implementation Plan (SIP) Submissions?
  - B. What are the Moderate Area Requirements?
- II. What was Included in New York's Submittals?
  - A. What do the Revisions to Part 235, "Consumer Products" Consist Of?
  - B. What do the Requirements of Part 239, "Portable Fuel Container Spillage Control" Consist Of?
- III. What is EPA's Conclusion?
- IV. Statutory and Executive Order Reviews

**I. What is Required by the Clean Air Act (Act) and How Does it Apply to New York?**

*A. What Is the History and Time Frame for State Implementation Plan (SIP) Submissions?*

In 1997, EPA revised the health-based national ambient air quality standards (NAAQS or standard) for ozone, setting it at 0.08 parts per million averaged over an 8-hour period. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals

with a pre-existing respiratory disease, such as asthma. On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. The three 8-hour ozone moderate nonattainment areas located in New York State are: the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area; the Poughkeepsie nonattainment area; and the Jefferson County nonattainment area. The New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. This is collectively referred to as the New York City Metropolitan Area or NYMA. The Poughkeepsie nonattainment area is composed of Dutchess, Orange and Putnam counties. On March 25, 2008 (73 FR 15672) EPA determined that Jefferson County attained the 8-hour ozone standard.

These designations triggered the Act's requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit a demonstration of attainment. To assist States in meeting the Act's requirements for ozone, EPA released an 8-hour ozone implementation rule in two Phases. EPA's Phase 1 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951) and referred to as the Phase 1 Rule, specifies that States must submit these attainment demonstrations to EPA by no later than three years from the effective date of designation, that is, submit them by June 15, 2007.<sup>1</sup>

*B. What Are the Moderate Area Requirements?*

On November 9, 2005, EPA published Phase 2 of the 8-hour ozone implementation rule (70 FR 71612) and referred to as the Phase 2 Rule, which addressed the control obligations that apply to areas designated nonattainment for the 8-hour NAAQS. Among other things, the Phase 1 and Phase 2 Rules

<sup>1</sup> On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated the Phase 1 Rule. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). Subsequently, in *South Coast Air Quality Management Dist. v. EPA*, 489 F.3d 1295 (DC Cir. 2007), in response to several petitions for rehearing, the Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. The court upheld the portions of the Phase 1 Rule relating to EPA's classification system under subpart 2. The portions of the rule that were vacated do not affect this proposed action.

outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, reasonably available control technology (RACT) plans were due by September 2006 (40 CFR 51.912(a)(2)). The rules further require that modeling and attainment demonstrations, reasonable further progress plans, reasonably available control measure (RACM) analysis, projection year emission inventories, motor vehicle emissions budgets and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a), and (c)).

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.

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

On October 21, 2009 and November 23, 2009, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA proposed revisions to the SIP which included State adopted revisions to two regulations which consist of, respectively, Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 235, "Consumer Products" with an effective date of October 15, 2009 and 6 NYCRR Part 239, "Portable Fuel Container Spillage Control" with an effective date of July 30, 2009. These revisions will provide volatile organic compound (VOC) emission reductions to address, in part, attainment of the 1997 8-hour ozone standard in the NYMA and towards meeting the RACT and RACM requirement. New York used the OTC model rules as guidelines to develop its rules.

*A. What Do the Revisions to Part 235, "Consumer Products" Consist Of?*

On January 23, 2004 (69 FR 3237), EPA approved the previous version of Part 235 that included VOC content limits for 43 separate consumer product categories. New York's recent revisions to Part 235 includes VOC content limits for eleven new categories of products and includes revised VOC content limits for contact adhesives. The new categories of products, some of which include subcategories, are: adhesive remover, anti-static (non-aerosol), electrical cleaner, electronic cleaner, fabric refresher, footwear or leather care,

graffiti remover, hair styling, shaving gel, toilet/urinal care, and wood cleaner.

New York also revised subpart 235–2.1, “Definitions” to accommodate the new and revised categories as well as to provide clarification on some existing definitions.

Revised subpart 235–3.1, “Standards” establishes that no person shall sell, supply, offer for sale, or manufacture for sale in the State of New York consumer products manufactured on or after January 1, 2010 which contain VOC’s in excess of the VOC content limits specified by New York State for the eleven new and revised categories. The VOC standards for products registered under FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act) will have an effective date of January 1, 2011.

The revisions to subpart 235–3.1 include an unlimited sell through for products that are manufactured before January 1, 2010, except for products that do not display on the container or package the date, or a code indicating the date, on which the product was manufactured (*see* subpart 235–3.1(d)); solid air fresheners and toilet/urinal care products that contain para-dichlorobenzene (*see* subpart 235–3.1(d) and (n)); adhesive removers, contact adhesives, electrical cleaners, electronic cleaners, footwear or leather care products, graffiti removers and general purpose degreasers (a category already included in the SIP) that contain methylene chloride, perchloroethylene; or trichloroethylene (*see* subpart 235–3.1(l) and (m)). Products containing these compounds will have a one year limited sell through until January 1, 2011. Other revisions to Part 235 include some administrative changes to the labeling/date coding provisions (subpart 235–6.1), an innovative products exemption (subpart 235–5.1), a variance provision (subpart 235–8.1), alternative test methods (subpart 235–9.1) and alternate control plan provisions (subpart 235–11). Subparts 235–5.1, 235–8.1, 235–9.1 and 235–11.1 require that after NYSDEC approves an application for an innovative product exemption, a variance, an alternative test method or alternative control plan, it must be submitted to the EPA for approval as a SIP revision. In the event that the State adopts a less stringent requirement and it is not approved into the SIP by EPA through a source-specific SIP mechanism, the rule in the SIP is operative under Federal law and is Federally enforceable.

