



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2013-0734, FRL-9907-02-Region-2]

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

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 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers." The intended effect of this action is to approve control techniques, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain the national ambient air quality standards for ozone.

DATES: This rule will be effective on [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES:EPA has established a docket for this action under the Federal Docket Management System (FDMS) which replaces the Regional Materials in EDOCKET (RME) docket system. The new FDMS is located at www.regulations.gov and the docket ID for this action is EPA-R02-OAR-2013-0734. All documents in the docket are listed in the FDMS index. Publicly available docket materials are available either electronically in FDMS or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW., Washington, DC; and the 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 was included in New York's submittals?

On July 15, 2013, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA revisions to the State Implementation Plan (SIP), which included State adopted revisions to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers,"

with an effective date June 5, 2013. These revisions are applicable statewide and will therefore provide volatile organic compound (VOC) emission reductions statewide and will help in achieving attainment of the ozone standards in the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area and in meeting the reasonably available control technology (RACT) requirements. The revisions to Part 228 are also intended to satisfy certain control technique guideline (CTG) documents issued by EPA pursuant to section 182(b)(2)(A) of the Clean Air Act (CAA).

New York also included a negative declaration in its July 15, 2013 submittal. New York has certified, based on a review of operating permits and emissions inventory, no facilities exist in the State to which the Fiberglass Boat Manufacturing Materials CTG or the Industrial Cleaning Solvents CTG apply.

II. What is EPA's Evaluation of Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers?"

Part 228 contains the required elements for a federally enforceable rule: emission limitations, compliance procedures and test methods, compliance dates and record keeping provisions.

Part 228 includes provisions that prohibit the selling, supplying, offering for sale, soliciting, using, specifying or requiring the use of a non-compliant coating on a part or product at a facility in New York, unless allowed by other provisions of Part 228. Part 228 also includes provisions for handling, storage and disposal of VOCs. Facilities also have compliance options including the option of using add-on control equipment provided it achieves 90 percent control.

EPA has evaluated New York's submittal for consistency with the CAA, EPA regulations, and EPA policy and guideline documents. EPA has determined that Part 228 is as effective in regulating the source categories as the following CTGs:

- 1) Wood Furniture Manufacturing Operations [EPA 453/R-96-007 (April 1996); 61 FR 25223 (May 20, 1996)];
- 2) Flat Wood Paneling Coatings [EPA 453/R-06-004 (September 2006); 71 FR 58745 (Oct. 5, 2006)];
- 3) Metal Furniture Coatings [EPA 453/R-07-005 (September 2007); 72 FR 57215 (Oct. 9, 2007)];
- 4) Large Appliance Coatings [EPA 453/R-07-004 (September 2007); 72 FR 57215 (Oct. 9, 2007)];
- 5) Paper, Film and Foil Coatings [EPA 453/R-07-003 (September 2007); 72 FR 57215 (Oct. 9, 2007)];
- 6) Automobile and Light-Duty Truck Assembly Coatings [EPA-453/R-08-006 (September 2008); 73 FR 58481 (Oct. 7, 2008)]; and
- 7) Miscellaneous Metal and Plastic Parts Coatings [EPA-453/R-08-003 (September, 2008); 73 FR 58481 (Oct. 7, 2008)].

EPA has determined that the VOC content limits associated with the various surface coating processes included in the revised Part 228 are consistent with the VOC content limits recommended in the applicable surface coating CTGs, as are all of the other recommended

control options (i.e., add-on controls efficiency, work practices for coating-related activities and work practices for cleaning materials) and applicability thresholds. Therefore, EPA is approving it as part of the SIP and as meeting the requirement to adopt a RACT rule for the CTG categories listed above.

With regard to New York's negative declaration for Fiberglass Boat Manufacturing Materials and Industrial Cleaning Solvents, EPA agrees with New York's evaluation that no facilities exist in the State to which the Fiberglass Boat Manufacturing Materials CTG apply. However, at this time, EPA is not taking action on the negative declaration as it applies to the Industrial Cleaning Solvents CTG because further EPA evaluation and discussions with the State are necessary to adequately assess the applicability of the Industrial Cleaning Solvents CTG to potentially affected facilities that may be operating in New York State.

III. What Comments Did EPA Receive in Response to its Proposal?

On November 20, 2013 (78 FR 69625), EPA proposed to approve New York's revised Part 228.

For a detailed discussion on the content and requirements of the revisions to New York's regulation, the reader is referred to EPA's proposed rulemaking action.

In response to EPA's November 20, 2013 proposed rulemaking action, EPA received no comments.

IV. What is EPA's conclusion?

EPA has evaluated New York's July 15, 2013 SIP revision submittal for consistency with the CAA, EPA regulations, and EPA policy and guideline documents. EPA is approving the revisions made to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers," with an effective date of June 5, 2013. The revisions to Part 228 meet the SIP requirements of the CAA and fulfill the recommended controls identified in the applicable CTGs. EPA is approving these revisions and is also approving New York's July 15, 2013 negative declaration, which certifies that based on a review of operating permits and emissions inventory, no facilities exist in the State to which the Fiberglass Boat Manufacturing Materials CTG apply. Therefore, New York will not have to incorporate provisions consistent with the Fiberglass Boat Manufacturing Materials CTG into Part 228 or any other regulation.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this 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 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 (Public Law 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 Clean Air 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.

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 action 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. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 10, 2014.

Judith A. Enck,
Regional Administrator,
Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTAION PLANS

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. In § 52.1670, the table in paragraph (c) is amended by revising the entry for Title 6, Part 228 to read as follows:

§52.1670 Identification of plan.

* * * * *

(c) * * *

EPA - Approved New York State Regulations And Laws

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6: * * * * * Part 228, Surface Coating Processes, 6/5/13 [Insert date of			

Commercial and Industrial Adhesives,

publication and FR

Sealants and Primers

page citation]

3. Section 52.1683 is amended, by adding paragraph (b) to read as follows:

§52.1683 Control strategy: Ozone.

* * * * *

(b) The State of New York has certified to the satisfaction of the EPA that no sources are located in the State which are covered by the following Control Techniques Guidelines:

(1) Fiberglass Boat Manufacturing Materials.

(2) [Reserved]

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[FR Doc. 2014-04324 Filed 03/03/2014 at 8:45 am; Publication Date: 03/04/2014]