### *B. What do the Requirements of Part 239, “Portable Fuel Container Spillage Control” Consist Of?*

On January 23, 2004 (69 FR 3237), EPA approved the previous version of Part 239 that is intended to reduce refueling emissions from equipment and engines in the off-road categories that are predominantly refueled with portable fuel containers. New York’s recent revisions to Part 239 make certain provisions (*i.e.*, applicability, performance standards, exemptions, test procedures and administrative procedures) consistent with Federal Rule, 40 CFR Part 59 Subpart F—Control of Evaporative Emissions From New and In-Use Portable Fuel Containers. Pursuant to Sections 110(l) and 193 of the Act, EPA is not authorized to approve a revision to the SIP unless the modification insures equivalent or greater emission reductions and the revision would not interfere with an applicable requirement concerning attainment and reasonable further progress as defined in title I of the Act or any other applicable requirement of the Act.

In the event that the State adopts a less stringent rule and it is not approved into the SIP by EPA through a source-specific SIP mechanism, the rule in the SIP is operative under Federal law and is Federally enforceable. Part 239 also differs from 40 CFR Part 59 Subpart F in that it establishes innovative product exemption provisions that allow for alternatives to complying with the performance standards specified in Part 239. If a manufacturer demonstrates by clear and convincing evidence that, due to the product’s design, delivery system, or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its product category, the manufacturer may apply to the NYSDEC for an innovative product exemption in accordance with the criteria specified in Part 239–5.

In addition, subpart 239–7 provides procedures for obtaining a variance. Any person who cannot comply with the performance standards set forth in Part 239, due to extraordinary reasons that are beyond that person’s reasonable control, may apply in writing to the NYSDEC for a variance. An application for a variance must specify the grounds upon which the variance is sought, the proposed date(s) by which compliance with the Part 239 VOC limits will be achieved and a compliance report reasonably detailing the method(s) by which compliance will be achieved.

### **III. 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 235 and Part 239 of Title 6 of the New York Codes, Rules and Regulations, entitled, “Consumer Products” and “Portable Fuel Container Spillage Control”, respectively, meet the SIP revision requirements of the Act with the following exceptions.

The provisions related to innovative products exemptions in subpart 239–5, variances in subpart 239–7 and alternate test methods in subpart 239–8 do not explicitly require submission of an innovative product exemption, variance or alternative test method to EPA for approval into the SIP. Since the rule does not explicitly state that innovative product exemptions, variances or alternative test methods have to be submitted to EPA for approval in the SIP, there is the possibility that such exemptions, variances and alternatives will not be submitted for review and approval into the SIP and therefore will not, if approved, become Federally enforceable. Failure to submit such exemptions, variances or alternatives to EPA for review and approval can lead to sources not understanding that the original rule still applies and can be enforced by the United States. In order to be Federally enforceable, any exemption, variance or alternative test method approved by NYSDEC must be approved by EPA into the SIP.

While Part 239 may create some uncertainty regarding which provisions in subpart 239–5, 239–7 or 239–8 are enforceable, EPA has determined that there is no certainty that sources will use these provisions in the future. Therefore, EPA is proposing to approve the proposed revisions to Part 239 as part of the New York SIP with the understanding that the specific application of provisions associated with innovative product exemptions, variances, and alternate test methods, pursuant to Part 239, must be submitted to EPA as SIP revisions.

### **IV. Statutory and Executive Order Reviews**

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does

not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 18, 2010.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

[FR Doc. 2010-4306 Filed 3-1-10; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 395

[Docket No. FMCSA-2004-19608]

RIN 2126-AB26

#### Hours of Service

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of public listening session.

**SUMMARY:** FMCSA announces that it will hold a fifth public listening session (in addition to the four sessions held in January 2010) to solicit comments and information on potential hours-of-service (HOS) regulations. Specifically, the Agency wants to know what factors, issues, and data it should be aware of as it prepares to issue a notice of proposed rulemaking (NPRM) on HOS requirements for property-carrying commercial motor vehicle (CMV) drivers. This session will be held in the Louisville, Kentucky area in conjunction with the Mid-America Trucking Show. The listening session will allow interested persons to present comments, views, and relevant research on revisions FMCSA should consider in its forthcoming rulemaking. All comments will be transcribed and placed in the rulemaking docket for the FMCSA's consideration.

**DATES:** This listening session will be held on Friday, March 26, 2010, in Louisville, Kentucky. It will begin at 10 a.m. local time and end at 6 p.m., or earlier, if all participants wishing to express their views have done so.

**ADDRESSES:** The listening session will be held at the Mid-America Trucking Show at the Kentucky Exposition Center, South Wing Room B101, 937 Phillips Lane, Louisville, Kentucky 40209-1331. The Kentucky Exposition Center may be contacted at (502) 367-5000 for directions. Each person attending may attend the trucking show and the listening session free of charge, if they pre-register online with the Mid-America Trucking Show organizer at <http://truckingshow.com/attendee/attendee-registration>. Attendees pre-registering must print out their

confirmation page after registering and present it at the Kentucky Exposition Center door to be admitted free. Otherwise, admission to the trucking show on March 26 will be \$5.00.

You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2004-19608 using any of the following methods.

*Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

*Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

*Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or to Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the hours-of-service rules, contact Mr. Tom Yager, Chief, Driver and Carrier Operations